

HOUSE BILL REPORT

HB 1745

As Reported by House Committee On:
Business & Financial Services

Title: An act relating to collection agencies.

Brief Description: Concerning collection agencies.

Sponsors: Representative Goodman.

Brief History:

Committee Activity:

Business & Financial Services: 2/8/11, 2/10/11, 2/15/11, 2/17/11 [DPS].

Brief Summary of Substitute Bill

- Makes a number of changes related to the prohibited practices of collection agencies.
- Adds prohibited practice standards specifically related to calling or texting a cellular telephone or wireless device.
- Prohibits a collection agency from bringing an action or initiating an arbitration on a claim when the collection agency knows the suit or arbitration is barred by the applicable statute of limitations.

HOUSE COMMITTEE ON BUSINESS & FINANCIAL SERVICES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Kirby, Chair; Kelley, Vice Chair; Bailey, Ranking Minority Member; Buys, Assistant Ranking Minority Member; Blake, Condotta, Hudgins, Hurst, Parker, Pedersen, Rivers, Ryu and Stanford.

Staff: Jon Hedegard (786-7127).

Background:

The Department of Licensing licenses collection agencies. No person may act as a collection agency unless licensed or exempt from licensing.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Federal Law.

Collection agencies are also regulated by federal law. The federal Fair Debt Collection Practices Act (FDCPA) permits and prohibits certain practices. The state Collection Agencies Act (CAA) also regulates and prohibits certain practices. Where there is an inconsistency with state law, the FDCPA supersedes state law, unless there is an exemption for the class of debt collection practices at issue. A state law is not inconsistent with the FDCPA if it affords greater consumer protection than the FDCPA.

Under the FDCPA, "communication" is defined as the conveying of information regarding a debt directly or indirectly to any person through any medium. A collection agency may not communicate with a debtor at a time or place that is inconvenient and the collection agency is to assume that the convenient time for communicating is between 8:00 a.m. and 9:00 p.m.

Communicating with the debtor at the debtor's place of business is prohibited if the collection agency knows or has reason to know that the debtor's employer does not allow the debtor to engage in such communication at work.

Prohibited Practices Under State Law.

When a collection agency sends a first notice to a debtor about a claim or a subsequent notice attempting to collect a different amount than indicated in the first notice, the collection agency must include:

- the name and address of the collection agency;
- the name of the original creditor if known; and
- an itemization of the claim asserted including: (1) the amount owing on the original obligation; and (2) any interest charge or fee added to the original obligation.

A collection agency may inform a consumer reporting agency (CRA) of the existence of a claim, but if the debtor disputes the claim by written notice, the collection agency must forward a copy of the dispute notice to the CRA.

A collection agency may not threaten a debtor with impairment of the debtor's credit rating if a claim is not paid.

Collection agencies are prohibited from communicating with a debtor in a way that harasses, intimidates, threatens, or embarrasses a debtor. Harassment is presumed if the collection agency:

- contacts a debtor or spouse in any form, manner, or place, more than three times in a single week;
- contacts a debtor at the debtor's place of employment more than one time in a single week; or
- contacts the debtor or spouse at the debtor's place of residence between 9:00 p.m. and 7:30 a.m.

A collection agency may not threaten to take any action the collection agency cannot legally take at the time the threat is made.

A collection agency may not make collect phone calls or send collect telegrams.

Summary of Substitute Bill:

Prohibited Practices Under State Law.

Several changes are made to the prohibited practices of collection agencies.

Generally, a collection agency is not required to provide specific information required in notices to debtors when providing information to debtors through proper legal action, process, or proceedings. The information is required in if the notice is the first written communication with the debtor.

When a collection agency gives or sends a subsequent notice to a debtor and is attempting to collect a different amount than indicated in the first notice to the debtor, the collection agency is not required to itemize the different amount if the difference concerns a judgment against a debtor. Post-judgment interest, however, must be itemized if it is claimed. The current amount of the debt must be included in the notice.

If a collection agency informed a CRA of the existence of a claim and the debtor disputes the claim, the collection agency must provide the CRA with notice of the dispute by written or electronic means and create a record of the notification. The collection agency is no longer required to forward the debtor's written notice of the dispute.

If a collection agency informs a debtor that the agency has or will report the claim to a consumer reporting agency, it is not considered a threat if the agency actually has reported the claim or does intend to report the claim.

A collection agency's response to a communication from a debtor does not count against the number of allowed communications in a week.

A call to a telephone is presumed to be received in the time zone for the area code of the number. If an area code is not assigned to any specific geographic area, the time zone is presumed to be the local time zone of the debtor's last known place of residence. The presumptions do not apply if the collection agency reasonably believes the telephone is located in a different time zone.

The prohibition on a collection agency causing charges to be incurred for a telegram or a telephone call does not preclude a collection agency from calling or texting a cellular phone or wireless device. A licensee is not allowed to attempt to communicate with a cellular phone or wireless device more than three times in a week. A collection agency may not call, text, or send an electronic message to a cellular phone or wireless device more than twice in a day. There are standards for when a licensee knows or reasonably should know that the number belongs to a cellular or wireless device. The provisions allowing a collection agency to call a cellular phone or wireless device do not increase the number of times a week a collection agency is allowed to contact a debtor or anyone else.

A collection agency may not bring an action or initiate arbitration on a claim when the collection agency knows, or reasonably should know, that the suit or arbitration is barred by the applicable statute of limitations.

A collection agency may not intentionally block its phone number from displaying on a telephone of a debtor.

Other.

A number of language changes, including gender-neutral changes, are made.

Substitute Bill Compared to Original Bill:

Provisions related to threatening a debtor regarding the possible impairment of the debtor's credit rating are modified. The prohibited practice standards specifically related to calling or texting a cellular telephone or wireless device are modified. Certain information must always be provided to a debtor when a first written communication is made. A collection agency may not intentionally block the display of its phone number. Provisions related to public debt assigned to collection agencies are removed. Language providing limited retroactive implementation is removed.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill is a work in progress. Representatives from collection agencies are working with other stakeholders. Today, the only phone that many people have is a cell phone. There is a need to allow a collection agency to call that cell phone. Some parts of the CAA are out of date. The bill updates the CAA to accommodate modern life. Many parts of the bill are still being worked on. State debt has no statute of limitations. Collection agencies that buy state debt should have the same rights as the state. That is a debate that collection agencies are willing to postpone. The ability to make contact on a cell phone is the key part of the bill. Existing law could be read to prevent a cell phone contact. There is a concern about a possible lack of an ability of a collection agency to inform a debtor that the agency will report the debtor to a CRA. It is not clear what is a threat and what is merely informing the debtor of what is actually going to occur. The CRAs do not let collection agencies report disputes in written form. Electronic notification of the CRA is required. The bill recognizes that problem.

(Opposed) The creditor-debtor section of the Washington State Bar Association (Section) is made up of representatives of creditors and debtors. The Executive Committee of the Section unanimously voted to oppose this bill. The statute of limitations provisions are a particular

concern. Private collection agencies have limitations placed upon them to protect consumers. Those consumer protections should not be repealed. Today, collection agencies call consumers on the consumers' cell phone. Sometimes those calls are made throughout the day. The calls can use up a consumer's cell phone minutes and incur charges for the consumer. Close attention must be paid to the mechanics of a law that allows a collection agency to call a consumer's cell phone. A collection agency may be calling the person at home when they call a cell phone. Cell phone calls should be limited in some fashion. A collection agency is always able to write a letter. They are not prohibited from contacting the consumer if they are not allowed to call a cell phone. Consumers may be called dozens of times a day. Sometimes, the collection agency has the wrong cell phone number but the collection agency continues to call that number over and over again. The bill allows for threats that are not deceptive. A collection agency should not be allowed to threaten a debtor. Complaints about collection agencies have skyrocketed in recent years. There are far fewer public and private attorneys that file cases against collection agencies than in the past. The changes regarding cell phones are a concern. The cell phone numbers are quite often the wrong number and the owner of the cell phone is asked about someone else's debt. Many collection agencies use computer-generated calls. This can be a huge problem if those calls eat up cell phone minutes and the money of the owner of the phone. The number of contacts to a cell phone must be limited. Perhaps there should be some additional disclosure requirements placed on a collection agency when they call a cell phone. An important part of the bill is the section preventing a collection agency from bringing an action on a debt that the collection agency knows, or should know, is barred by the applicable statute of limitations. Collection agencies often buy old debt and bring a suit against the debtor. If the debtor pays the part of a debt that is barred by the statute of limitations, that action may nullify the effect of the statute of limitations. The consumer may inadvertently be made liable again for a debt that had been barred by law. A collection agency should be prevented from seeking payment on time-barred debt. A collection agency should have to provide some type of warning to the consumer or provide a statement of the consumer's rights regarding time-barred debt.

Persons Testifying: (In support) Representative Goodman, prime sponsor; and Kevin Underwood, David Grimm, and Greg Luhn, Washington Collectors Association.

(Opposed) Shelly Crocker, Washington State Bar Association; and Bruce Neas, Columbia Legal Services.

Persons Signed In To Testify But Not Testifying: None.