

2013 SENATE INDUSTRY, BUSINESS, AND LABOR

SB 2260

2013 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee Roosevelt Park Room, State Capitol

SB 2260

February 12, 2013

Job Number 18774

Conference Committee

Committee Clerk Signature

Eva Retelt

Explanation or reason for introduction of bill/resolution:

Relating to consumer credit counseling services

Minutes:

Testimony Attached

Chairman Klein: Opened the hearing.

Senator Flakoll: Written Testimony (1).

Parrell Grossman, Director of the Attorney General's Consumer Protection and Antitrust Division: Written Testimony (2) and Amendment (3). (2:00-44:15)

Senator Laffen: Asked why businesses aren't able to be on the do not call list.

Parrell: Said it was a legislative decision. His staff would say that the consumers and the telephone subscribers who call in North Dakota do not want to be called by businesses. If the legislature was inclined to make that change you wouldn't see any resistance from consumers or the attorney general.

Chairman Klein: Asked when he talks about enforcement action, are you constantly out there trying to shut someone down or charge them with something.

Parrell: Said he did put some of the do not call enforcement numbers in his testimony. (See testimony page 3, paragraph 3.

Bob Entringer, Commissioner of the Department of Financial Institutions: Said he was here in support of sections one and two of the bill, that did become a part of the loophole. He talked with Parrell early on in the session and indicated their support for the amendment for both the credit counseling section as well as the debt settlement service provider section.

Chairman Klein: Said that was last session when we tightened up the debt settlement provision.

Bob: Said yes, that was introduced last session and is now subject to our enforcement.

Chairman Klein: Said and this helps you guys get clarity.

Bob: Said yes.

Chairman Klein: Closed the hearing.

Senator Sinner: Asked if they would consider adding a study on the end to study this issue. Based on the discussion that went on today, there are problems going on all the time.

Senator Sorvaag: Said he was the first one to ask the question about businesses. It is very frustrating and it gets time consuming because those calls get directed to his wife and him. On the same token they want to walk very careful because he doesn't want to inhibit businesses from doing.....that they don't put them all together. There is legitimate soliciting business to business, we all do it. It's more the continuing calls that are coming in from the credit card processers which are two or three a day. It has to be pretty carefully drafted legislation because we don't want to inhibit local and state businesses or even regional from doing legitimate business.

Senator Laffen: Said his thought was rather than a study that some of them could work with Parrell in the interim and see if there are issues and just try to tighten them up some more.

Senator Andrist: Said that he thinks the best study is the attorney general coming to them every two years and telling them where the problems are.

Chairman Klein: Said he thinks if they start the discussion early enough, whereas everyone can see what the bill looks like. They could even pre-file so businesses can take a look to see who may or may not be affected by it.

Senator Andrist: Moved a do pass as amended.

Senator Sinner: Seconded the motion.

Roll Call Vote: Yes - 7 No - 0 Absent - 0

Floor Assignment: Senator Unruh

**2013 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2260**

Senate Industry, Business, and Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Senator Andrist Seconded By Senator Sinner

| Senators | Yes | No | Senator | Yes | No |
|----------------------|-----|----|----------------|-----|----|
| Chariman Klein | x | | Senator Murphy | x | |
| Vice Chairman Laffen | x | | Senator Sinner | x | |
| Senator Andrist | x | | | | |
| Senator Sorvaag | x | | | | |
| Senator Unruh | x | | | | |
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Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Unruh

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2260: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2260 was placed on the Eleventh order on the calendar.

2013 HOUSE INDUSTRY, BUSINESS, AND LABOR

SB 2260

2013 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee Peace Garden Room, State Capitol

SB 2260
March 12, 2013
Job 19755

Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

Relating to consumer credit counseling services, debt settlement providers, assurance of discontinuance, and telephone solicitations

Minutes:

Attachment 1

Parrel Grossman, director of the attorney general's consumer protection and antitrust division, appearing on behalf of the Attorney General: Provided written testimony, attachment 1. Introduced bill by summarizing written testimony.

7:04 **Representative Boschee:** Voiced support of sections 4 and 5. Question about enforcement and how specific type of text message violations can be tracked down.

7:21 **Parrel Grossman:** It is almost impossible to enforce that particular statute. There will be limited situations in which the callers or the entities that engage in these will admit to sending those text messages. For the most part, these are text messages generated through an automated system, and it's impossible to trace the source. Gave example. Enforcement of that particular requirement will be difficult. However, we thought the legislature should ban them nonetheless.

8:39 **Representative N. Johnson:** Question on which sections of code are referred to on page 3 of the bill, lines 6 and 7.

9:10 **Parrel Grossman:** Provided general titles and content of chapters indicated.

10:26 **Chairman Keiser:** Thank you and your office for all that you do. If someone makes a live call, can you get them on the no call list?

10:58 **Parrel Grossman:** If you are on the do not call list, they are banned from calling you unless they meet one of the exceptions. Summarized exceptions.

Support:

Opposition:

House Industry, Business and Labor Committee

SB 2260

March 12, 2013

Page 2

Neutral:

Hearing closed.

Representative N. Johnson moved a **Do Pass** recommendation; Representative Frantsvog seconded the motion.

Roll call vote on Do Pass for SB 2260. Motion carried.

Yes = 15

No = 0

Absent = 0

Carrier: Representative N. Johnson

Date: 3-12

Roll Call Vote #: 1

**2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2260**

House Industry, Business, and Labor Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider Consent Calendar

Motion Made By Johnson Seconded By Frantsvog

| Representatives | Yes | No | Representatives | Yes | No |
|--------------------------|-----|----|-----------------------|-----|----|
| Chairman George Keiser | ✓ | | Rep. Bill Amerman | ✓ | |
| Vice Chairman Gary Sukut | ✓ | | Rep. Joshua Boschee | ✓ | |
| Rep. Thomas Beadle | ✓ | | Rep. Edmund Gruchalla | ✓ | |
| Rep. Rick Becker | ✓ | | Rep. Marvin Nelson | ✓ | |
| Rep. Robert Frantsvog | ✓ | | | | |
| Rep. Nancy Johnson | ✓ | | | | |
| Rep. Jim Kasper | ✓ | | | | |
| Rep. Curtiss Kreun | ✓ | | | | |
| Rep. Scott Louser | ✓ | | | | |
| Rep. Dan Ruby | ✓ | | | | |
| Rep. Don Vigasaa | ✓ | | | | |
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Total Yes 15 No 0

Absent -

Floor Assignment Johnson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2260: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **DO PASS** (15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
SB 2260 was placed on the Fourteenth order on the calendar.

2013 TESTIMONY

SB 2260

SB 2260

Chairman Klein and members of the IBL committee. For the Record I am Senator Tim Flakoll of Fargo and here to support SB 2260.

SB 2260 is legislation to close a couple of loopholes. One based on previous legislative intent related to Do No Call Lists and the second one related to robo-texts that occurred for the first time this fall 2012 general election.

In both instances the citizens we represent have shown their displeasure and at times outrage over these two new practices.

Due to changing in technologies the law we have on the books do not prevent certain new types of robo-calls that have a more random selection of numbers. This bill closes that loophole.

Parrel Grossman from the Attorney General's office is here to provide you greater and more technical detail so I would like to turn the testimony over to him.

SENATE INDUSTRY, BUSINESS AND LABOR COMMITTEE
JERRY KLEIN, CHAIRMAN
FEBRUARY 12, 2013

TESTIMONY BY
PARRELL D. GROSSMAN
DIRECTOR, CONSUMER PROTECTION AND ANTITRUST DIVISION
OFFICE OF ATTORNEY GENERAL
IN SUPPORT OF
SENATE BILL NO. 2260

Mr. Chairman and members of the Senate Industry, Business and Labor Committee. I am Parrell Grossman, Director of the Attorney General's Consumer Protection and Antitrust Division. I appear on behalf of the Attorney General in support of Senate Bill 2260.

Section 1 of this Bill changes the consumer credit counseling law to include the regulation of for-profit consumer counseling agencies. Prior to the 2011 legislative session, for-profit entities were banned from engaging in debt adjusting pursuant to N.D.C.C. ch. 13-06 and consumer credit counseling agencies were permitted to engage in debt adjusting pursuant to N.D.C.C. chs. 13-06 and 13-07.

In that same legislative session the legislature enacted ch. 13-11, the "Debt Settlement Law" a comprehensive regulation of debt settlement entities and that law applies to both non-profit and for-profit entities. It regulates activity in which the principal, or any other portion, of the debt may be reduced. At their request, non-profit entities were excluded from the debt settlement law, although we did not believe or maintain that their activities otherwise fell under the definition of debt settlement or the new debt settlement law.

When reauthorizing a non-profit corporation in N.D.C.C. ch. 13-07 at that time to engage in consumer credit counseling services pursuant to a refined definition, we inadvertently overlooked for-profit entities that might be engaged in consumer credit counseling services. One of two things occurred. We might have incorrectly assumed they were prohibited from providing these services because they were not specifically authorized to provide consumer credit counseling services in ch. 13-07. Also, ch. 13-06 had always banned for-profit entities from engaging in debt adjusting, which essentially included the activities of consumer credit counseling. However, ch. 13-06 was repealed.

The result of these errors was that for-profit entities could engage in consumer credit counseling services without any regulation and, unlike non-profit entities, could charge any fees for these services, despite many years of a careful and appropriate regulatory scheme for consumer counseling services. For many years there were for-profit entities engaged in debt adjusting using fraudulent and abusive practices.

The bottom line is that there currently is not a need to prohibit for-profit entities from engaging in these services as long as they follow the same requirements of fee disclosures and limitations and bonding requirements as the non-profit entities.

The proposed changes in Section 2 of the Bill, lines 29-30, implement the original intent of the language in the debt settlement law that excludes from regulation under that law entities that are engaged in consumer credit counseling, not debt settlement.

At that same time the definition of consumer credit counseling services was tweaked in N.D.C.C. ch. 13-07 to reflect services in which a debtor's obligations are reduced by the payment of structured settlements in which finance charges, late fees, etc. may be reduced and it does not include or contemplate the reduction of the principal debt.

Section 3 of the Bill addresses the Attorney General's authority to enter into settlement agreements that are subsequently approved by the Court. Often as an accommodation to more reputable businesses, or in the interests of achieving a settlement without protracted and expensive litigation, the Attorney General would use the assurance of discontinuance in circumstances in which it might be acceptable or preferable to both parties to reach that agreement without requiring or including any admission of liability or admission of violation by the business. This practice likely will continue in most respects because it is an expedient and cost-effective manner in which to resolve or reform certain business practices. It doesn't waste valuable resources in the Attorney General's Office or in the Courts with unnecessary litigation. However, there are becoming more frequent circumstances in which the Attorney General is able to reach a good settlement and, yet, it may not be in the State's best interest to allow the defendant to deny admission of wrongdoing or deny violation of the law. Many of these defendants would sign an agreement admitting liability or violations, if it was not prohibited by law. In some instances the defendants are banned from future business in North Dakota, or maybe a certain type of business, and they are deserving of the stigma of a finding of wrongful conduct. For instance, a contractor or car salesman might be banned from those businesses but later engage in a different type of activity in the future. It is in the public's best interest to have this information available in a manner that does not minimize certain conduct. The Attorney General now asks the Legislature to allow him the discretion to require an admission of unlawful conduct when he determines it is appropriate and to not require an admission when it is appropriate. There are some business practices that blurred a line, or were unintentional, but are not deserving of seriously damaging a business's reputation.

North Dakota, like all other states, uses the terminology of "assurance of voluntary compliance" as opposed to the outdated term in the statute, "assurance of discontinuance." The Attorney General would like the statute to conform to current practices, if the Legislature agrees. An assurance of voluntary compliance is used for violations of many different laws enforced by the Attorney General's Consumer Protection Division. We have included additional references to other statutes, although it is the Attorney General's position that this office is not precluded from entering into an

assurance of voluntary compliance for other violations of North Dakota law pursuant to other chapters not already or hereafter mentioned in N.D.C.C. 51-15-06.1.

Finally, I would like to address Section 4, the main attraction of this legislation, changes to North Dakota's Do Not Call Law.

The Attorney General enforces the Do Not Call Law. Since the Legislature enacted this law in 2003, the Attorney General has conducted 260 investigations, engaged in 208 legal actions, and collected \$471,647 through December 2012.

The Attorney General proposes some changes at this time. First, a minor change is required on page 4, line 15 to correct the reference to section 51-15-01.

Text messages that constitute telephone solicitations to subscribers registered on the North Dakota Do Not Call List are prohibited, except in certain circumstances. The exceptions in which text messages are allowed included the exceptions on page 4, lines 19 through 30 and page 5, lines 1 through 14. These are the circumstances in which calls to a subscriber on North Dakota's Do Not Call List are not violations of the law. These include calls with prior consent, calls pursuant to an established personal or business relationship, calls by a charity, survey calls, calls in which the sale doesn't occur until a later face-to-face meeting, and calls on behalf of a political party, candidate, etc.

The proposed changes on page 5, lines 3 through 6 and lines 12 through 15, address unwanted political text messages in the form of so-called surveys or texts from political parties. The primary intent of these changes is to prohibit political text messages at the request of cell phone subscribers, including legislators, who primarily object to political text messages. These text messages are sent to North Dakota cell phone subscribers by the thousands through current technology. Most subscribers find these text messages offensive or irritating. Whether subscribers do not subscribe to text messages and receive these random texts or simply are subscribers that pay for a limited amount of text messages that are exceeded by these additional unwanted texts, North Dakota cell phone subscribers are unhappy about receiving these texts.

The Attorney General and the sponsors of that legislation recognize that if the Legislature adopts these changes, you will be banning text messages in circumstances in which it will not be a violation to call telephone subscribers with a live communication. However, please be advised that it will only be a violation to text subscribers that have signed up on the Do Not Call List.

The proposed changes on page 5, lines 7 through 11, suggest an opportunity to ban text messages even in those instances in which there will be a face-to-face presentation later. We do not think subscribers will want to receive text messages in these circumstances and it is appropriate to ban these text messages too, if they are occurring.

Section 5 of this Bill proposes a very important change that closes a significant loophole that surfaced primarily during this last campaign season. An “automatic announcing dialing device” is defined in subsection 1 of section 51-28-01 as a device that selects and dials telephone numbers and delivers a prerecorded or synthesized voice message.

Section 51-28-02 prohibits prerecorded telephone messages. Unfortunately, some of the political action committees and political campaigns realized that if the operator or caller selected the number or numbers to be called, it was not using an automatic announcing dialing device because the device itself was not selecting the numbers to be called. Nonetheless, it is as easy for the operator or caller to manually select or highlight batches of telephone numbers on a computer and then the calls can be generated by a device that leaves a prerecorded message. Subscribers in North Dakota strongly object to prerecorded messages period and would not like this loophole that unintentionally permits prerecorded messages. The Attorney General requests the Legislature close this loophole and make the changes necessary to ban prerecorded messages in all circumstances, except as otherwise permitted by current law and contained on page 5 in lines 22 through 25.

The Attorney General respectfully asks the Senate Industry, Business and Labor Committee to give Senate Bill 2260 a “Do Pass” recommendation with the proposed technical amendments.

Thank you for your time and consideration. I would be pleased to try and answer any questions.

(3)

PROPOSED AMENDMENTS TO SENATE BILL NO. 2260
SENATE INDUSTRY, BUSINESS, AND LABOR COMMITTEE
JERRY KLEIN, CHAIRMAN
FEBRUARY 12, 2013

PRESENTED BY
PARRELL D. GROSSMAN, DIRECTOR
CONSUMER PROTECTION & ANTITRUST DIVISION
OFFICE OF ATTORNEY GENERAL

Page 1, line 1, replace "51-25-01" with "51-28-01"

Renumber accordingly

① SB 2260
3-12-2013

SENATE INDUSTRY, BUSINESS AND LABOR COMMITTEE
GEORGE J. KEISER, CHAIRMAN
MARCH 12, 2013

TESTIMONY BY
PARRELL D. GROSSMAN
DIRECTOR, CONSUMER PROTECTION AND ANTITRUST DIVISION
OFFICE OF ATTORNEY GENERAL
IN SUPPORT OF
SENATE BILL NO. 2260

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The result of these errors was that for-profit entities could engage in consumer credit counseling services without any regulation and, unlike non-profit entities, could charge any fees for these services, despite many years of a careful and appropriate regulatory scheme for consumer counseling services. For many years there were for-profit entities engaged in debt adjusting using fraudulent and abusive practices.

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assurance of voluntary compliance for other violations of North Dakota law pursuant to other chapters not already or hereafter mentioned in N.D.C.C. 51-15-06.1.

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The proposed changes on page 5, lines 7 through 11, provide a ban of text messages even in those instances in which there will be a face-to-face presentation later. It is doubtful sellers actually use text messages to set up face-to-face meetings. If so, the majority of, if not all, subscribers do not want to receive text messages in these circumstances and it is appropriate to ban these text messages too.

Section 5 of this Bill proposes a very important change that closes a significant loophole that surfaced primarily during this last campaign season. An "automatic announcing dialing device" is defined in subsection 1 of section 51-28-01 as a device that selects and dials telephone numbers and delivers a prerecorded or synthesized voice message.

Section 51-28-02 prohibits prerecorded telephone messages. Unfortunately, some of the political action committees and political campaigns realized that if the operator or caller selected the number or numbers to be called, it was not using an automatic announcing dialing device because the device itself was not selecting the numbers to be called. Nonetheless, it is as easy for the operator or caller to manually select or highlight batches of telephone numbers on a computer and then the calls can be generated by a device that leaves a prerecorded message. Subscribers in North Dakota strongly object to prerecorded messages period and would not like this loophole that unintentionally permits prerecorded messages. The Attorney General requests the Legislature close this loophole and make the changes necessary to ban prerecorded messages in all circumstances, except as otherwise permitted by current law and contained on page 5 in lines 22 through 25.

The Attorney General respectfully asks the House Industry, Business and Labor Committee to give Senate Bill 2260 a "Do Pass" recommendation with the proposed technical amendments.

Thank you for your time and consideration. I would be pleased to try and answer any questions.