

HOUSE BILL REPORT

ESHB 1864

As Passed House:
March 3, 2011

Title: An act relating to business practices of collection agencies.

Brief Description: Concerning the business practices of collection agencies.

Sponsors: House Committee on Business & Financial Services (originally sponsored by Representatives Stanford, Frockt, Fitzgibbon, Ryu, Billig, Moscoso, Ladenburg and Kenney).

Brief History:

Committee Activity:

Business & Financial Services: 2/17/11 [DPS].

Floor Activity:

Passed House: 3/3/11, 98-0.

Brief Summary of Engrossed Substitute Bill

- Prohibits a licensed collection agency from sending a first notice to a debtor unless it includes the complete or redacted original account number assigned to the debt and the date of the last payment, if known, although the licensee may be required to provide this information or cease collection efforts.
- Prohibits licensees from sending certain notices to a debtor without including the name of the original creditor to whom the debt is owed, if known, although the licensee may be required to provide the name or cease collection efforts.
- Prohibits a licensee from asking a court to transfer a bond posted by a debtor to the licensee when the debtor has appeared at special proceedings as required.

HOUSE COMMITTEE ON BUSINESS & FINANCIAL SERVICES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Kirby, Chair; Kelley, Vice Chair; Bailey, Ranking Minority Member; Buys, Assistant Ranking Minority Member; Blake, Condotta, Hudgins, Hurst, Parker, Pedersen, Rivers, Ryu and Stanford.

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: Parker Howell (786-5793) and Jon Hedegard (786-7127).

Background:

Collection Agency Licenses.

Washington law requires collection agencies to be licensed. State law prohibits collection agencies from conducting certain practices in attempting to collect on debts. A collection agency includes any person who:

- directly or indirectly solicits claims for collection, or who collects or attempts to collect claims owed or due to another person;
- furnishes or attempts to sell a collection system; or
- attempts to collect his or her own claims using a fictitious name other than his or her own name.

Collection agencies do not include people who:

- solicit claims for only one employer, if the efforts are done in the name of the employer and the individual is an employee of the employer;
- collect under their true names related to the operation of businesses such as savings and loan associations, real estate brokers, and banks; or
- prepare or mail periodic statements of accounts due if all payments are made to those people.

Collection agencies that operate without a license or commit acts or practices prohibited by statute may be found to violate the Consumer Protection Act (CPA). Under the CPA, a debtor may sue in an attempt to enjoin action of or recover damages from a collection agency.

Subject to certain exceptions, prohibited practices include sending notice to a debtor that represents or implies that a claim exists unless it indicates in clear and legible type the name and address of the collection agency and the name of the original creditor to whom the debtor owed the claim, if such name is known to the collection agency or employee.

If the notice is the first notice to the debtor or if the collection agency is attempting to collect a different amount than indicated in his or her first notice to the debtor, the collection agency must provide an itemization of the claim, including the amount owing on the original obligation at the time it was received by the collection agency for collection or by assignment, subject to certain exceptions, and any charge or fee that the collection agency is attempting to collect on his or her own behalf or on the behalf of a customer or assignor.

Special Proceedings.

Creditors, including collection agencies, may sue a debtor in an attempt to have a court enter a legal judgment that the debtor owes a certain amount of money to the collection agency. State statutes allow collection agencies to request "special proceedings" as a means to help enforce debts that have been reduced to judgment. During a special proceeding, collection agencies or their lawyers typically meet with the debtor subject to judgment in the superior or district court where the judgment was entered in order to assess the extent of the debtor's assets that could be used to repay the judgment. A collection agency may request a special

proceeding within 10 years after entry of a judgment for \$25 or more, unless time is extended.

Some courts issue a bench warrant for the debtor's arrest if the debtor fails to appear for a special proceeding as ordered. Collection agencies also may submit affidavits to the judge swearing that there is a danger of the debtor absconding, and the judge may order the sheriff to arrest the debtor and force him or her to appear before the judge. Once a bench warrant is issued, the judge may require that the debtor enter into a bond, also known as paying "bail," guaranteeing that he or she will attend future proceedings as directed until the proceedings are terminated. Some courts require bail amounts equal to the amount of the judgment against the debtor. If the debtor fails to appear as required, he or she forfeits the bond.

Summary of Engrossed Substitute Bill:

Licenses are prohibited from sending certain notices to debtors without including the name of the original creditor to whom the debtor owed the debt, if the name is known to the licensee or an employee. Upon written request, the licensee must provide the name or cease efforts to collect the debt until it is provided.

If the licensee's notice is the first notice to the debtor, an itemization of the debt asserted must be made, including the complete or redacted original account number assigned to the debt and the date of the last payment to the creditor on the subject debt by the debtor, if those pieces of information are known to the licensee or an employee. Upon a written request of the debtor, a licensee must make a reasonable effort to obtain this information or cease efforts to collect on the debt until this information is provided.

Licenses are prohibited from asking a superior or district court to transfer a bond posted by a debtor subject to a money judgment to the licensee when the debtor has appeared for special proceedings as required.

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.

Staff Summary of Public Testimony:

(In support) The bill aims to solve two problems. First, debtors sometimes do not realize when they owe debts, perhaps because notices blend in with junk mail. The bill would improve notice requirements so debtors can realize they owe debts and engage in the process. Second, the bill would correct an issue where courts require bail to be forfeited directly to debt collectors.

The bill originally was based on a set of recommendations made by the Federal Trade Commission last year. The legislation has gone through extensive negotiations and has been pared down so that its provisions are practical and can be implemented.

The bill gives consumers better tools and transparency to meet their financial obligations and commitments. It also helps people avoid bigger problems that happen when they spiral into debt or have issues related to job loss or medical problems that build stress on families. This legislation also addresses reducing poverty through prohibiting punitive methods that can further exacerbate financial problems. Courts and collection agencies should serve separate functions.

(Neutral) Last-minute negotiations caused some collection agency representatives to take a neutral position on the bill, rather than opposing it. Some stakeholders believe the portion of the bill dealing with special proceedings should be in chapter 6.32 RCW, which deals with special proceedings. The bill is fair, reasonable, and gives debtors additional protections while maintaining creditors' collection remedies.

(Opposed) None.

Persons Testifying: (In support) Representative Stanford, prime sponsor; and Mijkeu Reyherd, Statewide Poverty Action Network.

(Neutral) Kevin Underwood and David Grimm, Washington Collector's Association.

Persons Signed In To Testify But Not Testifying: None.