

# SENATE BILL REPORT

## HB 1066

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As of February 25, 2019

**Title:** An act relating to the service of legal actions to collect a debt by a collection agency.

**Brief Description:** Requiring debt collection complaints to be filed prior to service of summons and complaint.

**Sponsors:** Representatives Kilduff, Valdez, Orwall, Jinkins, Ryu, Bergquist, Stanford, Leavitt, Walen and Young; by request of Attorney General.

**Brief History:** Passed House: 2/14/19, 59-37.

**Committee Activity:** Law & Justice: 2/25/19.

### Brief Summary of Bill

- Prohibits a collection agency from serving a debtor with a summons and complaint in a debt collection lawsuit unless the court documents are filed with the court first and the assigned case number appears on the service documents.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Staff:** Melissa Burke-Cain (786-7755)

**Background:** Debt Collection by Collection Agencies and Prohibited Practices. Collection agencies contact delinquent debtors about their unpaid debts and attempt recovery of the money owed either through the debtor's voluntary payment or by obtaining a court judgment for the unpaid debt in court. Collection agencies are regulated under the federal Fair Debt Collection Practices Act and Washington's Collection Agency Act. In Washington, collection agencies must be licensed by Washington's Department of Licensing (DOL) before collecting debts. DOL is authorized to investigate consumer complaints and take disciplinary action if a collection agency does business without a license; uses prohibited debt collection practices such as using simulated court, government, or emergency notices; engages in unprofessional conduct; or otherwise violates the law.

General Requirements for Commencing a Civil Lawsuit. Under current Superior Court civil rules, a lawsuit may be commenced in one of two ways. The party starting the lawsuit may

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deliver an unfiled summons and complaint according to the service of process rules and then file the documents with the court clerk after service on the defendant. Alternatively, the party starting the lawsuit may file the summons and complaint with the court first and then serve the defendant with a copy of the summons and complaint. After filing, the clerk assigns a specific case number to the lawsuit which must appear on every court document. For civil actions in district or municipal courts, a lawsuit is commenced only by filing a complaint with the court.

Commencing a Debt Collection Lawsuit. A collection agency may file a lawsuit to collect a debt in a court having jurisdiction over the matter. Under current law, a collection agency may start its lawsuit in superior court if the court has jurisdiction over the parties, the subject matter of the action, and the venue, or county of filing, is correct. In superior court, the collection agency may elect to file the complaint with the court first, then serve the debtor. Alternatively, the collection agency may elect to serve an unfiled summons and complaint on the debtor.

**Summary of Bill:** When a collection agency files a debt collection lawsuit against a debtor, the lawsuit must be commenced by filing a summons and complaint with the court clerk. After filing, the collection agency may serve the court documents on the debtor, but the case number must appear on each court document.

**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:** PRO: The reason it is appropriate to single out the debt collection industry is because in most of the cases the debtor is not knowledgeable about court processes and is pro se. It is a David versus Goliath situation. The debt collection lawsuits are the second most common problem for low income persons. For low income persons, the number one complaint they make to the federal consumer protection bureau involves the practices of debt collection agencies. The debt is often sold to a third party collector, perhaps more than one time, so the plaintiff's name on the lawsuit is not recognizable to the defendant; its not a creditor with whom they have had a prior business relationship. The consequences of these pocket service cases can be severe, for example, garnishment or even issuance of a bench warrant. By changing the pocket service practice for superior court cases brought by debt collectors it aligns the superior court rule with the district court practice. This bill still leaves the plaintiff free to decide when to file the lawsuit. This bill is the first of several strong consumer protection bills coming out of the other chamber that helps prevent consumers from being misled in the judicial process. The bill is narrowly focused to address a problem that the Attorney General's Office is seeing. The Attorney General's Consumer Protection Division is only seeing this misleading pocket service situation in the debt collection industry.

CON: We oppose the bill because it singles out debt collection agencies. The problem the bill is trying to solve, pocket service, would apply to many other types of cases. Perhaps the courts could take action to modify the rules for commencing a lawsuit to apply a rule across the board and not simply single out debt collection agencies.

**Persons Testifying:** PRO: Representative Christine Kilduff, Prime Sponsor; Shannon Smith, Attorney General's Office; Jay Doran, Statewide Poverty Action Network.

CON: Kelsi Hamilton, Washington Collectors Association.

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