IN THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

IN RE: PETITION OF BELLSOUTH	)	
TO IMPLEMENT NEW AND	)	DOCKET NO. 00-00041
INCREASE EXISTING LATE	)	
PAYMENT CHARGES	)	

REQUEST FOR OFFICIAL AND JUDICIAL NOTICE

Comes Tennessee consumers, through the Consumer Advocate and Protection Division to respectfully submit request official notice of the items below in accordance with Tenn. Code Ann. § 4-5-313 (6)(A) and (D) and Tenn. Code Ann. § 65-2-109 (4):

1. Opinion 97-131 of the Office of the Attorney General and Reporter dated September 23, 1997 which decides that a purchaser of accounts acts as a collections service. A copy of said opinion is attached hereto.

2. Tenn. Code Ann. § 62-20-102 provides in pertinent part:

> (3) "Collection service" means any person who, directly or indirectly, for a fee, commission, or other compensation, offers to a client or prospective client the service of collecting, or purchasing for collection, accounts, bills, notes or other indebtedness due such client for various debtors. "Collection service" includes, but is not limited to:
>
> > (B) Any person who, in the process of collecting that person's own accounts, uses or causes to be used any fictitious name which would indicate to the debtor that a third party is handling the accounts;
> > (C) Any person who offers for sale, gives away, or uses any

letter or form designed for use in the collection of accounts which deceives the receiver into believing that an account is in the hands of a third party, even though the letter or form may instruct the debtor to pay directly to the debtor's creditor; and
(D) Any person who engages in the solicitation of claims in this state for purchase or collection;

(8) "Person" means an individual, firm, corporation, association or other legal entity; and
(9) "Solicitor" means any individual who is employed by, or under contract with, a collection service to solicit accounts or sell collection service forms or systems on its behalf.

3. That BellSouth asserts that it purchases accounts of other businesses and that said accounts are mature and due, meaning in this instance that service has been rendered and BellSouth is a collections service. That BellSouth also meets the other definitions of a collection service specified in paragraph 2 above.

4. That the Tennessee Collection Service Act, Tenn. Code Ann. § 65-20-101, et seq. is the law regarding collections services.

5. That Tenn. Code Ann. § 65-20-115 (b) provides in pertinent part:

(b) The board may suspend, revoke or refuse to renew any license held under the provisions of this chapter, for any of the following causes:

* * *

(2) Collecting or attempting to collect from the debtor any fee, commission or other compensation not provided by law for collection services rendered to a client, except that a collection service may recover from debtors reasonable charges imposed by banks for processing insufficient fund checks; provided, that such charges do not exceed nine dollars ($9.00) per check.

* * *

(4) Violating, or cooperating with others in violating, any provision of this chapter, or any rule lawfully promulgated by the board;

(5) Failing to comply with any applicable state or federal law or regulation pertaining to the credit and collection industry; and

6. That the acts stated in paragraph 4 above are unlawful.

7. That the Tennessee Collection Service distinguishes law from regulations. See Tenn. Code Ann. § 62-20-115 (b) (5).

8. That Tenn. Code Ann. § 62-20-115 (b) (2) makes unlawful "collecting or attempting to collect from the debtor any fee, commission or other compensation not provided by law."

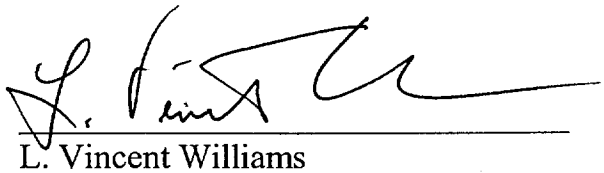
9. That the fee, commission, or other compensation BellSouth proposes to collect in its role as a collections service or purchaser of accounts is not provided by law.

10. That any contract or tariff filed by any company which purports to provide BellSouth with an independent right of collection is a violation of Tenn. Code Ann. § 62-20-115 (b) (4).

11. That BellSouth fails to show compliance with applicable state or federal law or regulations pertaining to the collections industry (Tenn. Code Ann. § 62-20-115 (b)(5) and its late payment charge should be dismissed and denied.

Wherefore Tennessee consumers pray that the Official Notice and Judicial Notice is taken of the matters asserted in paragraphs 1-11 above.

Respectfully submitted,



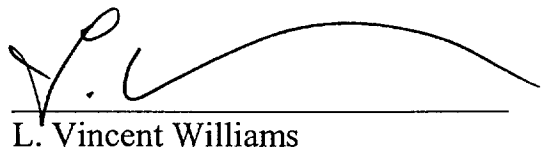
L. Vincent Williams
Deputy Attorney General
Consumer Advocate Division
425 5th Avenue, North
Nashville, TN 37243
(615) 741-8723
BPR. No. 011189

Certificate of Service

I hereby certify that a true and correct copy of the foregoing Document has been faxed and mailed postage prepaid to the parties listed below this 19th day of January, 2001.

Guy Hicks, Esq.
Patrick Turner, Esq.
BellSouth Telecommunications, Inc.
333 Commerce St., Suite 2101
Nashville, TN 37201-3300

David Waddell, Esq.
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505



L. Vincent Williams

OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF TENNESSEE

97-131

1997 Tenn. AG LEXIS 164

September 23, 1997

Application of collection Service Licensure Requirements

COUNSEL

JOHN KNOX WALKUP, Attorney General and Reporter (MICHAEL E. MOORE, Solicitor General; JOHN J. HANCOCK, Assistant Attorney General)

QUESTIONS

Whether the purchasing of accounts, notes, bills, etc., subjects the purchaser to the Collection Service Act, Tenn. Code Ann. § 62-20-101 **et seq.,** including the requirement that the purchaser be licensed as a collection service pursuant to Tenn. Code Ann. § 62-20-105. **OPINIONS**

Whether the purchaser is acting as a "collection service" as defined in Tenn. Code Ann. § 62-20-102(13), depends upon whether the purchaser is buying the accounts for the purpose of collecting on them (for which it would be required to obtain a license) or whether the purchaser is simply engaging in the purchase of factored accounts receivable (for which it would not need to be so licensed). Because the provision defining "collection service" speaks in terms of "accounts, bills, notes or other indebtedness **due** " at the time of purchase, the two activities are distinguished by the status of the accounts being purchased. If the accounts have matured at or before the time of purchase, they will be "due." Consequently, it is presumed that the purchaser is buying the accounts for the purpose of collection, and the purchaser will be required to obtain a collection service license. Conversely , if the accounts have not reached maturity by the time of purchase, they are not due. Because such a purchaser is not buying notes that are due, its activities will not fall within the definition of collection service and no collection service license will be required.

ANALYSIS

The "Tennessee Collection Services Act" is set forth at Tenn. Code Ann. § 62-20-101 **et seq.** The Act requires any entity acting as a collection service to first obtain a license from the Collection Service Board:

License requirement.- (a) No person shall commence, conduct, or operate any collection service business in this state unless such person holds a valid collection service license issued by the [Collection Service Board] under this chapter, or prior state law.

Tenn. Code Ann. § 62-20-105(a). Terms used in that provision are defined in Tenn. Code Ann. § 62-20-102 as follows:

(3) "Collection service" means any person who, directly or indirectly, for a fee, commission, or other compensation, offers to a client or prospective client **the service of collecting, or purchasing for collection,** accounts, bills, notes or other indebtedness **due such client** for various debtors.

***

(8) "Person" means an individual, firm, corporation, association or other legal entity.

Tenn. Code Ann. § 62-20-102 (emphasis added).

The fundamental rule of statutory construction is to ascertain and, if possible, give effect to the intention or purpose of the Legislature as expressed in the statute. **Worrall v. Kroger Company,** 545 S.W.2d 736, 738 (Tenn. 1977). The legislative intent or purpose is to be ascertained primarily from the natural and ordinary meaning of the language used, when read in the context of the entire statute, without any forced or subtle construction to limit or extend the import of the language. **Id.** In interpreting a statute, a court will assume that the Legislature used each word in the statute purposely and that the use of a particular word or words conveyed some intent and had a meaning and purpose. **Crowe v. Ferguson,** 814 S.W.2d 721, 723 (Tenn. 1991).

Tenn. Code Ann. § 62-20-102(3) provides two specific and alternative means by which an entity may engage in the "collection service" business. First, an entity will be considered a collection service if it offers to clients or prospective clients the "service of collecting" accounts, bills, notes, etc., due[1] to the client "for a fee, commission, or other compensation." This would apply to any entity that acts as the agent of the creditor and attempts to collect the debt on behalf of the creditor. Because the entity is "collecting" on these accounts, it is acting as a collection service and must first obtain a license from the Collection Service Board.

Second, an entity which **purchases** due accounts and then attempts to collect on those accounts will also be deemed a collection service. This much is clear from the language used by the Legislature in defining a collection service. The two alternative services, "collecting" and "purchasing," are separated by the disjunctive "or." Absent unusual circumstances, the disjunctive "or" separates words or phrases in an alternate relationship, indicating that either of the separated words or phrases may be employed without the other. **Pryor Oldsmobile v. Motor Vehicle Commission,** 803 S.W.2d 227, 230 (Tenn. App. 1990). "When the words of a statute are plain and unambiguous, the assumption is 'that the legislature intended what it wrote and meant what it said.'" **Worley v. Weigels, Inc.,** 919 S.W.2d 589, 593 (Tenn. 1996) (citations omitted). Application of these rules of statutory interpretation demonstrates the legislative intent behind

Tenn. Code Ann. § 62-20-102(3); an entity that offers to **collect** on notes due to creditors as the agent of those creditors and an entity that offers to **purchase** such notes from those creditors for the purpose of itself collecting on them, are both acting as collection services and are covered by the Act.

If the Legislature had intended for the term "collection service" to cover **only** those entities that collect accounts due on behalf of creditors, then it certainly would not have inserted into the statute the phrase, "or purchasing for collection." Rather, it would have deleted that phrase altogether. Any alternative interpretation (i.e., that this entity is **not** acting as a collection service) would violate the principle that a statute must be construed so as to give effect to all parts of the statute. **See Tidwell v. Collins,** 522 S.W.2d 674, 676 (Tenn. 1975)(A statute must be construed so that "no part will be inoperative, superfluous, void or insignificant.")

Furthermore, an entity that purchases such notes for the purpose of collection does not fall within any exemption to the Act's coverage. The Act provides specifically that the following entities are exempt from licensure:

Exemptions.- (a) The provisions of this chapter shall not apply to:

(1) Any person handling claims, accounts or collections under order of any court;

(2) Attorneys at law;

(3) Any person engaged in the collection of indebtedness incurred in the normal course of business, or the business of a parent, subsidiary, or affiliated firm or corporation; however, no person who holds himself out to be a collection service is exempt from this chapter.

(b) Nothing contained within this chapter shall be construed to require an individual or business entity, which collects **only his or its own unpaid accounts,** to submit to licensure or regulation by the collection service board.

Tenn . Code Ann. § 62-20-103 (emphasis added).

None of the exemptions set forth in Tenn. Code Ann. § 62-20-103(a) would apply to this entity. The exemption set forth in Tenn. Code Ann. § 62-20-103(b), by definition, applies only to an entity which collects "its own unpaid accounts." A statute must be read in conjunction with its surrounding parts and viewed consistently with the underlying legislative purpose. **See State v. Turner,** 913 S.W.2d 158, 160 (Tenn. 1995). Statutes must be read so that one section will not destroy another. **Tidwell,** 522 S.W.2d at 676-77. The scope of the section 103(b) exemption therefore depends upon the coverage of the term "collection service" as defined in Tenn. Code Ann. § 62-20-102(3). As shown above, "collection service" encompasses any entity which purchases the accounts of others and then attempts to collect on those accounts. Consequently, the provision exempting any entity which collects "only its own unpaid accounts" cannot be deemed to extend to entities which purchase the accounts of **others** and then attempt to collect on those accounts. Because a court must give effect to **all** portions of a statute, the term "his or its own unpaid accounts" must be construed narrowly so as to give practical meaning to both Tenn.

Code Ann. §§ 62-20-102(3) and 62-20-103(b).

It would make no sense for the Legislature to specifically include an entity within the coverage of a particular statute and then exempt that entity in the very next statute. The exemption at Tenn. Code Ann. § 62-20-103(b) must therefore be construed as exempting **only** an entity which is attempting to collect on its own accounts receivable (i.e., debts owed to the entity from its own debtors and not those accounts which it has purchased from other creditors). Any other interpretation simply cannot be squared with the rules of statutory construction. If, for instance, the provision were read broadly to include **all** of the accounts it owns (i.e., those of its own debtors **and** those which it has purchased from other creditors), then the explicit provision in Tenn. Code Ann. 62-20-102(3) dealing with entities that "offer to purchase" the notes of others, would be rendered meaningless. In effect, the exemption set out in Tenn. Code Ann. § 62-20-103(b) would swallow an entire portion of the rule set forth in Tenn. Code Ann. § 62-20-103(3). The construction limiting the scope of Tenn. Code Ann. § 62-20-103(b) is the only interpretation which gives effect to the plain language of both Tenn. Code Ann. §§ 65-20-102(3) and 62-20-103(b) without ignoring any portion of either of these statutes.

As noted previously, **supra,** n.1, only entities that purchase accounts that have matured at the time of purchase will be deemed to be acting as collection agencies. Because the notes are "due" by the time of purchase, it is presumed that the buyer is purchasing the accounts for the purpose of collecting on them. By contrast, an entity which purchases notes which have yet to mature at the time of purchase will not be construed as purchasing them for collection. This is because notes **cannot** be collected upon until they have matured. Rather, such an entity is purchasing notes that are "payable" but not yet "due." **See** n.1, **supra.** It logically follows that an entity which is purchasing factored accounts receivable (i.e., notes which are payable but not yet due) is not engaging in the activities of a collection service and need not obtain a collection service license.

The foregoing analysis can be recapped as follows: First, as evidenced by the plain language of Tenn. Code Ann. § 62-20-102(3), the Legislature intended for entities that collect on accounts **and** for those that purchase such accounts for the purpose of collecting on them, to be included within the definition of "collection service." **See** discussion, **supra,** at 2-4. Second, with respect to the purchase of accounts, it is plain from the Legislature's use of the word "due" in Tenn. Code Ann. § 62-20-102(3) that the definition of "collection service" was intended to cover **only** the purchase of accounts, notes, etc., which have matured by the time of purchase. **See** n.1, **supra.** Third, entities which purchase due accounts for the purpose of collecting on them do not fall within any of the exceptions set forth in Tenn. Code Ann. § 62-20-103, and are therefore not exempt from the licensure requirements set forth at Tenn. Code Ann. § 62-20-105. **See** discussion, **supra,** at 4-5. Finally, because the purchase of accounts which are not yet due and the purchase of factored accounts receivable do not fall within the definition of collection service, an entity which engages in these purchases is neither governed by the Collection Service Act nor required to obtain a collection service license.

Requested by: Hon. Tommy Head, State Representative, 33 Legislative Plaza, Nashville, Tennessee 37243-0168

OPINION FOOTNOTES

n1 The Legislature's use of the term "due" in Tenn. Code Ann. § 62-20-102(3) must be construed as meaning that the note representing the indebtedness has matured by the time of purchase as opposed to a note which has not yet matured at the time of purchase, as evidenced by the following:

due. Traditionally this word has contained an ambiguity since it could mean either (1) "payable; owing; constituting a debt"; or (2) "immediately enforceable." Sense (1) relates to fact of indebtedness, sense (2) to the time of payment. **Today, sense (2) is almost invariably the applicable one, as illustrated in an early-20th century edition of Bouvier: "[Due**] differs from **owing** in this, that sometimes what is owing is not due: a note payable thirty days after date is owing immediately after it is delivered to the payee, but it is not **due** until the thirty days have elapsed." 1 John Bouvier, Bouvier's Law Dictionary 946 (Francis Rawle ed., 3d ed. 1914).

A Dictionary of Modern Legal Usage 298-99 (2d ed. 1995) (Emphasis added). Other authority is in accord:

The word "due" always imports a fixed and settled obligation or liability, but with reference to the time for its payment there is considerable ambiguity in the use of the term, the precise signification being determined in each case from the context. It may mean that the debt or claim in question is now (presently or immediately) matured and enforceable, or that it matured at some time in the past and yet remains unsatisfied, or that it is fixed and certain but the day appointed for its payment has not yet arrived. **But commonly, and in the absence of any qualifying expressions, the word "due" is restricted to the first of these meanings, the second being expressed by the term "overdue," and the third by the word "payable."**

Black's Law Dictionary 448 (5th ed. 1979) (Emphasis added).

Because Tenn. Code Ann. § 62-20-102(3) contains no qualifiers with respect to the word "due," it must be presumed that the Legislature intended for the word to take its natural and ordinary meaning. **See Worrall,** 545 S.W.2d at 738; and **Crowe,** 814 S.W.2d at 723. Consequently, it is the opinion of this Office that the term "due" as used in that statute denotes accounts, bills, notes, etc., that have matured by the time of purchase rather than those which represent indebtedness that has yet to mature at the time of purchase.

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Comparative Legislation. Collection agencies:

Ala. Code § 40-12-80.

Ark. Code § 17-24-101 et seq.

N.C. Gen. Stat. § 58-70-1 et seq.

COLLATERAL REFERENCES

15A Am. Jur. 2d Collection and Credit Agencies § 3 et seq.

53 C.J.S. Licenses § 30 et seq.

Validity and construction of state Fair Credit Reporting Acts. 12 A.L.R.4th 294.

Licenses <key> 32 et seq.

62-20-102. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Board" means the Tennessee collection service board;

(2) "Client" means any person who retains the services of a collection service, and for such services directly provides the fee, commission or other compensation;

(3) "Collection service" means any person who, directly or indirectly, for a fee, commission, or other compensation, offers to a client or prospective client the service of collecting, or purchasing for collection, accounts, bills, notes or other indebtedness due such client for various debtors. "Collection service" includes, but is not limited to:

(A) Any deputy sheriff, constable or other individual who, in the course of that person's duties, accepts any compensation other than that fixed by statute in connection with the collection of an account;

(B) Any person who, in the process of collecting that person's own accounts, uses or causes to be used any fictitious name which would indicate to the debtor that a third party is handling the accounts;

(C) Any person who offers for sale, gives away, or uses any letter or form designed for use in the collection of accounts which deceives the receiver into believing that an account is in the hands of a third party, even though the letter or form may instruct the debtor to pay directly to the debtor's creditor; and

(D) Any person who engages in the solicitation of claims in this state for purchase or collection;

(4) "Collection service license" means a license granted to a collection service;

(5) "Financially responsible" means capable, as demonstrated to the board's satisfaction, of sound financial management and fiscal discretion. The board may deem to be not financially responsible any person who:

(A) Submits a balance sheet reflecting liabilities in excess of assets;

(B) Is unable to pay debts as they mature;

(C) Submits materially inaccurate financial information; or

(D) Issues a check to a client without sufficient funds for the payment of such check in full;

(6) "Location manager" means an individual who is employed full time at a location of a collection service and designated to be in active and responsible charge of the business of a collection service at the location at which the individual is employed;

(7) "Location manager license" means a license granted to a location manager, pursuant to § 62-20-108.

(8) "Person" means an individual, firm, corporation, association or other legal entity; and

(9) "Solicitor" means any individual who is employed by, or under contract with, a collection service to solicit accounts or sell collection service forms or systems on its behalf.

[Acts 1981, ch. 170, § 2; modified; Acts 1988, ch. 823, §§ 1-5.]

62-20-103. Exemptions.

(a) The provisions of this chapter do not apply to:

(1) Any person handling claims, accounts or collections under order of any court;

(2) Attorneys at law; or

(3) Any person engaged in the collection of indebtedness incurred in the normal course of business, or the business of a parent, subsidiary, or affiliated firm or corporation; however, no person who is or represents such person to be a collection service is exempt from this chapter.

(b) Nothing contained within this chapter shall be construed to require an individual or business entity, which collects only the individual's or its own unpaid accounts, to submit to licensure or regulation by the collection service board.

[Acts 1981, ch. 170, §§ 3, 27; T.C.A., § 62-20-123.]

Attorney General Opinions. Constitutionality of collection services board regulation of attorneys,

62-20-115. Investigations - Denial, revocation or suspension of licenses.

(a) (1) The board may, upon its own motion, or shall, upon the sworn complaint in writing of any person, investigate any collection service and/or licensee operating in the state.

(2) The board shall transmit any such complaint within fifteen (15) days of receipt thereof to the accused licensee by registered or certified mail.

(3) Such licensee shall, within twenty (20) days, file with the board the licensee's sworn answer to the complaint.

(b) The board may suspend, revoke or refuse to renew any license held under the provisions of this chapter, for any of the following causes:

(1) Obtaining a license through misrepresentation or fraud;

(2) Collecting or attempting to collect from the debtor any fee, commission or other compensation not provided by law for collection services rendered to a client, except that a collection service may recover from debtors reasonable charges imposed by banks for processing insufficient fund checks; provided, that such charges do not exceed nine dollars ($9.00) per check.

(3) Failing to report and pay to a client the net proceeds of all collections made during a calendar month within thirty (30) days, unless otherwise provided by mutual agreement between the licensee and the client;

(4) Violating, or cooperating with others in violating, any provision of this chapter, or any rule lawfully promulgated by the board;

(5) Failing to comply with any applicable state or federal law or regulation pertaining to the credit and collection industry; and

(6) Any cause for which issuance of a license could have been refused had it existed and been known to the board at the time of issuance.

[Acts 1981, ch. 170, § 15; 1987, ch. 292, § 1; 1988, ch. 823, §§ 27, 28; 1998, ch. 843, § 1.]

62-20-116. Actions required at expiration or revocation of license.

(a) Upon the expiration or revocation of any license held under the provisions of this chapter, the licensee:

(1) Shall within ninety (90) days return or assign all uncollected accounts to the licensee's clients or their order;

(2) Shall not charge or receive any fee or compensation for the return or assignment of any