

SMITH LAW FIRM, P.C.

R.J. "Jim" Sewell, Jr.
Lewis K. Smith
Bruce M. Spencer

Attorneys at Law

26 West Sixth Avenue * P.O. Box 1691 * Helena MT 59624-1691
(406) 449-8718 * Fax (406) 449-3817 * bspencer@smithlawmt.com

September 8, 2006

Pat Murdo
Legislative Services Division
Room 110, State Capitol Bldg.
1301 E. Sixth Avenue
Helena, MT 59601

RE: "An Act providing criteria for sharing information about identity theft passports; requiring notification in writing from original creditor if third-party debt collector to be used; including creditors under certain terms of Fair Debt Collection Practices Act; changing department of administration to department of justice for oversight of consumer protection issues in title 31, chapter 3, part 1; and amending sections 31-3-111 and 31-3-152, MCA."

Dear Pat:

I wanted to respond to your e-mail of today regarding the above proposed legislation to the Committee. It is my understanding that you will pass out my letter to the Committee. As none of this was ever discussed in workgroup I am blindsided. I also cannot be at the meeting Sept 11 and 12 as I am out of town. I am responding to this on very short notice, and may need to add additional remarks later. I do understand that you were just attempting to respond to concerns raised and did not intentionally keep us in the dark.

Section 2

It is not necessary for a creditor to give written notice of assignment of a debt. After a debt is assigned to a third party collector, the third party collector must, within 5 days of initial contact, give a validation notice to the debtor, this gives the debtor 30 days to dispute the debt. This validation requirement is mandated by the Fair Debt Collection Practices Act. If ID theft is raised the FACTACT requires the third party collector, and the original creditor to stop all collection activity and research the ID theft claim. I don't think that Section 2 provides any additional protection and it is frankly just open season for suits against creditors.

Section 3

This applies the Fair Debt Collection Practices Act (FDCPA) and additional restrictions to creditors and third party collectors. This is a radical change that adversely effects small Montana business, as well as banks, insurance companies, and any business that wishes to try to collect its own past due account receivables. It is great overkill for a problem that is adequately addressed by Federal law. There is a valid reason why the FDCPA does not apply to creditors,

Letter to Pat Murdo
September 8, 2006
Page 2

there are fewer complaints about creditor collection practices, and creditors do not wish to destroy existing customer relationships. (legislative history of the FDCPA regarding the creditor exemption)

FDCPA compliance requires lots of time, training and money. Frankly it is a complicated law and I just don't think that small Montana businesses could comply. I am an expert in the field and find that I am at times confused as to what the FDCPA does and does not require.

Let me provide an example. If Section 3 were passed, a Cenex station that sent out a past due notice on a bill, would within 5 days of that notice have to send a validation notice, or be subject to a suit for FDCPA violation. Each and every time an employee of the Cenex station spoke to their customer about the past due account they would have to state "This conversation is with a debt collector.", or be subject to a suit for FDCPA violation. There is more, but to site each and every requirement of the FDCPA would take more time and paper than I have. My compliance manual, without supplements is 1046 pages long. I don't believe we want to subject Montana business to that.

Section 4

This is well covered by existing federal law with lots of case law and users of this information understand the requirements for requesting consumer reports. I see no need for it. It gives the consumer the power to refuse to grant permission for anyone to see their consumer report. Refusal of permission would occur regularly in review of existing accounts as well as in the collection of debts, or when a creditor or judgment creditor needs address and social security information on a debtor. This would effectively shut down all ability for a creditor or third party collector to obtain any personal information about a debtor. It would bring collections to a crashing halt. Just to put this in perspective, the collections industry was found to contribute over \$4 Billion to the economy on a yearly basis. This bill would severely hurt that contribution.

In summary, with the exception of Sections 1 and 5, none of these proposals are acceptable, or needed to address the concerns of ID theft victims. Given that the working group was not given the opportunity to discuss and evaluate this proposal I urge the Committee not to adopt them.

Sincerely,

BRUCE M. SPENCER
Attorney at Law

BMS/jc
cc: Montana Auto Dealers Association