

HOUSE BILL REPORT

HB 1531

As Reported by House Committee On:
Civil Rights & Judiciary

Title: An act relating to medical debt.

Brief Description: Concerning medical debt.

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

Brief History:

Committee Activity:

Civil Rights & Judiciary: 2/6/19, 2/15/19 [DPS].

Brief Summary of Substitute Bill

- Lowers the prejudgment interest rate on medical debt and bans certain actions in supplemental proceedings related to medical debt.
- Amends the prohibited practices section of the Collection Agency Act 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.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 14 members: Representatives Jinkins, Chair; Thai, Vice Chair; Irwin, Ranking Minority Member; Dufault, Assistant Ranking Minority Member; Goodman, Graham, Hansen, Kilduff, Kirby, Orwall, Shea, Valdez, Walen and Ybarra.

Minority Report: Do not pass. Signed by 1 member: Representative Klippert.

Staff: Cece Clynch (786-7195).

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.

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 United States 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.
- 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.

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.

Postjudgment 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. Supplemental proceedings provide creditors with a mechanism for questioning a debtor about the property he or she owns and where it is located.

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 Substitute 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 prejudgment interest rate for medical debt is set at 9 percent. For any medical debt for which such prejudgment 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.

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, with some exceptions;
- 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.

Substitute Bill Compared to Original Bill:

Provisions regarding postjudgment interest and garnishment that were in the original bill are not included in the substitute. The prejudgment interest rate is set at 9 percent, rather than a variable rate of 2 percentage points above the prime rate. The requirement that collectors cease collections pending provision of a requested itemized statement is modified to provide that in the event a debtor has entered into a voluntary payment agreement, the debtor shall give notice if he or she wants the payment plan discontinued, and if no notice is given, the payment arrangement may continue.

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) Medical debt is the number one cause of bankruptcy in the United States and in Washington state. Medical debt is different than other debt because people cannot figure out how much they are going to owe. A stakeholder group was convened on this issue, and there is agreement on most of the elements of this bill. The piece regarding postjudgment interest will be removed because the bill regarding consumer debt will take care of this issue. There will be continuing work on the prejudgment interest piece. There are many important components contained within this bill. The Washington State Hospital Association, Washington State Medical Association, and the Washington Collectors Association all made the bill better, and they are to be thanked for this work. There was one client who found her bank account emptied because of 4-year-old medical bill that she did not even know about. Medical debt is a unique and hard to control debt. Bank accounts have been wiped out and earnings garnished for 25 percent. Coupled with Washington's high 12 percent interest rate and the fact that judgments last for 20 years, debtors can easily fall into situations from which they will never get out. Everyone should be concerned that medical debtors can be jailed for medical debt. Some people are burdened with medical debt that has accrued over a lifetime, and they are subject to frequent collection calls. It is unacceptable that a young, pregnant woman would have to choose between paying medical debt or medical insurance, since without the latter she would have to stop going to the obstetrician. These debts do need to be paid, but the debt can become crushing. Medical debt contributes to homelessness. A 12 percent interest rate is not acceptable. A few years ago, the interest rate on torts was lowered. Creditors have every right to enforce a valid contract. But the current system is rife with error. Judgments do not reflect the truth about medical debt. Creditors should have to attach the contracts on which they are basing the prejudgment interest being charged. The working middle class are being hurt. Several reports have been conducted on different hospitals in the region and their medical debt practices. These reports have been emailed to the members. An analysis of 100 random judgments in 2014 found that these patients faced an average of \$3,400 in interest and legal fees upon their first garnishment, in addition to what they owed from their original bills. Wage garnishments were renewed for a second, third, or fourth time, and each time legal fees and other interest were incurred. Another random sampling found that persons found to be subject to wage garnishment in 2010 were continuing to have their wages garnished in 2013. One in five of those people were forced into medical bankruptcy. Multiple patients report that they were not told about charity care. Often, the first time a patient finds out about their medical debt is because of garnishment proceedings. Resolution of this problem is needed.

(Opposed) There are many elements of this bill that can be supported. There was progress made during the stakeholder work. For instance, bench warrants are prohibited, and more transparency is in place. But the interest and garnishment provisions should be removed. This bill will require first party suppliers selling products, materials, and supplies to change their terms and conditions in order to justify the bad debt write-off they will incur. Being invited to the negotiation table is much appreciated, and the collectors would like to continue to be involved in those discussions. Provisions in the bill are too restrictive with respect to interest and garnishment. Medical providers should be able to recover debts which they are owed and be paid for their efforts. The bill may lead to medical providers requiring cash up-front rather than extending time to pay. Some of the provisions with respect to garnishment violate the federal Health Insurance Portability and Accountability Act. Medical debts are

often combined with other debts. The current interest rate is a simple, not compound, interest rate. Garnishments can be the last line of accountability for those persons who have the ability to pay their debts but choose not to pay. This bill will remove important balance in the system between creditors and debtors. This will increase costs due to the fact that there will be more lawsuits. Garnishments stack, and therefore if there is a 10 percent limit on one garnishment, there may still be 15 percent on another. A fluctuating interest rate would be a nightmare to work with.

Persons Testifying: (In support) Representative Jinkins, prime sponsor; Antonio Ginatta, Columbia Legal Services; Julia Kellison, Northwest Justice Project; Tony Evans; Larry Shannon, Washington State Association for Justice; SaraEllen Hutchinson; and Xochitl Maykovich, Washington Community Action Network.

(Opposed) Zosia Stanley, Washington State Hospital Association; Sean Graham, Washington State Medical Association; Paul Krause, National Association of Credit Management; and Kelsi Hamilton, Melinda Chumbley, and Diana Hernandez, Washington Collectors Association.

Persons Signed In To Testify But Not Testifying: Cliff Webster.