

HOUSE BILL REPORT

HB 2476

As Reported by House Committee On:
Civil Rights & Judiciary

Title: An act relating to debt buyers.

Brief Description: Concerning debt buyers.

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

Brief History:

Committee Activity:

Civil Rights & Judiciary: 1/17/20, 1/24/20 [DPS].

Brief Summary of Substitute 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 included in a 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.

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 Kilduff, Chair; Thai, Vice Chair; Irwin, Ranking Minority Member; Dufault, Assistant Ranking Minority Member; Goodman, Graham, Hansen, Kirby, Klippert, Orwall, Rude, Valdez, Walen and Ybarra.

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.

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.
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 Substitute 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 most recent monthly statement recording a purchase transaction, payment, or other extension of credit and, if such a claim is based on a breach of contract, a copy of the terms and conditions in place at the time of the most recent statement must also be attached.
 - 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 disclosing in the complaint (in at least 10-point type): 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 less than the value stated in the complaint; 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, an 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.

Substitute Bill Compared to Original Bill:

The substitute bill retains the underlying bill with the following changes:

- revises the requirement regarding what must be attached to the complaint when a claim is based on a credit card debt for which a signed writing evidencing the original debt does not exist, as follows:
 - With respect to all such claims, a copy of the most recent monthly statement recording a purchase transaction, payment, or other extension of credit must be attached.
 - If such a claim is based on a breach of contract, a copy of the terms and conditions in place at the time of this most recent statement must also be attached.
- replaces the requirement that certain statements be "prominently displayed" in the complaint with a requirement that they be provided in the complaint in no smaller than 10-point type; and
- requires the complaint to state:
 - that the plaintiff may have purchased this claim or obligation for "less than the value stated in the complaint" rather than "considerably less than its face value;" and
 - that the action is being commenced within, and is not barred by, "an" rather than "the" applicable statute of limitations.

Appropriation: None.

Fiscal Note: Not requested.

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) There is a need for more transparency with respect to debt buyers. In working with customers, car dealers see two aspects of debt collection. Sometimes, customers fail to make payments, and car dealers turn to collection agencies to collect. Other times, car

dealers are trying to assist customers who want to purchase cars and, in pulling the customers' credit, items are found on the credit records that are unfamiliar to the customers. The customers may not recognize the dates, claims, or names of the creditors that appear on their records. This bill will bring that needed transparency. Requirements for obtaining a default judgment are increased. In these situations, the debtor is not present in court, and there is a need for more information. This has been an inclusive stakeholder process; the parties have been working together, and they are close to reaching agreed-upon language.

In the 2019 report by the Center for Responsible Lending, it was revealed that Washington has the highest level of default judgments when a debt buyer is involved – it is higher than other states. In Washington, four-fifths of cases involving a debt buyer ended in default judgments. Only 1.2 percent of debtors in these cases had representation. This is indicative of this business model, particularly that of large national debt buyers that flood the courts with actions, hope that the debtors do not show up to court, and obtain default judgments. This bill would be a great addition to the four bills from the 2019 Legislative Session, and it touches upon a problem area that has been around for some time. The power dynamic in debt collection is very imbalanced, and invalid debts are a concern. There are some questions still outstanding about the documentation that the bill requires, but the stakeholder group is working on this.

(Opposed) There has been an inclusive stakeholder process, and the parties are very close to reaching an agreement. The Washington Collectors Association is mostly made up of third-party collectors, but some debt buyers are members, as well. There is one particular piece of information that would be required by this bill that is especially concerning, and that is the requirement that the complaint state that the plaintiff may have purchased the claim or obligation for considerably less than its face value. This is not always the case.

The PRA Group purchases portfolios but does not add attorneys' fees or interest. There is particular concern with the requirement that, with respect to a credit card debt for which a signed writing does not exist, a debt buyer must attach to the complaint a copy of the terms and conditions in place at the time of the last statement activity and a copy of the most recent monthly statement recording a purchase transaction, payment, or balance transfer. This language in the bill is ambiguous and invites suits against debt buyers. Maryland law provides a good model with respect to this.

(Other) Lawyers helping clients in debt defense clinics see problems with debt buyers first-hand. Sometimes, it simply cannot be determined who is suing the debtor or why. Other times, the clients' bank accounts have already been drained. Debts are purchased in unregulated markets pursuant to secret agreements, with devastating effects to consumers. This bill will protect many consumers from inaccurate and unreliable information.

Persons Testifying: (In support) Representative Walen, prime sponsor; Jay Doran, Statewide Poverty Action Network; Antonio Ginatta, Columbia Legal Services; and Larry Shannon, Washington State Association for Justice.

(Opposed) Kelsi Hamilton, Washington Collectors Association; Andrew Roskam, AcctCorp International Incorporated; Franci Wayland, PRA Group; and Holly Chisa, Receivables Management Association, Limited.

(Other) Julia Kellison, Northwest Justice Project.

Persons Signed In To Testify But Not Testifying: None.