

# SENATE BILL REPORT

## SB 5034

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As of January 25, 2019

**Title:** An act relating to the service of legal actions to collect a debt by a collection agency.

**Brief Description:** Requiring debt collection complaints to be filed prior to service of summons and complaint.

**Sponsors:** Senators Dhingra, Frockt, Pedersen, Kuderer, Carlyle, Wellman and Saldaña; by request of Attorney General.

**Brief History:**

**Committee Activity:** Law & Justice: 1/24/19.

**Brief Summary of Bill**

- Prohibits a collection agency from serving a debtor with a summons and complaint in a debt collection lawsuit unless the court documents are filed with the court first and the assigned case number appears on the service documents.

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**SENATE COMMITTEE ON LAW & JUSTICE**

**Staff:** Melissa Burke-Cain (786-7755)

**Background:** Debt Collection by Collection Agencies and Prohibited Practices. Collection agencies contact delinquent debtors about their unpaid debts and attempt recovery of the money owed either through the debtor's voluntary payment or by obtaining a court judgment for the unpaid debt in court. Collection agencies are regulated under the federal Fair Debt Collection Practices Act and Washington's Collection Agency Act. In Washington, collection agencies must be licensed by Washington's Department of Licensing (DOL) before collecting debts. DOL is authorized to investigate consumer complaints and take disciplinary action if a collection agency does business without a license; uses prohibited debt collection practices such as using simulated court, government, or emergency notices; engages in unprofessional conduct; or otherwise violates the law.

General Requirements for Commencing a Civil Lawsuit. Under current Superior Court Civil Rules, a lawsuit may be commenced in one of two ways. The party starting the lawsuit may

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deliver an unfiled summons and complaint according to the service of process rules and then file the documents with the court clerk after service on the defendant. Alternatively, the party starting the lawsuit may file the summons and complaint with the court first and then serve the defendant with a copy of the summons and complaint. After filing, the clerk assigns a specific case number to the lawsuit which must appear on every court document. For civil actions in district or municipal courts, a lawsuit is commenced only by filing a complaint with the court.

Commencing a Debt Collection Lawsuit. A collection agency may file a lawsuit to collect a debt in a court having jurisdiction over the matter. Under current law, a collection agency may start its lawsuit in superior court if the court has jurisdiction over the parties, the subject matter of the action, and the venue, or county of filing, is correct. In superior court, the collection agency may elect to file the complaint with the court first, then serve the debtor. Alternatively, the collection agency may elect to serve an unfiled summons and complaint on the debtor.

**Summary of Bill:** When a collection agency files a debt collection lawsuit against a debtor, the lawsuit must be commenced by filing a summons and complaint with the court clerk. After filing, the collection agency may serve the court documents on the debtor, but the case number must appear on each court document.

**Appropriation:** None

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which the bill is passed.

**Staff Summary of Public Testimony:** PRO: Almost every other state requires filing first to commence a lawsuit. Washington's procedure which allows a lawsuit to commence either by service of the summons and complaint or by filing a summons and complaint confuses consumers. Consumers may not understand the consequences of Washington's pocket service rule. Often the plaintiff in such suits is a debt buyer, not the original creditor, so the plaintiff is not familiar to the consumer. If the consumer calls the court, the court will say that no such lawsuit has been filed; that is correct because the suit was commenced by service and not by filing. The service copies have no court number on them, so the consumer has no way to know if the suit is a scam or real. In some instances, the debt buyer files the summons and complaint electronically, with proof of service and a default motion. These filings are shortly followed by a writ of garnishment. The first the consumer hears is when wages are deducted from their paycheck through garnishment; that is how the consumer finds out they have actually been sued. As a victim, I was convinced the paperwork was just a scam. When I contacted the court, they said nothing had been filed. Then my wages were garnished. I had no cash reserve, no savings, no credit card. The money was eventually released after ten days but the situation triggered my son's Crohn's disease. It has taken a long time to bring his condition back under control. I don't want anyone else to go through what happened to us. As a representative of an organization that represents low income persons, we have regular listening meetings to find out what challenges low income persons find most challenging.

They identify pocket service as one of their complaints and far too many people fall victim to this practice. Between 60 and 90 percent of collection agency suits end in default judgments. The NW Justice Project holds weekly debt collection clinics in King County. On a statewide basis pocket service is a problem. Clients are confused, may unknowingly give up a chance to learn more about the debt, the documents have no case number, and the clerk says there is no such filing. Some consumers think the summons and complaint served upon them are just a threat and don't realize a lawsuit is started. The consequences of a default judgment are devastating including wage garnishment plus interest, plus collection fees, plus attorney fees. The problem we are seeing is the caused by debt collectors. We are trying to address the situation where the consumer does not recognize the plaintiff's name and do not recognize the amount because fees and costs are added on top of the debt.

CON: Our trade association provides training and education and promotes compliance with the debt collection laws by collection agencies. This bill does not pertain to any other industry. Yet, landlord tenant lawsuits are the most common cases that use pocket service. This is not a due process issue. Forty-one states do not have pocket service for anyone. We would support a bill that pertains to all entities and not just collection agencies. It does not seem fair or equitable to distinguish between types of claims; allowing some, but not others to use pocket service. The difference between lawsuits that may or may not use pocket service creates confusion for the trial courts. This bill will increase the number of negative public records about potential debtors as to their credit worthiness by requiring filing of the summons and complaint. The effect on a person's credit status will be potentially consequential in terms of employment, housing, and similar transactions where credit checks are run on applicants. Requiring filing also drives up fees. We have concerns about how this bill is written, but are not taking a position on the larger question of pocket service. This bill will create confusion with the civil rules as some entities, but not others, would be able to use pocket service. It will increase the burden on judges who are considering a proposed default judgments and trying to decide if the plaintiff is one who is allowed to use pocket service or not.

**Persons Testifying:** PRO: Senator Manka Dhingra, Prime Sponsor; Shannon Smith, Office of the Attorney General; Rachel Hayes; Jay Doran, Statewide Poverty Action Network; Julia Kellison, Northwest Justice Project.

CON: Scott Wiswall, Washington Collectors Association; Megan Rue, WSBA Creditor-Debtor Rights Section; Peter Lukevich, Executive Director, Washington Collectors Association.

**Persons Signed In To Testify But Not Testifying:** No one.