
Business & Financial Services Committee

HB 1864

Brief Description: Concerning the business practices of collection agencies.

Sponsors: Representatives Stanford, Frockt, Fitzgibbon, Ryu, Billig, Moscoso, Ladenburg and Kenney.

Brief Summary of Bill

- Prohibits licensed collection agencies from requesting that a court order a debtor to attend a special proceeding unless the licensee has given the debtor certain written notice at least 30 days earlier.
- Prohibits a licensee from asking a court to order that a debtor post a bond in order to be released from custody or to transfer a bond already posted by a debtor subject to a money judgment to the licensee.
- Prohibits a licensee from sending to a debtor any notice that implies a claim exists unless the notice states the name of the original creditor to whom the debtor owed the claim.

Hearing Date: 2/17/11

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

Background:

Collection Agency Licenses.

Washington law requires collection agencies to be licensed and prohibits such licensees from conducting certain practices in attempting to collect on debts. Collection agencies include 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.

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.

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 commit unfair acts or practices, or unfair methods of competition, in the conduct of trade or commerce for purposes of 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 of the licensee and the city, street, and number at which he or she is licensed to do business; and the name of the original creditor to whom the debtor owed the claim if such name is known to the licensee or employee.

If the notice is the first notice to the debtor or if the licensee 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 licensee for collection or by assignment, subject to certain exceptions;
- interest or service charges, collection costs, or late payment charges, if any, added to the original obligation by the original creditor, customer, or assignor before it was received by the licensee for collection;
- interest or service charge added by the licensee, customer, or assignor after the obligation was received by the licensee for collection;
- collection costs that the licensee is attempting to collect;
- attorneys' fees that the licensee is attempting to collect on his or her behalf or on the behalf of a customer or assignor; and
- any other charge or fee that the licensee is attempting to collect on his or her own behalf or on the behalf of a customer or assignor.

Special Proceedings.

Creditors, including licensed 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 creditor. State statutes allow creditors to request "special proceedings" as a means to help enforce debts that have been reduced to judgment. During a special proceeding, creditors 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 creditor may request a special proceeding within 10 years after entry of a judgment for \$25 or more, unless time is extended.

Some courts will issue a bench warrant for the debtor's arrest if the debtor fails to appear for a special proceeding as ordered. Creditors 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 Bill:

Licenses are prohibited from requesting that a court or judge order a debtor subject to a judgment to attend special proceedings unless the licensee has given the debtor written notice of the intent to seek special proceedings at least 30 days earlier. The written notice must contain, in addition to the items listed above:

- the redacted original account number assigned to the debt;
- the date of the last payment to the creditor on the subject debt by the debtor;
- the cause of action under which the licensee sought relief;
- information provided or approved by a government agency, such as the consumer protection division of the Office of the Attorney General, that provides accurate information meant to inform debtors of their rights and responsibilities under Washington and federal laws pertinent to payment of debt, and a clearly visible statement that the consumer may read that information to learn more about their rights and responsibilities;
- the applicable statute of limitations and the date from which it runs pursuant to special proceedings; and
- the name of each party or entity to which the debt has been assigned over time.

Licenses are prohibited from submitting an affidavit or other request asking a superior or district court to order that a debtor subject to a money judgment post a bond in order to be released from custody or to transfer a bond already posted by a debtor subject to a money judgment to the licensee.

Licenses are prohibited from sending to a debtor any notice, letter, message, or form that implies a claim exists unless the notice states the name of the original creditor to whom the debtor owed the claim.

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.