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FISCAL IMPACT REPORT

ORIGINAL DATE 02/24/11

SPONSOR Sanchez, M. LAST UPDATED _____ HB _____

SHORT TITLE Restrict Debt Collector Access to Debtors SB 550

ANALYST Sanchez, C.

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Regulation and Licensing Department (RLD)

Attorney General's Office (AGO)

SUMMARY

Synopsis of Bill

Senate Bill 550 adds a new section to the existing law regarding restrictions on contacting debtors and penalties thereto as follows:

A. A debt collector shall not contact by telephone or a similar communication method a person whom the debt collector believes is a debtor unless the debt collector knows the first and last name and the last known physical address of the alleged debtor and the first and last name and the physical address of the person to be contacted by the debt collector.

B. A debt collector shall not contact by telephone or a similar communication method a person whom the debt collector believes is a debtor unless the person to be contacted has the same first and last name and physical address as the alleged debtor.

C. Whenever a debt collector contacts by telephone or a similar communication method a person whom the debt collector believes is a debtor, the debt collector shall provide the person contacted with the following information:

- (1) the name of the person calling and the name and address of the creditor or collection agency on whose behalf the person is calling; and
- (2) a toll-free telephone number that the person believed to be a debtor can call to verify the identity of the debt collector.

D. A debt collector that violates the provisions of this section is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

E. The collection agency and the creditor on whose behalf a debt collector is acting shall, if the debt collector violates the provisions of this section, be liable for a civil penalty not to exceed one hundred fifty thousand dollars (\$150,000), which penalty may be imposed by the director pursuant to rule."

FISCAL IMPLICATIONS

No significant fiscal impact is identified.

SIGNIFICANT ISSUES

Debt collectors shall not contact a debtor by telephone or a similar communication method unless the debt collector has specific identifying information about the debtor that warrants the belief that the debt collector is contacting the correct debtor. Debt collectors must properly identify themselves allowing the debtor to verify the debt in question. If the debt collector violates the provisions of this section, they may be liable for a civil penalty not to exceed one hundred fifty thousand dollars (\$150,000), which penalty may be imposed by the director pursuant to rule. In addition the debt collector can be imprisoned for up to one year in the county jail and fined up to \$1000.00 pursuant Section 31-19-1.

According to the Regulation and Licensing Department (RLD), the bill does not require that the debt collector "know" that he is violating the provisions of the bill. The way the bill is written it could be interpreted as a strict liability crime. A misdemeanor penalty might seem too severe a penalty if this bill was interpreted to be a strict liability crime.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The New Mexico Collection Agency Regulatory Act will not contain the additional consumer protections provided by Senate Bill 550.

CS/bym