

HOUSE BILL REPORT

HB 1822

As Reported by House Committee On:
Judiciary

Title: An act relating to debt collection practices.

Brief Description: Concerning debt collection practices.

Sponsors: Representative Stanford.

Brief History:

Committee Activity:

Judiciary: 2/21/13 [DPS].

Brief Summary of Substitute Bill

- Requires persons or entities engaged in the business of purchasing delinquent debt for collection purposes to be licensed as collection agencies under the Collection Agency Act (CAA) and to comply with all other requirements of the CAA.
- Amends the list of prohibited practices in the CAA to prohibit the "unauthorized" practice of law, rather than the practice of law in general.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Pedersen, Chair; Hansen, Vice Chair; Rodne, Ranking Minority Member; O'Ban, Assistant Ranking Minority Member; Goodman, Hope, Jinkins, Kirby, Klippert, Nealey, Orwall, Roberts and Shea.

Staff: Omeara Harrington (786-7136).

Background:

Scope of Federal and State Governing Laws.

Collection agencies are regulated by both state and federal law. Collection agencies are licensed by the Department of Licensing under the state Collection Agency Act (CAA), and are also subject to the federal Fair Debt Collection Practices Act (FDCPA) when collecting

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consumer debt. The CAA and FDCPA define collection agencies (called "debt collectors" under the FDCPA) as persons or entities directly or indirectly engaged in soliciting claims for collection, or collecting or attempting to collect claims owed or due or asserted to be owed or due another person. Also included are those collecting on their own behalf under another name, which would indicate to the debtor that a third person is attempting to collect the claim.

The CAA does not specifically address people or entities purchasing delinquent claims and taking action to collect on those claims. This practice is commonly referred to as "debt buying."

Prohibited Practices.

Both the CAA and the FDCPA permit and prohibit certain practices, and in general have similar provisions as to what is and is not allowed. Where there is an inconsistency with state law, the FDCPA supersedes state law; however, a state law is not inconsistent with the FDCPA if it affords greater consumer protection than the FDCPA.

Examples of prohibited practices under both acts include publishing or threatening to publish "bad debt lists," purporting to be associated with law enforcement, failing to follow certain requirements in communications with debtors, and engaging in harassing or threatening tactics, among other things. The practice of law is listed as a prohibited practice for collection agencies under the CAA.

Summary of Substitute Bill:

Persons or entities engaged in the business of purchasing delinquent or charged-off debt for collection (debt buyers) are collection agencies for purposes of the CAA, even if the collection of those claims is performed by a third party or an attorney through litigation. Debt buyers must be licensed as collection agencies and comply with the other requirements of the CAA.

The list of prohibited practices in the CAA is amended to prohibit the "unauthorized" practice of law, rather than the practice of law in general.

Substitute Bill Compared to Original Bill:

The definition of debt buyers is expanded to include persons or entities purchasing any delinquent debt for collection, rather than specifically consumer debt. The effective date of the provisions related to debt buyers is delayed to October 1, 2013.

The CAA prohibited practices list is amended to prohibit the "unauthorized" practice of law, rather than the practice of law in general.

A number of provisions are removed from the underlying proposal, including:

- requirements specific to debt buyers that added prohibited practices, imposed filing and procedural requirements, limited judgment interest, and imposed additional penalties for violations of the CAA;
 - a prohibition against collection agencies seeking a warrant for the arrest of a debtor;
 - a requirement that collection agencies provide debtors with receipts bearing specific information; and
 - amendments to current law that removed language specific to out-of-state collection agencies.
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Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for sections 1 and 3 relating to debt buyers, which take effect October 1, 2013.

Staff Summary of Public Testimony:

(In support-from testimony on HB 1069, which is identical to HB 1822 except for the title, on 1/16/2013) Debt buying is a new practice in the debt collection industry that is not technically covered by the CAA. Stakeholders in this area are working toward a compromise that will safeguard fairness for consumers while keeping the collection industry alive and efficient in Washington.

The bill is carefully drafted to not affect debt collection agencies, just debt buyers. Many of the worst abuses in the debt collection industry are by debt buyers. Debt buyers purchase mass portfolios of charged off debt for pennies on the dollar, with little evidentiary basis, and get massive default judgments because the consumers have no notice of the lawsuit. Consumers have had to go to great lengths to rectify judgments based on fraudulent or paid-off claims that were sold to debt buyers who did not know they were buying illegitimate claims. There should be requirements to verify and authenticate the debt so that courts can know that the judgment they are issuing is legitimate.

Debt collection practices can be harmful to life progress and self-esteem. Consumers are harassed over the same debt for extended periods of time. The elderly are especially vulnerable to unethical collection practices, and brain research has revealed that older people have difficulty identifying untrustworthy situations and are less concerned by future losses than younger people.

(Opposed-from testimony on HB 1069, which is identical to HB 1822 except for the title, on 1/16/2013) There is agreement that debt buyers are collection agencies and are subject to the CAA, but this bill goes too far. It is unfair to treat debt buyers differently just because they have purchased the debt they are collecting. It is untrue that a large proportion of complaints are against debt buyers. A study revealed that there are fewer complaints against debt buyers than collection agencies. The federal law protects consumers. If there is fraud, the debtor

can go to Federal Trade Commission website and file a claim, and then the company will stop collections.

A lot of debt buyer companies keep proof of the background of the debt and abide by the statute of limitations and notice requirements. The courts require evidence before entering a default judgment. The rules of evidence should not be legislated.

The provisions of the bill are too restrictive. The requirement to provide a mailed receipt will ultimately hurt clients, because the extra expense will force collection agencies to limit small payment options. The interest rate under the bill would be capped at 1 percent, when normally it would be 12 percent. The new penalties are very high, particularly when coupled with those in the FDCPA and the Washington Consumer Protection Act.

Persons Testifying: (In support-from testimony on HB 1069, which is identical to HB 1822 except for the title, on 1/16/2013) Representative Stanford, prime sponsor; Sara Ellen Hutchinson, Law Office of Sara Ellen Hutchinson PLLC; Melissa Commodore; Sally DeLeon; Jim Richards; Ingrid McDonald, AARP; Marcy Bowers, Statewide Poverty Action Network; and Bruce Neas, Columbia Legal.

(Opposed-from testimony on HB 1069, which is identical to HB 1822 except for the title, on 1/16/2013) Greg Luhn and Kevin Underwood, Washington Collector's Association; Ray Henning and Brian Fair, DBA International Washington; and Patrick Layman, Suttell and Hammer.

Persons Signed In To Testify But Not Testifying: None.