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## Judiciary Committee

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### HB 1069

**Title:** An act relating to the fair debt buyers practices act.

**Brief Description:** Concerning the fair debt buyers practices act.

**Sponsors:** Representatives Stanford, Ormsby, Fitzgibbon and Green.

#### Brief Summary of Bill

- Makes changes and additions to the Collection Agency Act (CAA), including:
  1. defining “debt buyers” and requiring them to be licensed as collection agencies;
  2. prohibiting debt buyers from collecting time-barred debt;
  3. requiring debt buyers to provide specific documentation to the debtor and court that indicates that they are entitled to collect the debt; and
  4. imposing penalties on debt buyers who violate the CAA.

**Hearing Date:** 1/16/13

**Staff:** Omeara Harrington (786-7136).

#### Background:

##### Scope of Federal and State Governing Laws.

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 on consumer debt. The CAA and FDCPA define collection agencies (called "debt collectors" under the FDCPA) 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 their own behalf under another name, which would indicate to the debtor that a third person is attempting to collect the claim.

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*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.*

There are a number of exceptions to the definition of collection agency for purposes of the CAA. "Out-of-state" collection agencies are not considered collection agencies for purposes of the CAA as a whole, or for purposes of licensing, although out-of-state collection agencies must comply with select provisions of the CAA.

The CAA does not specifically address debt buyers, who purchase delinquent claims and take action to collect on those claims.

#### Prohibited Practices.

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.

#### Penalties.

##### *Federal.*

Violation of the FDCPA subjects the violator to liability for any actual damage resulting from the violation, and additional damages. The additional damages may be up to \$1000, for an individual action, or, if a class action, the same for each named plaintiff, and up to the lesser of \$500,000 or 1 percent of the net worth of the debt collector for the pool of other class members. The court is given criteria to consider in determining the amount of liability that should be imposed, and no liability may be imposed if the violation was an unintentional bona fide error that occurred despite the maintenance of error-avoidance procedures.

##### *State.*

Violation of the licensing requirement of the CAA subjects the violator to a fine not to exceed \$500, imprisonment of up to one year, or both, and monies collected or received must be returned. Violation of the prohibited practices provisions of the CAA prohibits anyone (either the collection agency, its client, or any subsequent purchaser of the debt) from ever recovering any interest, service charge, attorneys' fee, or other associated costs or charges related to the claim; instead, only the amount of the original claim or obligation may be collected. Violations of either the licensing or prohibited practices provisions of the CAA are statutorily declared to be unfair acts or practices or unfair methods of competition for purposes of the Washington's Consumer Protection Act.

#### Procedural Requirements for Claims Brought by Collection Agencies.

Prior to bringing an action on a claim, collection agencies must allege and provide proof of valid licensing under the CAA and satisfaction of any necessary bonding requirements, unless the judgment is to be entered by default (meaning the defendant did not answer the complaint). The assignment of the claim to the collection agency is presumed valid, if the assignment is filed in court with the complaint, absent debtor objection.

The statute of limitations during which the collection agency must bring a claim will vary depending on the underlying obligation, but typically claims must be commenced within six years. It is a prohibited practice for a collection agency to attempt to collect debt that the collection agency knows or reasonably should know is time barred.

### **Summary of Bill:**

#### Debt Buyers.

The CAA is amended to define "debt buyers" and require them to be licensed as collection agencies. Debt buyers are defined as people or entities engaged in the business of purchasing delinquent consumer debt for collection purposes. Debt buyers can be those who collect the debt themselves, as well as those who hire third parties to do so, or who hire attorneys to engage in litigation to collect the debt.

"Consumer debt" is defined as the financial obligation associated with transactions in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes.

#### Prohibited Practices.

Certain acts are added to the list of prohibited practices. Debt buyers violate the CAA by attempting to collect debt they know or reasonably should know is time barred. Also prohibited is bringing suit without meeting certain requirements; specifically the debt buyer must have proof that they own the debt and of the amount of debt owed, and must give 30 days' notice prior to filing a legal action.

All collection agencies are prohibited from seeking a warrant for the arrest of a debtor (absent the debtor's violation of criminal law), and from failing to be licensed as a collection agency or failing to comply with notice and other procedural requirements.

Debt buyers who fail to comply with any provision of the CAA are liable for actual damage and civil penalties that range between \$500 and \$5,000 per violation for each individual plaintiff, or each named plaintiff in a class action, and up to the same amount for other class members, plus costs and attorneys' fees. In determining the amount of liability, the court must consider the frequency, persistence, and nature of non-compliance, and, in class actions, the resources of the debt buyer and number of people affected.

#### Claims by Debt Buyers.

Debt buyers must comply with specific requirements in bringing an action to collect consumer debt. The complaint or claim must be accompanied by debtor-signed proof of the original debt, proof of ownership and evidence of each previous transfer, and an itemization of the amount sought.

The presumption of validity in claims brought by collection agencies does not apply to debt buyers. To obtain a judgment, the plaintiff debt buyer must file:

- an authenticated copy of the contract or writing evidencing the debt and signed by the debtor;
- business records establishing specific information about the amount and nature of the debt;

- an affidavit and exhibits indicating that the plaintiff debt buyer is the sole owner of the debt, including a complete chronological record of previous owners and transfers;
- an affidavit by the original creditor, affidavits authenticating the contract, and specific evidence of each assignment or sale; and
- an affidavit indicating that the claim is not time-barred.

Failure to comply with these requirements results in the case being dismissed, with prejudice. Plaintiff debt buyers must appear for trial and be ready to proceed, otherwise default judgment is entered in favor of the debtor, with prejudice, and the court may award the debtor costs, attorneys' fees, and other expenses.

Judgment entered in favor of a debt buyer will bear interest at a maximum rate equal to the weekly average one-year constant maturity treasury yield for the calendar week preceding the date of judgment, regardless of any interest rate included in the underlying contract. Before a court may enforce an attorneys' fees provision in a contract in favor of a debt buyer, the debt buyer must provide the court with certain information evidencing ownership of the debt, and detailing the chain of prior ownership.

The statute of limitations during which a debt buyer may bring an action to collect consumer debt is three years, unless a shorter time period is cited in the contract or elsewhere in statute. Payment made after default does not restart the statute of limitations.

#### Other Changes.

Receipts bearing certain specified information must be provided to debtors within 10 days of payment on a consumer debt, and copies must be furnished within 10 days of a request. Collection agencies must retain receipts for four years.

The exemption for out-of-state collection agencies in the CAA definition of "collection agency" is removed, as is the definition, and references to out-of-state collection agencies are removed from the provision requiring proof of licensing and bonding prior to bringing suit.

**Appropriation:** None.

**Fiscal Note:** Requested on January 11, 2013.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.