

HOUSE BILL REPORT

HB 1066

As Passed House:
February 14, 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: Representatives Kilduff, Valdez, Orwall, Jinkins, Ryu, Bergquist, Stanford, Leavitt, Walen and Young; by request of Attorney General.

Brief History:

Committee Activity:

Civil Rights & Judiciary: 1/16/19, 1/25/19 [DP].

Floor Activity:

Passed House: 2/14/19, 59-37.

Brief Summary of Bill

- Makes it a prohibited practice for a collection agency to serve a debtor with a summons and complaint unless the summons and complaint have been filed with the court and bear the case number assigned by the court.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: Do pass. Signed by 8 members: Representatives Jinkins, Chair; Thai, Vice Chair; Goodman, Kilduff, Kirby, Orwall, Valdez and Walen.

Minority Report: Do not pass. Signed by 6 members: Representatives Irwin, Ranking Minority Member; Dufault, Assistant Ranking Minority Member; Graham, Klippert, Shea and Ybarra.

Staff: Alaura Valley (786-7291) and Cece Clynch (786-7195).

Background:

Collection Agencies.

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.

At the state level, debt collection agencies are regulated by the Collection Agency Act (CAA). The CAA creates a licensing system for collection agencies, establishes a regulating board, sets forth prohibited practices, and provides remedies. Generally, a collection agency includes any person or business collecting claims owed to another person or business. Claims include any contractual obligation requiring a debtor to make a payment. This includes personal, household, family, and business debts. No person or business may act as a collection agency without first acquiring a license from the Department of Licensing (DOL). The DOL may deny, revoke, not renew, or suspend licenses for reasons related to conduct, financial circumstances, and noncompliance with the law.

The CAA sets forth a number of prohibited practices. For example, collection agencies may not:

- contact a debtor with excessive frequency or at an unreasonable hour;
- publish an individual's debt or share the amount due with a third party; or
- misrepresent themselves when communicating with a debtor.

Violations of these prohibited practices are unfair and deceptive trade practices under the Consumer Protection Act (CPA). Individual debtors may file complaints with the collection agencies regulatory board or with the Attorney General. Individuals may also bring civil suits against collection agencies for alleged violations of the CAA for injunctive relief and damages.

Commencement of an Action.

Washington's court system is comprised of multiple types of courts. Superior courts are courts of general jurisdiction. District and municipal courts are courts of limited jurisdiction. District courts may hear civil suits in which the value of the claim or amount at issue does not exceed \$100,000, and in small claims up to \$5,000.

To commence an action in superior court, Washington Superior Court Civil Rule 3 provides that a plaintiff may either file the complaint with the court or serve the defendant with a summons and copy of the complaint. Defendants served with a summons and complaint that has not yet been filed with the court may demand the plaintiff file the lawsuit with the court. If demanded, failure to file the lawsuit with the court within 14 days will result in the service being void.

To commence an action in a court of limited jurisdiction, Washington Civil Rules for Courts of Limited Jurisdiction Rule 3 requires a plaintiff file the complaint with the court. The plaintiff may then serve the defendant with a summons and copy of the complaint.

Defendants served with a summons and complaint must respond with their defense within the number of days specified in court rule. Failure to respond to service in a timely manner may result in a default judgement against the defendant.

Summary of Bill:

It is a prohibited practice under the Collection Agency Act for a collection agency to serve a debtor with a summons and complaint unless the summons and complaint have been filed with the court and bear the case number assigned by the court.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) Requiring collection agencies to file the complaint before serving the defendant adds certainty and transparency to these lawsuits. Debtors are often confused when they receive a summons and complaint which contains no filing number from the court. Debtors who then do their due diligence and call the court to ask about the case are told there has been none filed and often disregard the service of process. This practice of "pocket service" is confusing and prevents people from verifying the suit is real. This law impacts the substantive rights of debtors. The consequences of pocket service and subsequent default can be extreme, and everyone deserves fair and reasonable protections when they fall into debt.

(Opposed) Collection agencies provide an important service to businesses owed money, and singling them out in this bill shines a bad light on collection agencies. Many debtors served with a summons and unfiled complaint fail to respond not because they are confused, but because they do not dispute the debt. Refraining from filing the action can save the debtor money in legal fees. A default judgement would likely not be entered against a defendant who did their due diligence and reached out to the entity that served them because that would constitute a sufficient response. Pocket service is banned in 41 other states, and 6 states allow it only when the complaint is filed within a specific time shortly after service. Only 3 states allow pocket service without ever filing the complaint. A fairer alternative would be to ask the Superior Court to revise the rule for commencing an action for all plaintiffs, not just collection agencies.

Persons Testifying: (In support) Representative Kilduff, prime sponsor; Shannon Smith, Office of the Attorney General; and Jay Doran, Statewide Poverty Action Network.

(Opposed) Kelsi Hamilton, Washington Collectors Association.

Persons Signed In To Testify But Not Testifying: None.