

SENATE BILL REPORT

SB 5043

As Reported by Senate Committee On:
Financial Institutions & Insurance, February 14, 2017

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

Brief Description: Concerning collection agency transaction fees for processing electronic payments. [**Revised for 1st Substitute:** Concerning payment of debts.]

Sponsors: Senators Angel, Mullet and Hobbs.

Brief History:

Committee Activity: Financial Institutions & Insurance: 1/19/17, 2/14/17 [DPS].

Brief Summary of Substitute Bill

- Authorizes collection agencies to collect a transaction fee, not exceeding 2.5 percent, for credit card payments from debtors.
- Restricts interest from accruing on nonrestitution legal financial obligations until an offender's date of release from custody or if paid in full.
- Prohibits partial or total confinement from being imposed for failure to pay legal financial obligations for amounts less than \$25,000.

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

Majority Report: That Substitute Senate Bill No. 5043 be substituted therefor, and the substitute bill do pass.

Signed by Senators Angel, Chair; Mullet, Ranking Minority Member; Fain, Fortunato, Hobbs and Kuderer.

Staff: Jeff Olsen (786-7428)

Background: Collection agencies are regulated by both state and federal law under Washington's Collection Agency Act (CAA) and the federal Fair Debt Collection Practices Act (FDCPA). Collection agencies are licensed by the Department of Licensing. Under CAA, collection agencies generally include those who solicit claims for collection, furnish or

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sell forms representing a collection system, use another name when collecting which indicates to the debtor that a third person is attempting to collect the claim, or purchase delinquent or charged-off claims for collection purposes.

Under the 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.

When a defendant is convicted of a crime, the court may impose legal financial obligations (LFOs) as part of the judgment and sentence. Legal financial obligations include: victim restitution; crime victims' compensation fees; costs associated with the offender's prosecution and sentence; fines; penalties; and assessments. Legal financial obligations judgments bear interest from the date of judgment at either 12 percent or four points above the 26-week treasury bill rate, whichever is greater. For cases in courts of limited jurisdiction, interest accrues on non-restitution financial obligations at the rate of 12 percent upon assignment to a collection agency. Interest that accrues on the restitution portion of the LFO is paid to the victim of the offense. All other accrued interest is split between the state and the county as follows: 25 percent to the State General Fund; 25 percent to the state Judicial Information System Account; and 50 percent to the county, 25 percent of which must be used to fund local courts.

An offender may petition a court to reduce or waive the interest on LFOs as an incentive for the offender to pay the principal. The court must waive interest on the portion of LFOs that accrued during the term of total confinement for the conviction giving rise to the LFOs if it creates a hardship for the offender or his or her family. The court may otherwise reduce interest on non-restitution LFOs if the offender has made a good faith effort to pay. Interest on restitution may not be waived, but may be reduced if the offender has paid the restitution principal in full.

Summary of Bill (First Substitute): Collection agencies may collect transaction fees for credit card payments in an amount not to exceed 2.5 percent of the payment amount. 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.

Interest must not accrue on nonrestitution legal financial obligations until an offender's date of release from custody. Partial or total confinement may not be imposed for failure to pay legal financial obligations for amounts less than \$25,000. The Department of Corrections must provide information in writing upon release of an offender regarding the amount of legal financial obligations owed and interest rates and charges. If an offender has fulfilled all of the conditions of sentence except nonrestitution legal financial obligations, the court shall clear the offender's record of conviction. Interest accruing on nonrestitution legal financial obligations paid in full within 5 years is waived. Courts, on motion by the offender, must waive interest on the nonrestitution portion of legal financial obligations if the principal has been paid in full.

Notification provisions currently required under federal law that a debt collector must send to a debtor are added. The notifications include statements that the consumer has 30 days to dispute the validity of the debt, that the collector will obtain verification of the debt, and that the collector must provide the name and address of the original creditor upon request. Proof of debt provisions that a debt collector must provide to a debtor before seeking a default judgement are established including documentation of the debt, explanation of interest charges and fees, collection costs, and a prominent notice that the debtor may request additional information from the debt collector.

EFFECT OF CHANGES MADE BY FINANCIAL INSTITUTIONS & INSURANCE COMMITTEE (First Substitute):

- Restricts interest from accruing on nonrestitution legal financial obligations until an offender's date of release from custody.
- Prohibits partial or total confinement from being imposed for failure to pay legal financial obligations for amounts less than \$25,000.
- Directs the Department of Corrections to provide information in writing upon release of an offender regarding the amount of legal financial obligations owed and interest rates and charges.
- Removes nonrestitution legal financial obligations as a condition of vacating a conviction.
- Waives interest for nonrestitution legal financial obligations paid in full within 5 years.
- Directs courts, on motion by the offender, to waive interest on the nonrestitution portion of legal financial obligations if the principal has been paid in full.
- Authorizes a debt collector to charge a 2.5 percent transaction fee for credit card payments.
- Adds notification provisions currently under federal law that a debt collector must send to a debtor.
- Adds proof of debt provisions that a debt collector must provide to a debtor before seeking a default judgement.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: With changes in technology, times have changed and customers demand more options and convenience. A majority of consumers want to pay their bill with a payment card. The debt collection industry is restricted from adding a transaction fee, and would like to be able to offer the option to those that want to pay with a credit card. Industry gets a contingency fee on the collection of debt, and card payment fees may take nearly 25 percent of the revenues earned by the collection agency. Other public agencies offer the option to their customers to use a credit card for

payments with a convenience fee, and the debt collection industry would like that same option.

CON: The ability for debt collectors to charge an additional 2 percent fee, on top of 12 percent judgement fees, would negatively impact all debtors. Paying off debt with a credit card just creates a cycle of debt. Debt is more likely in communities with higher populations of minorities, uninsured populations, and lower educational attainment and income levels. Many people with debt problems have experienced a medical emergency and have medical debt. The bill would negatively impact already vulnerable individuals that are unable to pay off their legal financial obligations. There should be an exemption for individuals that are paying off their court debt. Additional fees would increase the number of individuals that may need to file for bankruptcy, rather than being able to continue to pay off their debts. The bill allows debt collectors to charge the two percent fee on credit cards, debit cards, and other types of electronic payment cards.

OTHER: The definition of credit card payment is fairly broad and captures other types of payment cards, and it should be modified to match an existing definition of credit card that is already in statute.

Persons Testifying: PRO: Kelsi Hamilton, WA Collectors Association; David Fagan, Washington Collectors Association.

CON: Elisabeth Smith, ACLU of Washington; Eric Gonzalez, Washington State Labor Council AFL-CIO; Christina Henry, National Association of Consumer Advocates; Joshua Turnham, citizen; Rolando Avila, Statewide Poverty Action Network; Ellicott Dandy, OneAmerica; Lili Sotelo, Columbia Legal Services; Xochitl Maykovich, Washington Community Action Network / Political O.

OTHER: Cindi Holmstrom, Washington Bankers Association.

Persons Signed In To Testify But Not Testifying: No one.