
OLR Bill Analysis

sHB 6173

AN ACT CONCERNING THE REFORM OF DEBT COLLECTION PRACTICES.

SUMMARY:

This bill brings debt buyers under the state's laws regulating creditors and gives the banking commissioner the same regulatory power over them. Under the bill a "debt buyer" is a person or entity that professionally purchases delinquent debt or consumer credit accounts for collection purposes.

The bill establishes procedural requirements for debt buyer actions to collect debts. It:

1. sets a three-year statute of limitations for actions brought by debt buyers;
2. establishes prerequisites for debt buyers bringing suit or initiating an arbitration proceeding against a consumer debtor or otherwise attempting to collect a debt; and
3. requires debt buyers to provide certain documents to the (a) consumer debtor before trial, (b) court prior to the issuance of a judgment or an order, and (c) court to recover attorney's fees.

The bill prohibits debt buyers from using fraudulent and abusive debt collection practices and increases the penalties for violations by all creditors, including debt buyers. It also expands the factors that can be considered when determining damages in a class action case.

The law exempts certain properties, such as necessary apparel and foodstuffs, from any form of process or court order for debt collection. The bill expands this protection to also prohibit any dispossession or taking of these properties for debt collection.

EFFECTIVE DATE: October 1, 2013

§ 1 — DEFINITIONS

Creditor

Under current law, “creditor” means (1) any person to whom a consumer debtor owes debt due to a transaction in the debtor’s ordinary course of business, or (2) any person to whom debt is assigned. “Creditor” does not include a consumer collection agency or any federal or state department, agency, or political subdivision. The bill expands the definition of “creditor” to include a “debt buyer” and provides the banking commissioner with the same power to regulate them.

Debt Buyer

The bill defines a “debt buyer” as a person or entity that:

1. is in the business of purchasing delinquent debt, including, (a) delinquent or charged-off (debt seller considers it a loss) consumer loans or (b) consumer credit accounts, for collection purposes or
2. receives assignments of claims for collection purposes from a person or entity that purchased delinquent debt, including, (a) delinquent or charged-off consumer loans or (b) consumer credit accounts, whether it collects the debt itself or hires a third party for collection or an attorney for representation in a cause of action to collect such debt.

Original creditor

The bill defines an “original creditor” as the last person or entity, identified by the name it uses in its dealings with a consumer, that extended credit to the consumer for the purchase of goods or services, for the lease of goods, or as a loan of money.

§§ 5 & 11 — STATUTE OF LIMITATIONS

Unless applicable provisions in the law provide for a shorter period, the bill requires a debt buyer to start a debt collection action within

three years from the date of charge-off or 180 days after the last regular payment on the debt, whichever is later. If a debt has been charged-off or if there has not been any payment on it for more than 180 days, a subsequent payment does not extend the three-year limitations period or bar the consumer debtor from asserting any defenses to the collection.

Under the bill, when the three-year limitations period expires, the right to collect the debt and any remedies for the debt buyer are no longer available.

§ 2 — PREREQUISITES FOR DEBT BUYER ACTIONS

This bill prohibits debt buyers from bringing suit or initiating an arbitration proceeding against a consumer debtor or otherwise attempting to collect a debt if it knows, or reasonably should know, that the collection is barred by the statute of limitations. Before proceeding, the debt buyer must have (1) proof that it owns the specific debt instrument or account at issue, and (2) documented verification of the amount of the debt allegedly owed by the consumer debtor.

The bill requires the debt buyer to give the consumer debtor written notice of the intent to file a legal action at least 30 days in advance. The notice must include the name, address, and telephone number of the debt buyer, the name of the original creditor, the original creditor's account number for the consumer debtor, a copy of the contract or other document proving the debt, and an itemized accounting of all amounts claimed to be owed.

The bill also requires debt buyers to comply with the new judicial and procedural requirements it establishes for debt buyers.

§ 3 — COURT ACTION BY DEBT BUYER AGAINST DEBTOR

Pre-trial – Required Documents

The bill requires a debt buyer, in any action against a consumer debtor, to mail or deliver certain materials to the consumer debtor at least 10 days before the answer date. The materials include:

1. a copy of the contract or other writing showing the original debt, containing a written or electronic signature of the consumer debtor (if a claim is based on credit card debt and no signed writing showing the original debt ever existed, then the debt buyer must attach copies of documents generated when the credit card was used);
2. a copy of the assignment or other writing establishing the debt buyer as the owner of the debt, containing the original account number of the debt purchased and clearly showing the consumer debtor's name associated with such account number (if the debt has been assigned more than once, the debt buyer must attach each assignment or other writing showing the transfer of ownership and establishing an unbroken chain of ownership); and
3. an itemized amount of damages sought, including: (a) the amount owed; (b) interest, fees, and charges imposed by the original creditor; (c) any interest, fees, or charges imposed by any debt buyer or other assignee; (d) attorney's fees; (e) any other fees, costs, or charges sought or imposed; (f) the amount and date of the last payment before default or charge-off, whichever is later; (g) each payment credited to the debt after default or charge-off; and (h) the amount the debt buyer paid for the account.

The bill prohibits a debt buyer from getting a default judgment against a consumer debtor if the debt buyer fails to deliver the required documents.

Trial – Failure to Appear

The bill requires the court to enter judgment for the consumer debtor and dismiss the debt buyer's action with prejudice, if (1) the consumer debtor appears for trial on the scheduled trial date, (2) the debt buyer either fails to appear or is not prepared to proceed to trial, and (3) the court does not find good cause for a continuance. The bill allows the court to award the consumer debtor costs and attorney's

fees, including lost wages and other related expenses.

Required Filings Prior to Judgment or Order

The bill requires the debt buyer, prior to entry of a judgment or order against a consumer debtor, to file:

1. a statement of compliance with the requirement to deliver the documents listed above,
2. an authenticated copy of the contract or other writing showing the original debt,
3. evidence on court admissible business records establishing the amount and nature of the debt,
4. an affidavit of debt ownership with supporting documents,
5. evidence of an unbroken chain of ownership, including affidavits with supporting documents from each of the debt's prior owners, and
6. an affidavit that the statute of limitations has not expired.

The bill prohibits the court from entering judgment for the debt buyer and requires it to dismiss the action with or without prejudice if the debt buyer fails to comply with these filing requirements.

Interest Rates

If a debt buyer prevails in an action, the bill limits the interest rate on a judgment to the weekly average one-year constant maturity yield of United States Treasury securities, as published by the Board of Governors of the Federal Reserve System, for the calendar week preceding the date of the judgment. No other rate of interest on the judgment is permitted, including the rate provided for in the contract or other writing showing the original debt.

§ 9 — ATTORNEY'S FEES

In lawsuits involving contracts or leases requiring payment of attorney's fees for services to an assignee or debt buyer, the bill

requires the contract or lease holder to produce:

1. a copy of the contract or other writing showing the original debt, which must contain a written or electronic signature of the defendant (if a claim is based on credit card debt and no such signed writing showing the original debt ever existed, then the holder must attach copies of documents generated when the credit card was used) and
2. a copy of the assignment or other writing establishing that the plaintiff is the owner of the debt (if the debt has been assigned more than once, the holder must attach each assignment or other writing showing transfer of ownership and establishing an unbroken chain of ownership; each assignment or other writing evidencing transfer of ownership must contain the original account number of the debt purchased and must clearly show the debtor's name associated with such account number).

§§ 7-8 — PENALTIES FOR ABUSIVE OR FRAUDULENT COLLECTION PRACTICES

Current law prohibits a creditor from using any abusive, harassing, fraudulent, deceptive, or misleading representation, device, or practice to collect or attempt to collect a debt. The bill prohibits debt buyers from these same practices and increases the penalties for violations. It changes the additional damages an individual can recover from current law's \$1,000 maximum to between \$500 and \$5,000 per violation. In the case of a class action, it allows the court to award each named plaintiff and each class member an amount up to what each could have recovered on an individual basis.

The bill prohibits a creditor or any person guilty of abusive or fraudulent collection practices from collecting any interest, service charge, attorney's fees, collection costs, delinquency charge, or any other fees or charges otherwise legally chargeable to the consumer debtor. It allows a creditor who is not a debt buyer to recover the amount of the original claim or obligation from the consumer debtor.

The law requires the trier of fact in prohibited collection practice

cases to consider, among other relevant factors, (1) the frequency and persistence of noncompliance by the creditor, (2) the nature of such noncompliance, and (3) the extent to which such noncompliance was intentional. If the case is a class action, the bill requires the trier to also consider the creditor's resources and the number of persons adversely affected.

BACKGROUND

Related Bill

sSB 911, reported favorably by the Banks Committee, brings debt buyers within the jurisdiction of the consumer collection agency statutes by amending the definition of "consumer collection agency" to include any person who buys debt that is delinquent or in default and then engages in the business of collecting on such debt.

COMMITTEE ACTION

Banks Committee

Joint Favorable Substitute

Yea 11 Nay 6 (03/14/2013)