

2 **SSB 6093 - H COMM AMD ADOPTED 3-3-94**

3 By Committee on Commerce & Labor

4

5 Strike everything after the enacting clause and insert the
6 following:

7 "Sec. 1. RCW 19.16.100 and 1990 c 190 s 1 are each amended to read
8 as follows:

9 Unless a different meaning is plainly required by the context, the
10 following words and phrases as hereinafter used in this chapter shall
11 have the following meanings:

12 (1) "Person" includes individual, firm, partnership, trust, joint
13 venture, association, or corporation.

14 (2) "Collection agency" means and includes:

15 (a) Any person directly or indirectly engaged in soliciting claims
16 for collection, or collecting or attempting to collect claims owed or
17 due or asserted to be owed or due another person;

18 (b) Any person who directly or indirectly furnishes or attempts to
19 furnish, sells, or offers to sell forms represented to be a collection
20 system or scheme intended or calculated to be used to collect claims
21 even though the forms direct the debtor to make payment to the creditor
22 and even though the forms may be or are actually used by the creditor
23 himself in his own name;

24 (c) Any person who in attempting to collect or in collecting his
25 own claim uses a fictitious name or any name other than his own which
26 would indicate to the debtor that a third person is collecting or
27 attempting to collect such claim.

28 (3) "Collection agency" does not mean and does not include:

29 (a) Any individual engaged in soliciting claims for collection, or
30 collecting or attempting to collect claims on behalf of a licensee
31 under this chapter, if said individual is an employee of the licensee;

32 (b) Any individual collecting or attempting to collect claims for
33 not more than one employer, if all the collection efforts are carried
34 on in the name of the employer and if the individual is an employee of
35 the employer;

1 (c) Any person whose collection activities are carried on in his or
2 its true name and are confined and are directly related to the
3 operation of a business other than that of a collection agency, such as
4 but not limited to trust companies, savings and loan associations,
5 building and loan associations, abstract companies doing an escrow
6 business, real estate brokers, public officers acting in their official
7 capacities, persons acting under court order, lawyers, insurance
8 companies, credit unions, loan or finance companies, mortgage banks,
9 and banks; (~~(e)~~)

10 (d) Any person who on behalf of another person prepares or mails
11 monthly or periodic statements of accounts due if all payments are made
12 to that other person and no other collection efforts are made by the
13 person preparing the statements of account; or

14 (e) An "out-of-state collection agency" as defined in this chapter.

15 (4) "Out-of-state collection agency" means a person whose
16 activities within this state are limited to collecting debts from
17 debtors located in this state by means of interstate communications,
18 including telephone, mail, or facsimile transmission, from the person's
19 location in another state on behalf of clients located outside of this
20 state.

21 (5) "Claim" means any obligation for the payment of money or thing
22 of value arising out of any agreement or contract, express or implied.

23 (~~(5)~~) (6) "Statement of account" means a report setting forth
24 only amounts billed, invoices, credits allowed, or aged balance due.

25 (~~(6)~~) (7) "Director" means the director of licensing.

26 (~~(7)~~) (8) "Client" or "customer" means any person authorizing or
27 employing a collection agency to collect a claim.

28 (~~(8)~~) (9) "Licensee" means any person licensed under this
29 chapter.

30 (~~(9)~~) (10) "Board" means the Washington state collection agency
31 board.

32 (~~(10)~~) (11) "Debtor" means any person owing or alleged to owe a
33 claim.

34 **Sec. 2.** RCW 19.16.110 and 1971 ex.s. c 253 s 2 are each amended to
35 read as follows:

36 No person shall act, assume to act, or advertise as a collection
37 agency or out-of-state collection agency as defined in this chapter,

1 except as authorized by this chapter, without first having applied for
2 and obtained a license from the director.

3 Nothing contained in this section shall be construed to require a
4 regular employee of a collection agency or out-of-state collection
5 agency duly licensed under this chapter to procure a collection agency
6 license.

7 **Sec. 3.** RCW 19.16.120 and 1977 ex.s. c 194 s 1 are each amended to
8 read as follows:

9 In addition to other provisions of this chapter, any license issued
10 pursuant to this chapter or any application therefor may be denied, not
11 renewed, revoked, or suspended, or in lieu of or in addition to
12 suspension a licensee may be assessed a civil, monetary penalty in an
13 amount not to exceed one thousand dollars:

14 (1) If an individual applicant or licensee is less than eighteen
15 years of age or is not a resident of this state.

16 (2) If an applicant or licensee is not authorized to do business in
17 this state.

18 (3) If the application or renewal forms required by this chapter
19 are incomplete, fees required under RCW 19.16.140 and 19.16.150, if
20 applicable, have not been paid, and the surety bond or cash deposit or
21 other negotiable security acceptable to the director required by RCW
22 19.16.190, if applicable, has not been filed or renewed or is canceled.

23 (4) If any individual applicant, owner, officer, director, or
24 managing employee of a nonindividual applicant or licensee:

25 (a) Shall have knowingly made a false statement of a material fact
26 in any application for a collection agency license or an out-of-state
27 collection agency license or renewal thereof, or in any data attached
28 thereto and two years have not elapsed since the date of such
29 statement;

30 (b) Shall have had a license to engage in the business of a
31 collection agency or out-of-state collection agency denied, not
32 renewed, suspended, or revoked by this state, any other state, or
33 foreign country, for any reason other than the nonpayment of licensing
34 fees or failure to meet bonding requirements: PROVIDED, That the terms
35 of this subsection shall not apply if:

36 (i) Two years have elapsed since the time of any such denial,
37 nonrenewal, or revocation; or

38 (ii) The terms of any such suspension have been fulfilled;

1 (c) Has been convicted in any court of any felony involving
2 forgery, embezzlement, obtaining money under false pretenses, larceny,
3 extortion, or conspiracy to defraud and is incarcerated for that
4 offense or five years have not elapsed since the date of such
5 conviction;

6 (d) Has had any judgment entered against him in any civil action
7 involving forgery, embezzlement, obtaining money under false pretenses,
8 larceny, extortion, or conspiracy to defraud and five years have not
9 elapsed since the date of the entry of the final judgment in said
10 action: PROVIDED, That in no event shall a license be issued unless
11 the judgment debt has been discharged;

12 (e) Has had his license to practice law suspended or revoked and
13 two years have not elapsed since the date of such suspension or
14 revocation, unless he has been relicensed to practice law in this
15 state;

16 (f) Has had any judgment entered against him or it under the
17 provisions of RCW 19.86.080 or 19.86.090 involving a violation or
18 violations of RCW 19.86.020 and two years have not elapsed since the
19 entry of the final judgment: PROVIDED, That in no event shall a
20 license be issued unless the terms of such judgment, if any, have been
21 fully complied with: PROVIDED FURTHER, That said judgment shall not be
22 grounds for denial, suspension, nonrenewal, or revocation of a license
23 unless the judgment arises out of and is based on acts of the
24 applicant, owner, officer, director, managing employee, or licensee
25 while acting for or as a collection agency or an out-of-state
26 collection agency;

27 (g) Has petitioned for bankruptcy, and two years have not elapsed
28 since the filing of said petition;

29 (h) Shall be insolvent in the sense that his or its liabilities
30 exceed his or its assets or in the sense that he or it cannot meet his
31 or its obligations as they mature;

32 (i) Has failed to pay any civil, monetary penalty assessed in
33 accordance with RCW 19.16.351 or 19.16.360 within ten days after the
34 assessment becomes final; ((or))

35 (j) Has knowingly failed to comply with, or violated any provisions
36 of this chapter or any rule or regulation issued pursuant to this
37 chapter, and two years have not elapsed since the occurrence of said
38 noncompliance or violation; or

1 (k) Has been found by a court of competent jurisdiction to have
2 violated the federal fair debt collection practices act, 15 U.S.C. Sec.
3 1692 et seq., or the Washington state consumer protection act, chapter
4 19.86 RCW, and two years have not elapsed since that finding.

5 Any person who is engaged in the collection agency business as of
6 January 1, 1972 shall, upon filing the application, paying the fees,
7 and filing the surety bond or cash deposit or other negotiable security
8 in lieu of bond required by this chapter, be issued a license
9 hereunder.

10 **Sec. 4.** RCW 19.16.140 and 1985 c 7 s 81 are each amended to read
11 as follows:

12 Each applicant when submitting his application shall pay a
13 licensing fee and an investigation fee determined by the director as
14 provided in RCW 43.24.086. The licensing fee for an out-of-state
15 collection agency shall not exceed fifty percent of the licensing fee
16 for a collection agency. An out-of-state collection agency is exempt
17 from the licensing fee if the agency is licensed or registered in a
18 state that does not require payment of an initial fee by any person who
19 collects debts in the state only by means of interstate communications
20 from the person's location in another state. If a license is not
21 issued in response to the application, the license fee shall be
22 returned to the applicant.

23 An annual license fee determined by the director as provided in RCW
24 43.24.086 shall be paid to the director on or before January first of
25 each year. The annual license fee for an out-of-state collection
26 agency shall not exceed fifty percent of the annual license fee for a
27 collection agency. An out-of-state collection agency is exempt from
28 the annual license fee if the agency is licensed or registered in a
29 state that does not require payment of an annual fee by any person who
30 collects debts in the state only by means of interstate communications
31 from the person's location in another state. If the annual license fee
32 is not paid on or before January first, the licensee shall be assessed
33 a penalty for late payment in an amount determined by the director as
34 provided in RCW 43.24.086. If the fee and penalty are not paid by
35 January thirty-first, it will be necessary for the licensee to submit
36 a new application for a license: PROVIDED, That no license shall be
37 issued upon such new application unless and until all fees and
38 penalties previously accrued under this section have been paid.

1 Any license or branch office certificate issued under the
2 provisions of this chapter shall expire on December thirty-first
3 following the issuance thereof.

4 **Sec. 5.** RCW 19.16.190 and 1971 ex.s. c 253 s 10 are each amended
5 to read as follows:

6 (1) Except as limited by subsection (7) of this section, each
7 applicant shall, at the time of applying for a license, file with the
8 director a surety bond in the sum of five thousand dollars. The bond
9 shall be annually renewable on January first of each year, shall be
10 approved by the director as to form and content, and shall be executed
11 by the applicant as principal and by a surety company authorized to do
12 business in this state as surety. Such bond shall run to the state of
13 Washington as obligee for the benefit of the state and conditioned that
14 the licensee shall faithfully and truly perform all agreements entered
15 into with the licensee's clients or customers and shall, within thirty
16 days after the close of each calendar month, account to and pay to his
17 client or customer the net proceeds of all collections made during the
18 preceding calendar month and due to each client or customer less any
19 offsets due licensee under RCW 19.16.210 and 19.16.220. The bond
20 required by this section shall remain in effect until canceled by
21 action of the surety or the licensee or the director.

22 (2) An applicant for a license under this chapter may furnish,
23 file, and deposit with the director, in lieu of the surety bond
24 provided for herein, a cash deposit or other negotiable security
25 acceptable to the director. The security deposited with the director
26 in lieu of the surety bond shall be returned to the licensee at the
27 expiration of one year after the collection agency's license has
28 expired or been revoked if no legal action has been instituted against
29 the licensee or on said security deposit at the expiration of said one
30 year.

31 (3) A surety may file with the director notice of his or its
32 withdrawal on the bond of the licensee. Upon filing a new bond or upon
33 the revocation of the collection agency license or upon the expiration
34 of sixty days after the filing of notice of withdrawal as surety by the
35 surety, the liability of the former surety for all future acts of the
36 licensee shall terminate.

1 (4) The director shall immediately cancel the bond given by a
2 surety company upon being advised that the surety company's license to
3 transact business in this state has been revoked.

4 (5) Upon the filing with the director of notice by a surety of his
5 withdrawal as the surety on the bond of a licensee or upon the
6 cancellation by the director of the bond of a surety as provided in
7 this section, the director shall immediately give notice to the
8 licensee of the withdrawal or cancellation. The notice shall be sent
9 to the licensee by registered or certified mail with request for a
10 return receipt and addressed to the licensee at his or its main office
11 as shown by the records of the director. At the expiration of thirty
12 days from the date of mailing the notice, the license of the licensee
13 shall be terminated, unless the licensee has filed a new bond with a
14 surety satisfactory to the director.

15 (6) All bonds given under this chapter shall be filed and held in
16 the office of the director.

17 (7) An out-of-state collection agency need not fulfill the bonding
18 requirements under this section if the out-of-state collection agency
19 maintains an adequate bond or legal alternative as required by the
20 state in which the out-of-state collection agency is located.

21 **Sec. 6.** RCW 19.16.230 and 1987 c 85 s 1 are each amended to read
22 as follows:

23 (1) Every licensee required to keep and maintain records pursuant
24 to this section, other than an out-of-state collection agency, shall
25 establish and maintain a regular active business office in the state of
26 Washington for the purpose of conducting his or its collection agency
27 business. Said office must be open to the public during reasonable
28 stated business hours, and must be managed by a resident of the state
29 of Washington.

30 (2) Every licensee shall keep a record of all sums collected by him
31 or it and all disbursements made by him or it. All such records shall
32 be kept at the business office referred to in subsection (1) of this
33 section, unless the licensee is an out-of-state collection agency, in
34 which case the record shall be kept at the business office listed on
35 the licensee's license.

36 (3) Licensees shall maintain and preserve accounting records of
37 collections and payments to customers for a period of four years from
38 the date of the last entry thereon.

1 **Sec. 7.** RCW 19.16.240 and 1971 ex.s. c 253 s 15 are each amended
2 to read as follows:

3 Each licensee, other than an out-of-state collection agency, shall
4 at all times maintain a separate bank account in this state in which
5 all moneys collected by the licensee shall be deposited except that
6 negotiable instruments received may be forwarded directly to a
7 customer. Moneys received must be deposited within ten days after
8 posting to the book of accounts. In no event shall moneys received be
9 disposed of in any manner other than to deposit such moneys in said
10 account or as provided in this section.

11 The bank account shall bear some title sufficient to distinguish it
12 from the licensee's personal or general checking account, such as
13 "Customer's Trust Fund Account". There shall be sufficient funds in
14 said trust account at all times to pay all moneys due or owing to all
15 customers and no disbursements shall be made from such account except
16 to customers or to remit moneys collected from debtors on assigned
17 claims and due licensee's attorney or to refund over payments except
18 that a licensee may periodically withdraw therefrom such moneys as may
19 accrue to licensee.

20 Any money in such trust account belonging to a licensee may be
21 withdrawn for the purpose of transferring the same into the possession
22 of licensee or into a personal or general account of licensee.

23 **Sec. 8.** RCW 19.16.260 and 1971 ex.s. c 253 s 17 are each amended
24 to read as follows:

25 No collection agency or out-of-state collection agency may bring or
26 maintain an action in any court of this state involving the collection
27 of a claim of any third party without alleging and proving that he or
28 it is duly licensed under this chapter and has satisfied the bonding
29 requirements hereof, if applicable: PROVIDED, That in any case where
30 judgment is to be entered by default, it shall not be necessary for the
31 collection agency or out-of-state collection agency to prove such
32 matters.

33 A copy of the current collection agency license or out-of-state
34 collection agency license, certified by the director to be a true and
35 correct copy of the original, shall be prima facie evidence of the
36 licensing and bonding of such collection agency or out-of-state
37 collection agency as required by this chapter.

1 **Sec. 9.** RCW 19.16.390 and 1971 ex.s. c 253 s 30 are each amended
2 to read as follows:

3 Personal service of any process in an action under this chapter may
4 be made upon any person outside the state if such person has engaged in
5 conduct in violation of this chapter which has had the impact in this
6 state which this chapter reprehends. Such persons shall be deemed to
7 have thereby submitted themselves to the jurisdiction of the courts of
8 this state within the meaning of RCW 4.28.180 and 4.28.185. A holder
9 of an out-of-state collection agency license is deemed to have
10 appointed the director or the director's designee to be the licensee's
11 true and lawful agent upon whom may be served any legal process against
12 that licensee arising or growing out of any violation of this chapter.

13 **Sec. 10.** RCW 19.16.430 and 1973 1st ex.s. c 20 s 6 are each
14 amended to read as follows:

15 (1) Any person who knowingly operates as a collection agency or
16 out-of-state collection agency without a license or knowingly aids and
17 abets such violation is punishable by a fine not exceeding five hundred
18 dollars or by imprisonment not exceeding one year or both.

19 (2) Any person who operates as a collection agency or out-of-state
20 collection agency in the state of Washington without a valid license
21 issued pursuant to this chapter shall not charge or receive any fee or
22 compensation on any moneys received or collected while operating
23 without a license or on any moneys received or collected while
24 operating with a license but received or collected as a result of his
25 or its acts as a collection agency or out-of-state collection agency
26 while not licensed hereunder. All such moneys collected or received
27 shall be forthwith returned to the owners of the accounts on which the
28 moneys were paid.

29 **Sec. 11.** RCW 19.16.440 and 1973 1st ex.s. c 20 s 7 are each
30 amended to read as follows:

31 The operation of a collection agency or out-of-state collection
32 agency without a license as prohibited by RCW 19.16.110 and the
33 commission by a licensee or an employee of a licensee of an act or
34 practice prohibited by RCW 19.16.250 are declared to be unfair acts or
35 practices or unfair methods of competition in the conduct of trade or
36 commerce for the purpose of the application of the Consumer Protection
37 Act found in chapter 19.86 RCW.

1 **Sec. 12.** RCW 19.16.920 and 1971 ex.s. c 253 s 42 are each amended
2 to read as follows:

3 (1) The provisions of this chapter relating to the licensing and
4 regulation of collection agencies and out-of-state collection agencies
5 shall be exclusive and no county, city, or other political subdivision
6 of this state shall enact any laws or rules and regulations licensing
7 or regulating collection agencies.

8 (2) This section shall not be construed to prevent a political
9 subdivision of this state from levying a business and occupation tax
10 upon collection agencies or out-of-state collection agencies
11 maintaining an office within that political subdivision if a business
12 and occupation tax is levied by it upon other types of businesses
13 within its boundaries."

14 EFFECT: The amendment strikes the substitute bill and creates a
15 separate license for out-of-state collection agencies whose activities
16 in this state are limited to collecting debts by means of interstate
17 communications, such as telephone, mail, or fax, from another state for
18 clients located in another state. The license fees for an out-of-state
19 licensee must not exceed 50 percent of the license fees for other
20 collection agencies. An out-of-state licensee is exempt from the
21 license fees if the agency is licensed or registered in another state
22 and that state does not charge license fees to out-of-state licensees.
23 An out-of-state licensee is exempted from certain requirements
24 applicable to collection agencies, including: (1) the requirement to
25 post a bond if the licensee maintains a bond or legal alternative in
26 its home state; (2) the requirement to maintain a trust account in
27 Washington; and (3) the requirement to maintain a business office in
28 Washington. All prohibited practices and enforcement provisions
29 applying to collection agencies also apply to out-of-state collection
30 agencies. An out-of-state licensee is deemed to have appointed the
31 director as the licensee's agent for purposes of service of process.

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