
Civil Rights & Judiciary Committee

HB 1531

Brief Description: Concerning medical debt.

Sponsors: Representatives Jenkins, Walen, Orwall, Cody, Robinson, Riccelli, Valdez, Ormsby and Macri.

Brief Summary of Bill

- Lowers prejudgment and post-judgment interest rates, raises the exemption amounts in garnishment proceedings, and bans certain actions in supplemental proceedings related to medical debt.
- Amends the prohibited practices section of the Collection Agency Act to prohibit a variety of practices with respect to medical debt.
- Prohibits health care providers and facilities from selling or assigning medical debt to any person licensed as a collection agency until at least 120 days after the initial billing statement has been transmitted to the patient or other responsible party.

Hearing Date: 2/6/19

Staff: Cece Clynych (786-7195).

Background:

Medical Debt.

The 2015 Washington Civil Legal Needs Study Update found that seven in 10 low-income households face at least one civil legal problem each year. The most common problem faced by these households involves health care. The second most common concerns consumer/financial services and credit.

The U.S. Consumer Financial Protection Bureau, in its December 2014 Consumer Credit Reports: A study of medical and non-medical collections, identified several characteristics that differentiate medical debt from other debt:

- Medical debt often results from an unexpected event.

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.

- Patients are often unaware of the costs of services, and providers cannot necessarily know in advance what tests and treatments might be needed because this depends upon diagnoses made during the visit.
- The medical billing process can be complex and confusing. A single visit may trigger multiple bills from multiple providers, and the amount a patient owes may depend upon: whether the patient has insurance; whether the patient has reached out-of-pocket maximum; the deductible amount; whether the provider is within the insurer's network; billing issues between the provider and insurer; and charity care availability and eligibility requirements.
- Patients may not realize that medical debt is owed until they receive a call from a collection agency or view their credit report.

Debt Collection and Enforcement, Generally.

Interest.

Every loan or forbearance of money, goods, or thing in action bears interest at the rate of 12 percent per year where no different rate is agreed to in writing between the parties. If an agreement in writing between the parties provides for the payment of money at the end of an agreed period of time, or in installments over an agreed period of time, then the agreement constitutes a writing.

Post-judgment interest begins to run on a judgment on the date the judgment is entered. Judgments predicated on a written contract providing for interest at a particular rate bear interest at that rate. Other judgments bear interest as follows: unpaid child support at 12 percent; tort judgments at a special rate established in statute; and all other judgments at the maximum rate permitted under the usury statute.

The usury statute provides that any rate of interest shall be legal so long as the rate does not exceed the higher of:

- 12 percent; or
- 4 percent above the interest rate on 26-week treasury bills.

Prejudgment interest is intended to make a plaintiff whole by compensating for the use value of damages incurred from the time of the loss until the date of judgment. A prejudgment award is permissible when an amount claimed is liquidated or when the amount of an unliquidated claim is for an amount due upon a specific contract for the payment of money, and the amount due is determinable by computation with reference to a fixed standard contained in the contract, without reliance on opinion or discretion.

Enforcement.

A creditor may seek enforcement of a debt owed by a debtor through execution, attachment, or garnishment of the debtor's property. Execution is the process for enforcing a court judgment for the payment of money or property by "levying" on the judgment debtor's property. Attachment is a process that allows a plaintiff in a court action to ask the court to attach the defendant's property during the pendency of the action as security for satisfaction of a judgment that may be rendered in favor of the plaintiff. Garnishment allows a creditor to reach a debtor's property that is held by a third person, such as a bank or an employer. Generally a judgment may be enforced for a period of 10 years from the date of judgment, and for an additional 10 years if the judgment is extended within 90 days of the end of the initial 10-year period. All real and personal property

of a judgment debtor is subject to execution to satisfy the judgment, unless the property is exempt from execution.

There are a number of exemptions for personal property up to a certain value, for such things as household goods, clothing, vehicles, and tools of the trade. The exemption for bank accounts is \$500. In a garnishment proceeding, a debtor's earnings are exempt up to the greater of 35 times the federal minimum hourly wage or 75 percent of disposable earnings. With respect to a judgment for child support, however, the exempt amount is 50 percent of disposable earnings.

Private Student Loan Debt.

In 2018 legislation was enacted which changed the judgment interest rate for unpaid private student loan debt to 2 percentage points above the prime rate, unless the judgment interest rate is specified in the contract. That legislation also increased the bank account and wage garnishment exemptions for judgments on private student loan debt and modified the writs and forms for garnishment and continuing lien on earnings to specify whether a writ is for private student loan debt, and if so, to notify the debtor of his or her exemption rights for private student loan debt.

Collection Agencies.

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 regulatory 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. 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.

Summary of Bill:

"Medical debt" is defined as any obligation for the payment of money arising out of any agreement or contract, express or implied, for the provision of health care services. "Health care services" means and includes medical, surgical, dental, chiropractic, hospital, optometric, podiatric, pharmaceutical, ambulance, custodial, mental health, and other therapeutic services.

The post-judgment and prejudgment interest rate for medical debt is set at 2 percentage points above the prime rate. For any medical debt for which such prejudgment or post-judgment

interest has accrued or may be accruing as of the effective date, no such interest in excess of the rate for medical debt shall accrue thereafter.

Garnishment provisions are amended, similar to the 2018 changes regarding unpaid private student loan debt:

- \$2,500 (rather than \$500) in bank accounts is exempt and the amount of exempt earnings is the greater of 85 percent of disposable earnings of the debtor or 50 times the minimum hourly wage of the highest minimum wage law in the state.
- Garnishment forms must indicate that they are for medical debt.

A plaintiff in supplemental proceedings may not seek a warrant for the arrest of a judgment debtor for any act or failure to act that arises out of or relates to a judgment for medical debt, unless the act or failure to act constitutes a crime under state law.

Health care providers and facilities are prohibited from selling or assigning medical debt to any person licensed as a collection agency until at least 120 days after the initial billing statement has been transmitted to the patient or other responsible party.

The prohibited practices section of the Collection Agency Act is amended to prohibit the following practices with respect to medical debt:

- failure to include with the first written notice to the debtor a statement that informs the debtor of his or her right to request the original account number, the date of the last payment, and an itemized statement;
- failure to provide, upon request of the debtor for more information, an itemized statement, and failure to cease collection efforts unless and until it is provided;
- collection of prejudgment interest on medical debt without first providing written notice to the debtor, at least 40 days prior to assessing any prejudgment interest, that the licensee intends to so collect;
- failure to provide certain information regarding a payment or adjustment made by a carrier, such as an insurer;
- reporting adverse information to consumer credit reporting agencies or credit bureaus until at least 180 days after the original obligation was received by the licensee for collection or by assignment; and,
- if the claim involves hospital debt, failure to include certain information regarding charity care or collection during the pendency of an application for charity care about which the licensee has received notice.

Appropriation: None.

Fiscal Note: Requested on January 29, 2019.

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