

# HOUSE BILL REPORT

## HB 1730

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### As Amended by the Senate

**Title:** An act relating to the effect of payment or acknowledgment made after the expiration of a limitations period.

**Brief Description:** Concerning the effect of payment or acknowledgment made after the expiration of a limitations period.

**Sponsors:** Representatives Walen, Frame, Jinkins, Macri and Ormsby.

#### **Brief History:**

##### **Committee Activity:**

Civil Rights & Judiciary: 2/15/19, 2/20/19 [DP].

##### **Floor Activity:**

Passed House: 3/1/19, 94-0.

Senate Amended.

Passed Senate: 4/15/19, 48-0.

#### **Brief Summary of Bill**

- Provides that any payment of principal or interest made after the limitations period for commencing a cause of action has expired shall not revive or extend the limitations period.
- Provides that an acknowledgement or promise made after the limitations period for commencing a cause of action has expired shall not revive or extend the limitations period.

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### HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

**Majority Report:** Do pass. Signed by 15 members: Representatives Jinkins, Chair; Thai, Vice Chair; Irwin, Ranking Minority Member; Dufault, Assistant Ranking Minority Member; Goodman, Graham, Hansen, Kilduff, Kirby, Klippert, Orwall, Shea, Valdez, Walen and Ybarra.

**Staff:** Cece Clynch (786-7195).

#### **Background:**

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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.*

The goal or policy behind statutes of limitation is to require claims to be brought when the evidence is still available and while witnesses can still recall the events. Generally, a limitations period begins to run when the cause of action "accrues," which is such time as all elements of the cause of action are susceptible of proof and the injured party has a right to apply to a court for relief.

There are numerous statutes of limitation. Which one applies depends upon the cause of action. For instance:

- Actions upon written contracts and accounts receivable must be commenced within six years.
- Actions upon contracts that are not in writing must be commenced within three years.

The general rule in Washington is that the running of the statute of limitations does not extinguish the debt. Rather, its running bars the creditor from using the courts to recover the debt. The language of the statutes of limitations mentioned above reflect this general rule, providing that certain listed actions "shall be commenced within" the limitations period.

A limitations period on a debt may be extended by a payment on the debt of either principal or interest. If the payment is made after it becomes due, the limitations period commences from the time of the last payment. A statute of limitations may also be extended by an acknowledgement of or promise to pay the debt. An acknowledgement or promise must be in writing and signed by the party to be charged.

#### **Summary of Bill:**

Payment on a debt of either principal or interest made after the limitations period has expired shall not revive or extend the limitations period. An acknowledgement or promise made after the limitations period has expired shall not revive or extend the limitations period.

#### **EFFECT OF SENATE AMENDMENT(S):**

##### The Senate amendment:

- retains the new provisions in the underlying House bill which provide that any payment on an existing contract or any acknowledgement or promise, made after the limitation period has expired, shall not revive or extend the limitation period, and adds that such payment shall also not restart the limitation period; and
- restates and adds a clause to current law to provide that when any payment has been or shall be made upon any existing contract "prior to its applicable limitation period having expired", if the payment is made after it is due, the limitation period shall restart from the time the most recent payment was made. (Current law, last amended in 1881, provides that when any payment of principal or interest has been or shall be made upon any existing contract, if such payment be made after the same shall have become due, the limitation shall commence from the time the last payment was made.)

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) It is surprising that even if a statute of limitations has expired, the limitations period on a debt can be revived by making a payment. This is referred to as "zombie debt." Often, debts are passed from one collector to another. At the time of revival, there may be no evidence still in existence regarding the debt or any history of payments on the debt. This is unfair to debtors. Most collectors are good actors, and they do not engage in this sort of practice. It is the bad actors that use this zombie debt mechanism. In one case, a husband and wife team of business owners had a business fail in 2004 and reported a horrible 12-year experience thereafter, despite their having diligently worked to make sure that any outstanding debts were taken care of. They had kept good records and, by 2006, they believed everything was in order and behind them. For years, they and their parents received calls and letters from collectors. Because they had kept good records, eventually all but one collector left them alone. They ended up having to go to court with that collector. It was only after the court case was over that the collector found the agreement. During the course of this experience, they were garnished five times over 10 years even though they were innocent of the debt. People should take responsibility and pay their debts. This practice can have a negative effect on the elderly and vulnerable. Often collectors who pursue this zombie debt are overseas. Debt buyers are notorious for their large-scale efforts to pursue debt. One study found that debt collectors have sufficient documentation for the debts they pursue only 6 percent of the time. Ideally, they should have to prove the debt is owed. This would cut down on litigation. Debt buyers are known to employ large Excel spreadsheets with lots of names, many of them very common names, and then they ask all of the people on the spreadsheets for small payments on alleged debt without telling them that a payment will extend the statute of limitations.

(Opposed) None.

**Persons Testifying:** Representative Walen, prime sponsor; Kelsi Hamilton, Washington Collectors Association; Russ Brandt; SaraEllen Hutchison, Law Offices of SaraEllen Hutchison, PLLC; Jay Doran, Statewide Poverty Action Network; Sam Leonard, Northwest Consumer Law Center; and Larry Shannon, Washington State Association for Justice.

**Persons Signed In To Testify But Not Testifying:** None.