

TN Debt Collection Law Changed Dramatically from Passage of SB 224 / HB 443

By Marti Lythgoe, NL Editor; and Kelly Dicken, FKSC Attorney

“There is currently some unique legislation that is before the General Assembly of TN that will benefit debt buyers and banks in TN if it is passed in the next few weeks,” Attorney Kelly Dicken of [Finkelstein, Kern, Steinberg, & Cunningham, P.C.](#) (FKSC) told NL for the blog published by InsideARM on 4/3/13. I kept in touch with her, and when the Governor signed TN SB Bill 224/HB 443, she generously granted me an interview. What follows are some of the questions I asked her and her candid responses.

What prompted proposing/drafting the Bill?

Over the last few years, there have been many lawsuits filed in Tennessee concerning false affidavits claims, based on Double Hearsay Objection 90211 and Business Records Exception 8036. They have mostly affected debt buyers and banks. Debtors who simply said, “I don’t remember what I owe” could get away with not paying their debt, because the proof/paper was inadmissible as evidence. All they needed to do was file a sworn account, or give an oral statement saying they didn’t know the exact amount of the debt. We saw consistent and repeated dismissal of cases based on this “scam” that was becoming an epidemic.

This problem, resulting from the way “acquired records” or “business records” were defined, has had a negative effect on TN in the National Market. The spirit of the law said records could come in, but there was a big loophole that needed to be closed.

What is the main purpose of the bill?

The Bill redefines “Business Records” broadly to include “Acquired Records”—both purchased records and records involved in a contractual relationship. It consists mostly of 13 new definitions of terms that broaden the meaning of what “creditors’ records” include. It is Not anti-consumer. The Bill only works against those who are trying to scam the system and puts everyone on an even footing. Before the enactment of the Bill, certain business records or documents could not come in. Now, because of the redefinition, they can. This gives the judge crucial evidence to look at.

Who will it benefit?

Banks benefit because it increases the value of paper to be sold. Those buying debt know that they have a better chance of collecting on the debt. Bank employees now can testify to the validity of their own records. **Debt buyers** benefit from a decrease in litigation and related costs. We think the Bill will do away with false affidavit claims and double-hearsay objections. It upholds the spirit of the law and will allow in documents that should rightfully be in front of the judge. Debt buyers don’t have to fly in a witness or an attorney from another state where the transaction occurred.

Did your firm help to draft the Bill &/or support lobbying efforts in any way?

FKSC (Ron Cunningham and myself) spearheaded and did the main drafting of the bill. We did our own lobbying, appearing before all the members of the TN House and Senate. We were assisted by Thomas Norris, Jr., and Bill Shick. Thomas was critical in this process. He helped to edit the bill throughout all the revisions, as well as to draft a memo explaining the need for this legislation. He attended several meetings with us and helped educate us on the “process.” He is very knowledgeable on TN law. He is “of counsel” with The Law Offices of Barry J. Gammons, PLLC. Bill is an attorney with Buffaloe & Associates, PLC. He also helped with revisions to the bill, as well as meeting with our Senators and Representatives

Was passage of the Bill a long process? What did it involve?

The 4-month-long process was a great learning experience. It was very costly, if you consider all the time our firm put into it. But it was in our own best interest. We realized how critical it is, when trying to pass a bill, to get face time with every Senator and Representative and explain the Bill to them one-on-one. We were pleasantly surprised to find that if we gave them enough notice, they would work us into their days and give us 10-15 minutes. We learned to only prepare a 2-4 minute speech summing up the Bill. They wanted us to be quick and leave time for questions. Their only concerns were that they didn’t want the Bill to adversely affect anyone, and they wanted to understand why the current process was a problem, why it hadn’t been corrected before. They were happy to learn about the reduced costs and that a loophole in

the system would be closed by the Bill. The Legislators and the Governor are very pro-business. They want TN to be a place where businesses want to come. They could see that the Bill would help the economy.

Is this the first time that a bill of this nature has been submitted in TN? Have other states tried it?
We're it! This Bill is the only one like it in the United States.

Are there any obstacles that attorneys will have to face when the Bill takes effect? What is your firm doing to be prepared to use this new "tool"?

Judges will put up some resistance. Ron Cunningham, the President of the Tennessee Creditors Bar Association, is overseeing the development of a Brief outlining how this statute impacts the current law surrounding business records in TN. After the statute is enacted on July 1, 2013, TCBA members can submit this brief to the judges when a trial arises. We are also adapting our current 902(11) affidavit and corresponding filings to reflect the language in this statute. It is our hope that the TCBA members can use these tools to more successfully litigate cases on behalf of their clients in TN. We want to have a united front on how these cases are presented.

What advice would you give to a law firm trying to pass a bill like this in another state?

We quickly realized how easily something could be opposed. We got opposition from some sources that later supported us once they understood what we were trying to accomplish. We had to make some "throw-away" changes to the Bill. We had to negotiate. When you draft a bill, you have to have some things in it that you are willing to throw away, that give you room to negotiate. Work out any opposition and be willing to compromise, while maintaining the key elements. Don't make enemies. Make friends. The Committees we put the Bill in front of are not usual the usual path one would take for passing a bill. We tried to stay under the radar and not attract media attention.

There has been a lot of new resistance, a lot of negative legislation passed against banks and creditors in the last 2-3 years. As attorneys, it's critical that we be watchdogs, lobbying against negative legislation and proposing and/or advocating positive legislation. At FKSC, we are doing both. We like some of the changes that have made the industry cleaner and tighter, but we all need to be watchdogs, in order to keep the industry going forward.

Kelly concluded by graciously adding, "If anyone is interested in finding out more about the process we went through to get the Bill passed, feel free to contact me (Kelly Dicken) or Ron Cunningham at 888-200-6501." To read the entire Bill, click [here](#). The white paper on TN Debt Collection Law, can be found on [The National List of Attorneys](#) website under Legal Resources.