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**Consumer Protection & Business  
Committee**

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**HB 1666**

**Brief Description:** Making changes to certain fee and debt collection practices.

**Sponsors:** Representative Reeves.

**Brief Summary of Bill**

- Makes changes to the Collection Agency Act, including modifying the definition of claim to include outstanding debts owed to government entities and courts and adding prohibited practices.
- Limits the collection agency fee that government entities are permitted to add to outstanding debts to 9 percent.
- Permits businesses whose fees or charges are regulated by the state to charge a transaction fee for processing a credit card transaction.

**Hearing Date:** 2/7/23

**Staff:** Megan Mulvihill (786-7304).

**Background:**

Collection Agencies.

Collection agencies are regulated by both state and federal law. Collection agencies are licensed by the Department of Licensing under the state Collection Agency Act (CAA), and are also subject to the federal Fair Debt Collection Practices Act (FDCPA) when collecting consumer debt. The CAA and FDCPA define collection agencies as persons or entities 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. Also included are those collecting on

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their own behalf under another name, which would indicate to the debtor that a third person is attempting to collect the claim.

Both the CAA and the FDCPA permit and prohibit certain practices, and in general have similar provisions as to what is and is not allowed. Where there is an inconsistency with state law, the FDCPA supersedes state law; however, a state law is not inconsistent with the FDCPA if it affords greater consumer protection than the FDCPA. Examples of prohibited practices under both acts include publishing or threatening to publish "bad debt lists," purporting to be associated with law enforcement, failing to follow certain requirements in communications with debtors, and engaging in harassing or threatening tactics, among other things. Among other prohibited practices, collection agencies may only collect, or attempt to collect, the principal amount of a claim and:

- any allowable interest, collection costs, or handling fees authorized in statute;
- attorney's fees and taxable court costs in the case of a lawsuit; and
- the collection costs and fees between the licensee's client and the debtor in the case of a commercial claim.

Government entities may use collection agencies to collect on unpaid debts, and in doing so may charge a reasonable fee payable by the debtor to cover the fee charged by the collection agency. The fee is determined between the government entity and the collection agency, but the statutory suggestion is a contingent fee of 50 percent of the first \$100,000 per account and 35 percent for debt over \$100,000. A minimum fee of the full amount of the debt up to \$100 dollars per account is also considered reasonable.

#### Credit and Debit Card Transaction Fees.

Credit card transaction fees are charges that merchants pay to credit card companies and financial services providers to authorize and complete transactions. Transaction fees vary based on the credit card network; type of card used, such as reward credit card versus non-reward credit card; and how the card is processed, such as in person versus online. The processing fee includes the interchange fee, the assessment fee, and payment processor fee. Interchange fees are applied by credit card companies, but the fee goes to the issuing bank that manages the credit card. The rate of the interchange fee varies by credit card company, but usually includes a percentage plus an additional fixed amount. Most vary around 1 to 3 percent with a fixed rate of 10 cents per transaction. The assessment fee is paid directly to the credit card network and is a much smaller fee, typically less than a percent. Payment processor fees go to the processor who manages the logistics of processing credit card payments.

The Durbin Amendment to the Dodd-Frank Wall Street Reform and Consumer Protection Act capped debit card transaction fees for banks with over \$10 million in assets. Debit card transaction fees are capped at 21 cents plus 0.05 percent of the transaction value.

Certain businesses have the fees they can charge regulated by statute, including collection agencies, tow truck operators, and debt adjusters.

## **Summary of Bill:**

### Collection Agencies.

The definition of "claim" under the CAA is modified to include outstanding public debts owed to government entities and courts.

A debtor is permitted to request an itemization of the claim at any time. The request does not need to be in writing, and if the claim concerns a judgment, post-judgment interest or other post-judgment collection costs need to be included.

Two additional prohibited practices are added for collection agencies: (1) using any false, deceptive, or misleading representation or means in connection with the collection of any claim; or (2) using unfair or unconscionable means to collect or attempt to collect any claim.

The collection agency fee that a government entity may add to outstanding debt that is payable by the debtor is limited to 9 percent.

### Credit and Debit Card Transaction Fees.

Businesses whose fees or charges are regulated in Washington are allowed to charge a transaction fee for processing a credit card payment, provided that a no-cost payment option is available and it is disclosed at the same time and in the same manner as the debtor's credit card information is taken. The transaction fee cannot exceed the actual amount incurred, or 3 percent of the payment amount, whichever is less. "Credit card payment" is defined to mean any payment made by a payment card that incurs an interchange fee, regardless of the type of payment card used.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect on January 1, 2024.