

SENATE BILL REPORT

SB 5222

As Reported by Senate Committee On:
Financial Institutions & Insurance, February 5, 2015

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: Senators Angel, Benton and Hobbs.

Brief History:

Committee Activity: Financial Institutions & Insurance: 1/29/15, 2/05/15 [DPS, DNP].

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

Majority Report: That Substitute Senate Bill No. 5222 be substituted therefor, and the substitute bill do pass.

Signed by Senators Benton, Chair; Angel, Vice Chair; Fain, Hobbs and Litzow.

Minority Report: Do not pass.

Signed by Senators Mullet, Ranking Minority Member; Darneille and Pedersen.

Staff: Susan Jones (786-7404)

Background: Collection Agency Regulation. Collection agencies are regulated by both state and federal law under the Washington's Collection Agency Act (CAA) and the federal Fair Debt Collection Practices Act (FDCPA). Where there is an inconsistency with state law, FDCPA supersedes state law. However, a state law is not inconsistent with FDCPA if it affords greater consumer protection than FDCPA. Collection agencies are licensed by the Department of Licensing.

Collection Agency Definition. Under CAA, collection agencies – called debt collectors under FDCPA, generally include those who (1) directly or indirectly are engaged in soliciting claims for collection, or collecting or attempting to collect claims owed or due or asserted to be owed or due to another person; (2) directly or indirectly furnish or attempt to furnish, sell, or offer to sell certain forms represented to be a collection system or scheme; (3) in attempting to collect or in collecting its own claim uses another name which would indicate to the debtor that a third person is attempting to collect the claim; and (4) are engaged in the

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business of purchasing delinquent or charged-off claims for collection purposes, whether it collects the claims itself or hires a third party for collection or an attorney for litigation in order to collect the claims.

Prohibited Practices. Both CAA and FDCPA permit and prohibit certain practices. Among other prohibited practices under CAA, 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. Exceptions are made for collection costs and fees in commercial claims.

Summary of Bill (Recommended Substitute): A collection agency may collect a transaction fee for processing a credit card payment of up to \$0.50 and 3 percent of the payment amount, provided a no-cost payment option is available to the debtor. The option must be disclosed to the debtor at the same time and in the same manner as the credit card information is taken.

EFFECT OF CHANGES MADE BY FINANCIAL INSTITUTIONS & INSURANCE COMMITTEE (Recommended Substitute): The proposed substitute changes the following: (1) the transaction fee from the greater of \$10 or 3 percent of the payment amount to \$0.50 plus 3 percent of the payment amount, and (2) the term electronic payment to credit card payment; and requires disclosure to the debtor of a no-cost option at the same time and in the same manner as the credit card information is taken.

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 on Original Bill: PRO: E-commerce is becoming the new standard. So much is being done online and consumers are paying electronically. The bill gives the consumer more options and choices on how to pay their bills. These electronic transactions carry fees. Consumers have the option to pay the fees and for that convenience it is worth the fee. Under current law, the collection agencies may not pass along the fees. This is a necessity. Washington businesses are at a disadvantage. Thirty-four states allow an electronic transaction fee. When the Washington state Collection Agency Act was passed, the ability to pay electronically was nonexistent. The percentage of electronic transactions has increased substantially. Not allowing electronic payment slows the process for consumers to get items cleared up faster for license reinstatement or getting an apartment. It is only fair to allow the collection agencies to recoup the fees. There is always a free option – mail, walk-in, or automated clearinghouse. Most other industries charge an electronic transaction fee.

CON: This will have an adverse effect on low-income people and is an anti-consumer bill. This hurts consumers who are trying to pay debts. These debts are often because of a lost job, illness, and a foreclosure with a second mortgage remaining. The collection agencies

want consumers to pay by electronic means as it is a sure payment. It is the collectors' preferred payment method. This is a cost of doing business. Only one state, Idaho, has this type of legislation. Thirty-four states are silent. With collection agencies a certain percentage is assumed uncollectable and therefore, the consumers paying the debts are subsidizing those who don't pay. There are problems with the broadness of this bill. It covers all transactions and some should be excluded as there is clearly no cost to the collection agencies with some of the transactions. The state of Washington has been very good to collection agencies and judgment creditors with 12 percent pre and post-judgment interest, ten-year judgments, and automatic ten-year extensions.

Persons Testifying on Original Bill: PRO: Senator Angel, Prime Sponsor; Greg Luhn, David Fagan, WA Collectors Assn.

CON: Bruce Neas, Columbia Legal Services; Christina Henry, Henry, DeGraff & McCormick PS.