
SENATE BILL 5574

State of Washington

62nd Legislature

2011 Regular Session

By Senators Harper and Kline

Read first time 01/31/11. Referred to Committee on Judiciary.

1 AN ACT Relating to collection agencies; amending RCW 19.16.500;
2 reenacting and amending RCW 19.16.250; and creating a new section.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 19.16.250 and 2001 c 217 s 5 and 2001 c 47 s 2 are
5 each reenacted and amended to read as follows:

6 No licensee or employee of a licensee shall:

7 (1) Directly or indirectly aid or abet any unlicensed person to
8 engage in business as a collection agency in this state or receive
9 compensation from such unlicensed person: PROVIDED, That nothing in
10 this chapter shall prevent a licensee from accepting, as forwarder,
11 claims for collection from a collection agency or attorney whose place
12 of business is outside the state.

13 (2) Collect or attempt to collect a claim by the use of any means
14 contrary to the postal laws and regulations of the United States postal
15 department.

16 (3) Publish or post or cause to be published or posted, any list of
17 debtors commonly known as "bad debt lists" or threaten to do so. For
18 purposes of this chapter, a "bad debt list" means any list of natural
19 persons alleged to fail to honor their lawful debts. However, nothing

1 herein shall be construed to prohibit a licensee from communicating to
2 its customers or clients by means of a coded list, the existence of a
3 check dishonored because of insufficient funds, not sufficient funds or
4 closed account by the financial institution servicing the debtor's
5 checking account: PROVIDED, That the debtor's identity is not readily
6 apparent: PROVIDED FURTHER, That the licensee complies with the
7 requirements of subsection (9)(e) of this section.

8 (4) Have in his or her possession or make use of any badge, use a
9 uniform of any law enforcement agency or any simulation thereof, or
10 make any statements which might be construed as indicating an official
11 connection with any federal, state, county, or city law enforcement
12 agency, or any other governmental agency, while engaged in collection
13 agency business.

14 (5) Perform any act or acts, either directly or indirectly,
15 constituting the practice of law.

16 (6) Advertise for sale or threaten to advertise for sale any claim
17 as a means of endeavoring to enforce payment thereof or agreeing to do
18 so for the purpose of soliciting claims, except where the licensee has
19 acquired claims as an assignee for the benefit of creditors or where
20 the licensee is acting under court order.

21 (7) Use any name while engaged in the making of a demand for any
22 claim other than the name set forth on his or her or its current
23 license issued hereunder.

24 (8) Give or send to any debtor or cause to be given or sent to any
25 debtor, any notice, letter, message, or form, other than through proper
26 legal action, process, or proceedings, which represents or implies that
27 a claim exists unless it shall indicate in clear and legible type:

28 (a) The name of the licensee and the city, street, and number at
29 which he or she is licensed to do business;

30 (b) The name of the original creditor to whom the debtor owed the
31 claim if such name is known to the licensee or employee: PROVIDED,
32 That upon written request of the debtor, the licensee shall make a
33 reasonable effort to obtain the name of such person and provide this
34 name to the debtor;

35 (c) If the notice, letter, message, or form is the first notice to
36 the debtor or if the licensee is attempting to collect a different
37 amount than indicated in his or her or its first notice to the debtor,
38 an itemization of the claim asserted must be made including:

1 (i) Amount owing on the original obligation at the time it was
2 received by the licensee for collection or by assignment;

3 (ii) Interest or service charge, collection costs, or late payment
4 charges, if any, added to the original obligation by the original
5 creditor, customer or assignor before it was received by the licensee
6 for collection, if such information is known by the licensee or
7 employee: PROVIDED, That upon written request of the debtor, the
8 licensee shall make a reasonable effort to obtain information on such
9 items and provide this information to the debtor;

10 (iii) Interest or service charge, if any, added by the licensee or
11 customer or assignor after the obligation was received by the licensee
12 for collection;

13 (iv) Collection costs, if any, that the licensee is attempting to
14 collect;

15 (v) Attorneys' fees, if any, that the licensee is attempting to
16 collect on his or her or its behalf or on the behalf of a customer or
17 assignor;

18 (vi) Any other charge or fee that the licensee is attempting to
19 collect on his or her or its own behalf or on the behalf of a customer
20 or assignor;

21 (d) If the notice, letter, message, or form concerns a judgment
22 obtained against the debtor, no itemization of the amounts contained in
23 the judgment, except postjudgment interest, if claimed, is required.

24 (9) Communicate or threaten to communicate, the existence of a
25 claim to a person other than one who might be reasonably expected to be
26 liable on the claim in any manner other than through proper legal
27 action, process, or proceedings except under the following conditions:

28 (a) A licensee or employee of a licensee may inform a credit
29 reporting bureau of the existence of a claim(~~(:—PROVIDED, That)~~). If
30 the licensee or employee of a licensee reports a claim to a credit
31 reporting bureau, the licensee shall, upon receipt of written notice
32 from the debtor that any part of the claim is disputed, ((forward a
33 copy of such written notice to)) notify the credit reporting bureau of
34 the dispute by written or electronic means and create a record of the
35 fact of the notification and when the notification was provided;

36 (b) A licensee or employee in collecting or attempting to collect
37 a claim may communicate the existence of a claim to a debtor's employer
38 if the claim has been reduced to a judgment;

1 (c) A licensee or employee in collecting or attempting to collect
2 a claim that has not been reduced to judgment, may communicate the
3 existence of a claim to a debtor's employer if:

4 (i) The licensee or employee has notified or attempted to notify
5 the debtor in writing at his or her last known address or place of
6 employment concerning the claim and the debtor after a reasonable time
7 has failed to pay the claim or has failed to agree to make payments on
8 the claim in a manner acceptable to the licensee, and

9 (ii) The debtor has not in writing to the licensee disputed any
10 part of the claim: PROVIDED, That the licensee or employee may only
11 communicate the existence of a claim which has not been reduced to
12 judgment to the debtor's employer once unless the debtor's employer has
13 agreed to additional communications.

14 (d) A licensee may for the purpose of locating the debtor or
15 locating assets of the debtor communicate the existence of a claim to
16 any person who might reasonably be expected to have knowledge of the
17 whereabouts of a debtor or the location of assets of the debtor if the
18 claim is reduced to judgment, or if not reduced to judgment, when:

19 (i) The licensee or employee has notified or attempted to notify
20 the debtor in writing at his or her last known address or last known
21 place of employment concerning the claim and the debtor after a
22 reasonable time has failed to pay the claim or has failed to agree to
23 make payments on the claim in a manner acceptable to the licensee, and

24 (ii) The debtor has not in writing disputed any part of the claim.

25 (e) A licensee may communicate the existence of a claim to its
26 customers or clients if the claim is reduced to judgment, or if not
27 reduced to judgment, when:

28 (i) The licensee has notified or attempted to notify the debtor in
29 writing at his or her last known address or last known place of
30 employment concerning the claim and the debtor after a reasonable time
31 has failed to pay the claim or has failed to agree to make payments on
32 the claim in a manner acceptable to the licensee, and

33 (ii) The debtor has not in writing disputed any part of the claim.

34 (10) Deceptively threaten the debtor with impairment of his or her
35 credit rating if a claim is not paid.

36 (11) Communicate with the debtor after notification in writing from
37 an attorney representing such debtor that all further communications
38 relative to a claim should be addressed to the attorney: PROVIDED,

1 That if a licensee requests in writing information from an attorney
2 regarding such claim and the attorney does not respond within a
3 reasonable time, the licensee may communicate directly with the debtor
4 until he or she or it again receives notification in writing that an
5 attorney is representing the debtor.

6 (12) Communicate with a debtor or anyone else in such a manner as
7 to harass, intimidate, threaten, or embarrass a debtor, including but
8 not limited to communication at an unreasonable hour, with unreasonable
9 frequency, by threats of force or violence, by threats of criminal
10 prosecution, and by use of offensive language. A communication shall
11 be presumed to have been made for the purposes of harassment if:

12 (a) It is made with a debtor or spouse in any form, manner, or
13 place, more than three times in a single week, unless the licensee is
14 responding to a communication from the debtor or spouse;

15 (b) It is made with a debtor at his or her place of employment more
16 than one time in a single week;

17 (c) It is made with the debtor or spouse at his or her place of
18 residence between the hours of 9:00 p.m. and 7:30 a.m. A call to a
19 telephone is presumed to be received in the local time zone to which
20 the area code of the number called is assigned for landline numbers,
21 unless the licensee reasonably believes the telephone is located in a
22 different time zone. If the area code is not assigned to landlines in
23 any specific geographic area, such as with toll-free telephone numbers,
24 a call to a telephone is presumed to be received in the local time zone
25 of the debtor's last known place of residence, unless the licensee
26 reasonably believes the telephone is located in a different time zone.

27 (13) Communicate with the debtor through use of forms or
28 instruments that simulate the form or appearance of judicial process,
29 the form or appearance of government documents, or the simulation of a
30 form or appearance of a telegraphic or emergency message.

31 (14) Communicate with the debtor and represent or imply that the
32 existing obligation of the debtor may be or has been increased by the
33 addition of attorney fees, investigation fees, service fees, or any
34 other fees or charges when in fact such fees or charges may not legally
35 be added to the existing obligation of such debtor.

36 (15) Threaten to take any action against the debtor which the
37 licensee cannot legally take at the time the threat is made.

1 (16) (~~Send~~) Cause charges to be incurred for any telegram or make
2 any telephone calls to a debtor or concerning a debt or for the purpose
3 of demanding payment of a claim or seeking information about a debtor,
4 (~~for which the charges are payable by the addressee or by the person~~
5 ~~to whom the call is made~~) by concealment of the true purpose of the
6 communication. This subsection does not prohibit a debt collector from
7 communicating with a debtor by way of a debtor's cellular telephone or
8 other wireless device. This subsection may not be construed to require
9 a debt collector to disclose information regarding a claim to a third
10 party.

11 (17) In any manner convey the impression that the licensee is
12 vouched for, bonded to or by, or is an instrumentality of the state of
13 Washington or any agency or department thereof.

14 (18) Collect or attempt to collect in addition to the principal
15 amount of a claim any sum other than allowable interest, collection
16 costs or handling fees expressly authorized by statute, and, in the
17 case of suit, attorney's fees and taxable court costs. A licensee may
18 collect or attempt to collect collection costs and fees, including
19 contingent collection fees, as authorized by a written agreement or
20 contract, between the licensee's client and the debtor, in the
21 collection of a commercial claim. The amount charged to the debtor for
22 collection services shall not exceed thirty-five percent of the
23 commercial claim.

24 (19) Procure from a debtor or collect or attempt to collect on any
25 written note, contract, stipulation, promise or acknowledgment under
26 which a debtor may be required to pay any sum other than principal,
27 allowable interest, except as noted in subsection (18) of this section,
28 and, in the case of suit, attorney's fees and taxable court costs.

29 (20) For actions filed and arbitrations initiated on or after the
30 effective date of this section, bring an action or initiate an
31 arbitration proceeding on a debt when the licensee knows, or reasonably
32 should know, that such suit or arbitration is barred by the applicable
33 statute of limitations.

34 (21) Upon notification by a debtor that the debtor disputes all
35 debts arising from a series of dishonored checks, automated
36 clearinghouse transactions on a demand deposit account, or other
37 preprinted written instruments, initiate oral contact with a debtor
38 more than one time in an attempt to collect from the debtor debts

1 arising from the identified series of dishonored checks, automated
2 clearinghouse transactions on a demand deposit account, or other
3 preprinted written instruments when: (a) Within the previous one
4 hundred eighty days, in response to the licensee's attempt to collect
5 the initial debt assigned to the licensee and arising from the
6 identified series of dishonored checks, automated clearinghouse
7 transactions on a demand deposit account, or other preprinted written
8 instruments, the debtor in writing notified the licensee that the
9 debtor's checkbook or other series of preprinted written instruments
10 was stolen or fraudulently created; (b) the licensee has received from
11 the debtor a certified copy of a police report referencing the theft or
12 fraudulent creation of the checkbook, automated clearinghouse
13 transactions on a demand deposit account, or series of preprinted
14 written instruments; (c) in the written notification to the licensee or
15 in the police report, the debtor identified the financial institution
16 where the account was maintained, the account number, the magnetic ink
17 character recognition number, the full bank routing and transit number,
18 and the check numbers of the stolen checks, automated clearinghouse
19 transactions on a demand deposit account, or other preprinted written
20 instruments, which check numbers included the number of the check that
21 is the subject of the licensee's collection efforts; (d) the debtor
22 provides, or within the previous one hundred eighty days provided, to
23 the licensee a legible copy of a government-issued photo
24 identification, which contains the debtor's signature and which was
25 issued prior to the date of the theft or fraud identified in the police
26 report; and (e) the debtor advised the licensee that the subject debt
27 is disputed because the identified check, automated clearinghouse
28 transaction on a demand deposit account, or other preprinted written
29 instrument underlying the debt is a stolen or fraudulently created
30 check or instrument.

31 The licensee is not in violation of this subsection if the licensee
32 initiates oral contact with the debtor more than one time in an attempt
33 to collect debts arising from the identified series of dishonored
34 checks, automated clearinghouse transactions on a demand deposit
35 account, or other preprinted written instruments when: (i) The
36 licensee acted in good faith and relied on their established practices
37 and procedures for batching, recording, or packeting debtor accounts,
38 and the licensee inadvertently initiates oral contact with the debtor

1 in an attempt to collect debts in the identified series subsequent to
2 the initial debt assigned to the licensee; (ii) the licensee is
3 following up on collection of a debt assigned to the licensee, and the
4 debtor has previously requested more information from the licensee
5 regarding the subject debt; (iii) the debtor has notified the licensee
6 that the debtor disputes only some, but not all the debts arising from
7 the identified series of dishonored checks, automated clearinghouse
8 transactions on a demand deposit account, or other preprinted written
9 instruments, in which case the licensee shall be allowed to initiate
10 oral contact with the debtor one time for each debt arising from the
11 series of identified checks, automated clearinghouse transactions on a
12 demand deposit account, or written instruments and initiate additional
13 oral contact for those debts that the debtor acknowledges do not arise
14 from stolen or fraudulently created checks or written instruments; (iv)
15 the oral contact is in the context of a judicial, administrative,
16 arbitration, mediation, or similar proceeding; or (v) the oral contact
17 is made for the purpose of investigating, confirming, or authenticating
18 the information received from the debtor, to provide additional
19 information to the debtor, or to request additional information from
20 the debtor needed by the licensee to accurately record the debtor's
21 information in the licensee's records.

22 **Sec. 2.** RCW 19.16.500 and 1997 c 387 s 1 are each amended to read
23 as follows:

24 (1)(a) Agencies, departments, taxing districts, political
25 subdivisions of the state, counties, and cities may retain, by written
26 contract, collection agencies licensed under this chapter for the
27 purpose of collecting public debts owed by any person, including any
28 restitution that is being collected on behalf of a crime victim.

29 (b) Any governmental entity as described in (a) of this subsection
30 using a collection agency may add a reasonable fee, payable by the
31 debtor, to the outstanding debt for the collection agency fee incurred
32 or to be incurred. The amount to be paid for collection services shall
33 be left to the agreement of the governmental entity and its collection
34 agency or agencies, but a contingent fee of up to fifty percent of the
35 first one hundred thousand dollars of the unpaid debt per account and
36 up to thirty-five percent of the unpaid debt over one hundred thousand
37 dollars per account is reasonable, and a minimum fee of the full amount

1 of the debt up to one hundred dollars per account is reasonable. Any
2 fee agreement entered into by a governmental entity is presumptively
3 reasonable.

4 (2) No debt may be assigned to a collection agency unless (a) there
5 has been an attempt to advise the debtor (i) of the existence of the
6 debt and (ii) that the debt may be assigned to a collection agency for
7 collection if the debt is not paid, and (b) at least thirty days have
8 elapsed from the time notice was attempted.

9 (3) Collection agencies assigned debts under this section shall
10 have only those remedies and powers which would be available to them as
11 assignees of private creditors: PROVIDED, That no statute of
12 limitation can be asserted against a collection agency if the same
13 statute of limitation could not be asserted against the assignor
14 governmental entity.

15 (4) For purposes of this section, the term debt shall include fines
16 and other debts, including the fee (~~required~~) allowed under
17 subsection (1)(b) of this section.

18 NEW SECTION. Sec. 3. Except for RCW 19.16.250(20), this act
19 applies to all causes of action commenced on or after the effective
20 date of this section, regardless of when the cause of action arose. To
21 this extent, this act applies retroactively, but in all other respects
22 it applies prospectively.

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