

HOUSE BILL REPORT

HB 1054

As Reported by House Committee On:
Business & Financial Services

Title: An act relating to collection agency transaction fees for processing electronic payments.

Brief Description: Concerning collection agency transaction fees for processing electronic payments.

Sponsors: Representatives Stanford and Gregerson.

Brief History:

Committee Activity:

Business & Financial Services: 1/14/15, 2/4/15 [DPS].

Brief Summary of Substitute Bill

- Allowing collection agencies to collect a transaction fee for credit card payments from debtors.

HOUSE COMMITTEE ON BUSINESS & FINANCIAL SERVICES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Kirby, Chair; Vick, Ranking Minority Member; Parker, Assistant Ranking Minority Member; Blake, Hurst, Kochmar, McCabe, Santos and Stanford.

Minority Report: Do not pass. Signed by 2 members: Representatives Ryu, Vice Chair; G. Hunt.

Staff: David Rubenstein (786-7153).

Background:

Definition of 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

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are also subject to the federal Fair Debt Collection Practices Act (FDCPA) when collecting 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.

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.

Among other prohibited practices, collection agencies may not collect any sum beyond the principal amount of the debt owed other than allowable interest, expressly allowed collection costs or handling fees, or attorneys' fees and court costs.

Summary of Substitute Bill:

Collection agencies may collect transaction fees for credit card payments up to 50 cents plus 3 percent of the transaction. The agency must also offer a no-cost option to the debtor and must disclose the option to the debtor at the same time and in the same manner as the debtor's credit card information is taken.

A credit card payment is defined to mean any payment made by a payment card that incurs a credit card interchange fee, regardless of the type of card used.

Substitute Bill Compared to Original Bill:

The substitute bill changes "electronic payment" to "credit card payment" and defines credit card payment.

The substitute bill also changes the allowable fee from the greater of \$10 or 3 percent of the transaction to 50 cents plus 3 percent of the payment and adds a requirement that the collection agency disclose the no-cost option.

Appropriation: None.

Fiscal Note: Not requested.

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

Staff Summary of Public Testimony:

(In support) This bill is intended to modernize the CAA. Debt collectors would like to accept credit card payments, but current law does not allow any extra fees for the portion taken by credit card companies. Technology has changed and society demands the opportunity to use electronic payments. Collection agencies ask to be able to defray the cost of offering the option like any other industry, since they operate on a contingency basis and cannot pass along the cost.

It is not an option to make this an actual-cost provision; merchants do not know the percentage they will be charged at the time of the transaction. Instead, the \$10 figure is intended to balance out across all payers and represents the approximate break-even point. In a garnishment situation, it can be more costly to take an electronic payment than to proceed with garnishment, which is worse for the consumer.

(Opposed) Electronic payments have been happening for a very long time and are, in fact, the preferred method of payment for collection agencies. They prefer the debtor to pay immediately, often over the phone, which usually takes the form of an electronic payment. Even paper coupons on which the debtor writes his or her credit card information is considered an electronic payment. Most payments to debt collectors are electronic or web-based, so this change will impact thousands of people, but only those who pay their bills and want to catch up on their debts. An added fee would disincentivize paying off debts.

In credit card payments, recent litigation resulted in credit card companies being allowed to only charge between 1 and 2 percent, but never above 3 percent. Merchants are allowed to pass on to customers only the actual cost. In debit card transactions, the fees are much lower, and the merchant is not permitted to pass along any fee at all. The \$10 figure bears no relationship to actual cost.

People facing collections are often in that situation because the debt is an insurmountable cost, and this fee would only add to the burden.

The cost of collections for unpaid debt is built into the original price between the creditor and the debtor, but this fee would be added on top of it. Further, collection agencies are already allowed to collect 12 percent interest, and they have 10 years to collect plus another 10-year automatic extension. Other state laws permit these fees by omitting mention, not by explicitly allowing them. Federal and Washington law limit the fees debt collectors can collect because consumers need those protections. These laws were hard-fought and should not be changed without a deep look at the reasons for the change and a balance of the needs of creditors and consumers.

Persons Testifying: (In support) Representative Stanford, prime sponsor; David Fagan and Kevin Underwood, Washington Collectors Association.

(Opposed) Paul Arons and Christina Henry, National Association of Consumer Advocates; and Bruce Neas, Columbia Legal Services.

Persons Signed In To Testify But Not Testifying: None.