SENATE BILL REPORT
ESHB 1864

As of March 21, 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: Passed House: 3/03/11, 98-0.
Committee Activity: Judiciary: 3/18/11.

SENATE COMMITTEE ON JUDICIARY

Staff: Lidia Mori (786-7755)

Background: 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. Washington law requires collection agencies to be licensed and prohibits such licensees from engaging in certain practices in attempting to collect on debts.

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 its 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, subject to certain exceptions, and any charge or fee that the collection agency is attempting to collect on its behalf or on the behalf of a customer or assignor.

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.

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 ten 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 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 the debtor will attend future proceedings as directed. Some courts require bail amounts equal to the amount of the judgment against the debtor. If the debtor fails to appear as required, the debtor forfeits the bond.

Summary of Bill: Licensees 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.

Licensees 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.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: The original bill relates to what information must be provided by a collection agency when trying to collect a debt from a debtor. This bill requires collection agencies to do more than what they are currently required to do. Federal law also places limits on what agencies can do and the law that's more protective of the consumer takes precedence. This bill makes sure consumers get the information they

need about their debts and makes clear the separation between the courts and collection agencies. Courts should not be perceived as an arm of collection agencies.

OTHER: I have concern about the cash exemption and the bank account exemption. Currently they are merged and in the striking amendment, they are separated with different amounts being exempted in each.

Persons Testifying: PRO: Kevin Underwood, WA Collectors Assn.; John Rizzardi, WA State Bar Assn., Creditor-Debtor Section; Majken Ryherd, Statewide Poverty Action Network.

OTHER: Selina Davis.