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## Civil Rights & Judiciary Committee

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### HB 2476

**Brief Description:** Concerning debt buyers.

**Sponsors:** Representatives Walen, Duerr, Kloba, Kilduff, Leavitt, Lekanoff, Orwall, Davis, Doglio, Frame, Macri, Goodman and Ormsby.

#### Brief Summary of Bill

- Adds provisions to the Collection Agency Act (CAA) which are specific only to debt buyers, including requirements with respect to what must be attached to a complaint in a legal action, the evidence that must be submitted in support of a claim or obligation, and disclosures that must be prominently disclosed in the complaint.
- Declares violations to be unfair and deceptive practices or unfair methods of competition in the conduct of trade or commerce for purposes of the Consumer Protection Act.
- Provides that these amendments to the CAA apply prospectively only and not retroactively, and specifically apply with respect to delinquent or charged off claims purchased for collection purposes by a debt buyer on or after the effective date.

**Hearing Date:** 1/17/20

**Staff:** Cece Clynch (786-7195).

#### **Background:**

In Washington 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 requirements and prohibited practices, and provides remedies. "Collection agency" means and includes:

1. any person 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;

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2. any person who directly or indirectly furnishes or attempts to furnish, sells, or offers to sell forms represented to be a collection system or scheme intended or calculated to be used to collect claims;
3. any person who in attempting to collect or in collecting his or her own claim uses a fictitious name or any name other than his or her own which would indicate to the debtor that a third person is collecting or attempting to collect such a claim;
4. any person or entity that is engaged in the business of purchasing delinquent or charged off claims for collection purposes, whether it collects the claims itself or hires a third party for collection or an attorney for litigation in order to collect such claims;
5. any person or entity attempting to enforce a lien under the statutory chapter specific to the liens of doctors, nurses, hospitals, and ambulance services.

"Claim" means any obligation for the payment of money or thing of value arising out of any agreement or contract, express or implied. 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 declared to be unfair acts or practices or unfair methods of competition in the conduct of trade or commerce 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. If a prohibited act or practice is committed in the collection of a claim, the original claim or obligation may be recovered from the debtor, but neither the licensee, the customer of the licensee, nor any other person who may thereafter be legally entitled to collect is allowed to recover any interest, service charge, attorneys' fees, collection costs, delinquency charge, or any other fees or charges otherwise legally chargeable to the debtor on the claim.

### **Summary of Bill:**

#### Debt Buyers.

The label "debt buyer" is given to one of the types or categories of "collection agency" (the fourth in the list above). This new term, "debt buyer," is specifically defined under the Collection Agency Act (CAA) to mean any person or entity that is engaged in the business of purchasing delinquent or charged off claims for collection purposes, whether it collects the claims itself or hires a third party for collection or an attorney for litigation in order to collect such claims.

Provisions are added to the CAA which are specific only to debt buyers. No debt buyer may:

- bring any legal action against a debtor without attaching to the complaint a copy of the contract or other writing evidencing the original debt that contains the signature of the debtor;
  - If a claim is based on a credit card debt for which a signed writing does not exist, the debt buyer may instead attach a copy of the terms and conditions in place at the time of the last statement together with a copy of the most recent monthly statement recording a purchase transaction, payment, or balance transfer.
  - If a claim is based on an electronic transaction for which a signed writing never existed, the debt buyer may instead attach a copy of records created during the transaction evidencing the debtor's agreement to the debt and recording the date and terms of the transaction and information provided by the debtor during the transaction.
- request a default judgment against a debtor in any legal action without providing to the court evidence establishing certain enumerated facts, including: the amount and nature of the debt; the original account number at charge-off; the original creditor at charge-off; the date of the last payment or transaction; and a copy of the assignment or other writing establishing that the debt buyer is the owner of the debt. This evidence must satisfy the requirements of the rule and statute governing business records as evidence;
- bring any legal action against a debtor without prominently disclosing in the complaint: that the action is being brought by a debt buyer; the date the claim or obligation was purchased; the identity of the person or entity from whom or which the claim or obligation was purchased; that the plaintiff may have purchased the claim or obligation for considerably less than its face value; if the claim or obligation was at any time sold without any representation or warranty of accuracy, a statement to that effect; and, that the action is being commenced within, and is not barred by, the applicable statute of limitations.

Violations of these prohibited practices are unfair and deceptive practices or unfair methods of competition in the conduct of trade or commerce for purposes of the Consumer Protection Act. If one of these prohibited acts or practices is committed in the collection of a claim, the original claim or obligation may be recovered from the debtor, but neither the licensee, the customer of the licensee, nor any other person who may thereafter be legally entitled to collect is allowed to recover any interest, service charge, attorneys' fees, collection costs, delinquency charge, or any other fees or charges otherwise legally chargeable to the debtor on the claim.

Application.

These amendments to the CAA apply prospectively only and not retroactively. They apply with respect to delinquent or charged off claims purchased for collection purposes by a debt buyer on or after the effective date.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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