

Regular Session, 2012

HOUSE BILL NO. 782

BY REPRESENTATIVE CONNICK

CONTRACTS: Provides with respect to certain contracts for the collection and settlement of debts as the practice of law

1 AN ACT

2 To amend and reenact R.S. 37:212(A)(introductory paragraph), (1), and (2)(a) and (b) and
3 to enact R.S. 37:212(A)(2)(e), (f), and (g), (3), and (E) and (F) and R.S.
4 37:213(A)(8), relative to contracts for collecting or settling certain debts; to provide
5 relative to definitions; to provide that certain activities related to debt settlement or
6 collection shall be considered the practice of law; to provide for exceptions; and to
7 provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 37:212(A)(introductory paragraph), (1), and (2)(a) and (b) are hereby
10 amended and reenacted and R.S. 37:212(A)(2)(e), (f), and (g), (3), and (E) and (F) and R.S.
11 37:213(A)(8) are hereby enacted to read as follows:

12 §212. "Practice of law" defined

13 A. The practice of law means and includes all of the following:

14 (1) In a representative capacity, the appearance as an advocate, or the
15 drawing of papers, pleadings, or documents, or the performance of any act in
16 connection with pending or prospective proceedings before any court of record in
17 this state; ~~or,~~

18 (2) For a consideration, reward, contingency fee, referral fee, commission,
19 or any other pecuniary benefit, present or anticipated, however phrased or styled,

1 whether direct or indirect, through an intermediary or by means of a fee-splitting
2 agreement or other arrangement for monetary compensation:

3 (a) The advising or counseling of another as to secular law, consumer debt
4 settlement, consumer debt avoidance, or consumer debt defense.

(b) In behalf of another, the drawing or procuring, or the assisting in the drawing or procuring of a court pleading, paper, document, or instrument affecting or relating to secular rights; consumer debt settlement, consumer debt avoidance, or consumer debt defense.

9 * * *

10 (e) The advising of a debtor who is a Louisiana resident or domiciliary of
11 any of the following:

12 (i) To ignore, delay payment of, or not to pay at all, a legal debt or charge
13 or any portion of the legal debt or charge.

14 (ii) To file pleadings pro se or in proper person in any pending or prospective
15 litigation or lawsuit.

(iii) That a debt is illegal, unenforceable in a court of law, extinguished by a prescriptive or preemptive period, uncollectible, or subject to modification without the consent of the creditor.

19 (iv) That he is subject to arrest or prosecution for the nonpayment of a civil
20 court judgment.

21 (f) After a lawsuit has been filed to foreclose a mortgage or to seize or
22 recognize a lien on immovable property, advising a defendant who is a Louisiana
23 resident or domiciliary of his options and alternatives for responding to the lawsuit
24 or seizure, or otherwise dealing with or disposing of a lawsuit.

25 (g) After a lawsuit has been filed to collect a consumer debt, preparing for
26 or furnishing to, directly or indirectly, any pro se or in proper person pleadings in
27 connection with the lawsuit.

(3) For a profit or for any direct or indirect financial remuneration or
consideration, to operate any service or program represented, directly or by

1 ~~implication, to renegotiate, settle, or in any way alter the terms of payment or other~~
2 ~~terms of the debt between a person and one or more unsecured creditors or debt~~
3 ~~collectors, including but not limited to a reduction in the balance, interest rate, or~~
4 ~~fees owed by a person to an unsecured creditor or debt collector.~~

5 * * *

6 E. Nothing in this Section shall prohibit a person directly employed by an
7 attorney at law licensed in Louisiana, a professional legal association, legal
8 corporation, or legal limited liability company, or a debt collector or collection
9 agency whose activities are governed and regulated by the Fair Debt Collection
10 Practices Act, 15 U.S.C. 1692 et seq., and which has registered as a collection
11 agency with the Louisiana secretary of state as required by law, from attending to
12 and caring for the business, claims, and demands of its clients against third parties
13 for the payment of a lawful debt owed to its principal.

14 F. Nothing in this Section shall prohibit an FDIC insured institution and its
15 affiliates and subsidiaries from lawfully collecting debts owed pursuant to state and
16 federal law, and from advising its customers on debt settlement, consolidation, or
17 restructuring options for debts owed to such institutions.

18 §213. Persons, professional associations, professional corporations, and limited
19 liability companies entitled to practice law; penalty for unlawful practice

20 A. No natural person, who has not first been duly and regularly licensed and
21 admitted to practice law by the supreme court of this state, no corporation or
22 voluntary association except a professional law corporation organized pursuant to
23 Chapter 8 of Title 12 of the Revised Statutes, and no partnership or limited liability
24 company except one formed for the practice of law and composed of such natural
25 persons, corporations, voluntary associations, or limited liability companies, all of
26 whom are duly and regularly licensed and admitted to the practice of law, shall:

27 * * *

28 ~~(8) Operate any service or program represented, directly or by implication,~~
29 ~~to renegotiate, settle, or in any way alter the terms of payment or other terms of the~~

1 debt between a person and one or more unsecured creditors or debt collectors,
2 including but not limited to a reduction in the balance, interest rate, or fees owed by
3 a person to an unsecured creditor or debt collector.

4 * * *

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Connick

HB No. 782

Abstract: Provides that conducting business under certain types of contracts, such as contingency fee, referral fee, commission, and fee-splitting contracts, in order to collect or settle consumer debts shall be considered practicing law.

Present law provides an extensive definition of the "practice of law" which provides, in part, that the practice of law includes appearing in a representative capacity as an advocate, or the drawing of papers, pleadings, or documents, or the performance of any act in connection with pending or prospective proceedings before any court of record in this state, and advising or counseling of another as to secular law for consideration, reward, or pecuniary benefit.

Proposed law retains present law but also includes those activities listed in present law pursuant to certain types of contracts, such as contingency fee, referral fee, commission, and fee-splitting contracts. Further defines the "practice of law" to include the advising of a debtor who is a La. resident or domiciliary on certain matters involving debt.

Present law provides, in part, that no natural person, who has not first been admitted to practice law by the supreme court of this state, no corporation, no partnership, and no limited liability company shall practice law, furnish attorneys to render legal services, or render or furnish legal services or advice.

Proposed law provides that no natural person, who has not first been admitted to practice law by the supreme court of this state, no corporation, no partnership, and no limited liability company shall operate any service or program represented, directly or by implication, to renegotiate, settle, or in any way alter the terms of payment or other terms of the debt between a person and one or more unsecured creditors or debt collectors.

Provides that proposed law shall not prohibit a person directly employed by an attorney at law licensed in La., certain professional legal entities, or a debt collector or collection agency whose activities are governed and regulated by the Fair Debt Collection Practices Act, 15 U.S.C. 1692 et seq., and which has registered as a collection agency with the La. secretary of state as required by law, from attending to and caring for the business, claims, and demands of its clients against third parties for the payment of a lawful debt owed to its principal.

Provides that proposed law shall not prohibit an FDIC insured institution and its affiliates from collecting debts owed pursuant to state and federal law, and from advising customers on certain debt related issues.

(Amends R.S. 37:212(A)(intro. para.), (1), and (2)(a) and (b); Adds R.S. 37:212(A)(2)(e), (f), and (g), (3), and (E) and (F) and 213(A)(8))

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Civil Law and Procedure to the original bill.

1. Added an exception relative to attorneys licensed to practice law in La. and debt collectors or collection agencies regulated by the Fair Debt Collection Practices Act.
2. Added technical amendments.

Summary of Amendments Adopted by House

House Floor Amendments to the engrossed bill.

1. Added persons directly employed by an attorney, certain professional legal entities, and FDIC insured institutions and their affiliates to those excepted from application of proposed law.