

Linda Kambeitz

From: Barry Wood <bwood@idcourts.net>
Sent: Monday, February 11, 2019 4:45 PM
To: Senator Jim Patrick; Linda Kambeitz; anthony.polidori@finance.idaho.gov
Cc: Barry Wood; Jason Spillman; Jennifer Carr; Michael Mehall
Subject: SB 1007 (2019)

Mr. Polidori,
Chairman Patrick,

We have had the opportunity to review Senate Bill 1007 which is assigned to the Senate Commerce & Human Resources Committee.

I write to ask that you please consider revisions to one sentence so to avoid ambiguity that may impact the courts and public.

Section 12, bottom of page 7, and page 8 and top half of page 9 of the printed bill. The proposed new section 26-2255 states that a "person who obtains against a collection agent. . . a money judgment in an Idaho court, which judgment includes findings of violations of this chapter . . . after final judgment has been entered, execution returned unsatisfied, and the judgment has been recorded, **may file a verified claim with the court in which the judgment was entered . . .**

It is unclear from this language whether the intent of the statute is to:

- a. require that the plaintiff / victim initiate an entirely new lawsuit in the same court which would require additional filing fees with the court, assignment of a new case number, and the assignment of the matter to a judge (potentially a different judge from the one that presided over the original action against the collection agent);
OR
- b. require that the plaintiff / victim initiate their verified claim for recovery from the recovery fund in the existing case that already granted the judgment in the original action against the collection agent.

If the intent is option a, perhaps language such as the following would be preferable:: "may initiate a new separate lawsuit with a verified claim filed with the court in which the underlying judgment was entered, . . ."

If the intent is option b, then perhaps "may file a verified claim in the same case in which the underlying judgment was entered, . . ."

We also ask that you consider whether it is necessary to include the requirement that the plaintiff / victim record the judgment before pursuing recovery from the Collection Agency Recovery Fund. It is not necessary to record a judgment to begin execution on a judgment (garnishments of wages, attach bank account, attach property). The purpose behind recording a judgment is to secure a lien on property. The language of 26-2255, however, imposes upon the victim the requirement that they record the judgment before they may proceed with the claim for payment from the fund. (*See relevant portion of 26-2255 below.*)

If it is the intent of the legislature to impose the requirement that the plaintiff / victim both attempt to execute and record for the purpose of securing a lien, then the language is clear as written.

If it is the intent of the legislature to only ensure that the plaintiff / victim make a reasonable effort to collect before turning to a claim for payment from the fund, then the language "and the judgment has been recorded" should be removed.

Thank you for your consideration. If you have any questions regarding the above please do not hesitate to contact us.

Senior Judge Barry Wood
Deputy Admin. Director of the Courts
Idaho Supreme Court Building
(208) 334-2246
bwood@idcourts.net