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HOUSE BILL 1945

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State of Washington

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1999 Regular Session

By Representatives O'Brien and Koster

Read first time 02/11/1999. Referred to Committee on Financial Institutions & Insurance.

1 AN ACT Relating to collection agencies; and amending RCW 19.16.100  
2 and 19.16.250.

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

4 **Sec. 1.** RCW 19.16.100 and 1994 c 195 s 1 are each amended to read  
5 as follows:

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

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

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

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

15 (b) Any person who directly or indirectly furnishes or attempts to  
16 furnish, sells, or offers to sell forms represented to be a collection  
17 system or scheme intended or calculated to be used to collect claims  
18 even though the forms direct the debtor to make payment to the creditor

1 and even though the forms may be or are actually used by the creditor  
2 himself in his own name;

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

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

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

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

15 (c) Any person whose collection activities are carried on in his or  
16 its true name and are confined and are directly related to the  
17 operation of a business other than that of a collection agency, such as  
18 but not limited to trust companies, savings and loan associations,  
19 building and loan associations, abstract companies doing an escrow  
20 business, real estate brokers, public officers acting in their official  
21 capacities, persons acting under court order, lawyers, insurance  
22 companies, credit unions, loan or finance companies, mortgage banks,  
23 and banks;

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

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

29 (4) "Out-of-state collection agency" means a person whose  
30 activities within this state are limited to collecting debts from  
31 debtors located in this state by means of interstate communications,  
32 including telephone, mail, or facsimile transmission, from the person's  
33 location in another state on behalf of clients located outside of this  
34 state.

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

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

39 (7) "Director" means the director of licensing.

1 (8) "Client" or "customer" means any person authorizing or  
2 employing a collection agency to collect a claim.

3 (9) "Licensee" means any person licensed under this chapter.

4 (10) "Board" means the Washington state collection agency board.

5 (11) "Debtor" means any person owing or alleged to owe a claim.

6 (12) "Commercial claim" means any obligation for payment of money  
7 or thing of value arising out of any agreement or contract, express or  
8 implied, where the transaction which is the subject of the agreement or  
9 contract is not primarily for personal, family, or household purposes,  
10 whether or not such obligation has been reduced to judgment.

11 **Sec. 2.** RCW 19.16.250 and 1983 c 107 s 1 are each amended to read  
12 as follows:

13 No licensee or employee of a licensee shall:

14 (1) Directly or indirectly aid or abet any unlicensed person to  
15 engage in business as a collection agency in this state or receive  
16 compensation from such unlicensed person: PROVIDED, That nothing in  
17 this chapter shall prevent a licensee from accepting, as forwarder,  
18 claims for collection from a collection agency or attorney whose place  
19 of business is outside the state.

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

23 (3) Publish or post or cause to be published or posted, any list of  
24 debtors commonly known as "bad debt lists" or threaten to do so. For  
25 purposes of this chapter, a "bad debt list" means any list of natural  
26 persons alleged to fail to honor their lawful debts. However, nothing  
27 herein shall be construed to prohibit a licensee from communicating to  
28 its customers or clients by means of a coded list, the existence of a  
29 check dishonored because of insufficient funds, not sufficient funds or  
30 closed account by the financial institution servicing the debtor's  
31 checking account: PROVIDED, That the debtor's identity is not readily  
32 apparent: PROVIDED FURTHER, That the licensee complies with the  
33 requirements of subsection (9)(e) of this section.

34 (4) Have in his possession or make use of any badge, use a uniform  
35 of any law enforcement agency or any simulation thereof, or make any  
36 statements which might be construed as indicating an official  
37 connection with any federal, state, county, or city law enforcement

1 agency, or any other governmental agency, while engaged in collection  
2 agency business.

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

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

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

13 (8) Give or send to any debtor or cause to be given or sent to any  
14 debtor, any notice, letter, message, or form which represents or  
15 implies that a claim exists unless it shall indicate in clear and  
16 legible type:

17 (a) The name of the licensee and the city, street, and number at  
18 which he is licensed to do business;

19 (b) The name of the original creditor to whom the debtor owed the  
20 claim if such name is known to the licensee or employee: PROVIDED,  
21 That upon written request of the debtor, the licensee shall make a  
22 reasonable effort to obtain the name of such person and provide this  
23 name to the debtor;

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

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

30 (ii) Interest or service charge, collection costs, or late payment  
31 charges, if any, added to the original obligation by the original  
32 creditor, customer or assignor before it was received by the licensee  
33 for collection, if such information is known by the licensee or  
34 employee: PROVIDED, That upon written request of the debtor, the  
35 licensee shall make a reasonable effort to obtain information on such  
36 items and provide this information to the debtor;

37 (iii) Interest or service charge, if any, added by the licensee or  
38 customer or assignor after the obligation was received by the licensee  
39 for collection;

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

3 (v) Attorneys' fees, if any, that the licensee is attempting to  
4 collect on his or its behalf or on the behalf of a customer or  
5 assignor;

6 (vi) Any other charge or fee that the licensee is attempting to  
7 collect on his or its own behalf or on the behalf of a customer or  
8 assignor.

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

13 (a) A licensee or employee of a licensee may inform a credit  
14 reporting bureau of the existence of a claim: PROVIDED, That if the  
15 licensee or employee of a licensee reports a claim to a credit  
16 reporting bureau, the licensee shall upon receipt of written notice  
17 from the debtor that any part of the claim is disputed, forward a copy  
18 of such written notice to the credit reporting bureau;

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

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

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

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

35 (d) A licensee may for the purpose of locating the debtor or  
36 locating assets of the debtor communicate the existence of a claim to  
37 any person who might reasonably be expected to have knowledge of the  
38 whereabouts of a debtor or the location of assets of the debtor if the  
39 claim is reduced to judgment, or if not reduced to judgment, when:

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

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

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

10 (i) The licensee has notified or attempted to notify the debtor in  
11 writing at his last known address or last known place of employment  
12 concerning the claim and the debtor after a reasonable time has failed  
13 to pay the claim or has failed to agree to make payments on the claim  
14 in a manner acceptable to the licensee, and

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

16 (10) Threaten the debtor with impairment of his credit rating if a  
17 claim is not paid.

18 (11) Communicate with the debtor after notification in writing from  
19 an attorney representing such debtor that all further communications  
20 relative to a claim should be addressed to the attorney: PROVIDED,  
21 That if a licensee requests in writing information from an attorney  
22 regarding such claim and the attorney does not respond within a  
23 reasonable time, the licensee may communicate directly with the debtor  
24 until he or it again receives notification in writing that an attorney  
25 is representing the debtor.

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

32 (a) It is made with a debtor or spouse in any form, manner, or  
33 place, more than three times in a single week;

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

36 (c) It is made with the debtor or spouse at his or her place of  
37 residence between the hours of 9:00 p.m. and 7:30 a.m.

38 (13) Communicate with the debtor through use of forms or  
39 instruments that simulate the form or appearance of judicial process,

1 the form or appearance of government documents, or the simulation of a  
2 form or appearance of a telegraphic or emergency message.

3 (14) Communicate with the debtor and represent or imply that the  
4 existing obligation of the debtor may be or has been increased by the  
5 addition of attorney fees, investigation fees, service fees, or any  
6 other fees or charges when in fact such fees or charges may not legally  
7 be added to the existing obligation of such debtor.

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

10 (16) Send any telegram or make any telephone calls to a debtor or  
11 concerning a debt or for the purpose of demanding payment of a claim or  
12 seeking information about a debtor, for which the charges are payable  
13 by the addressee or by the person to whom the call is made.

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

17 (18) Collect or attempt to collect in addition to the principal  
18 amount of a claim any sum other than allowable interest, collection  
19 costs or handling fees expressly authorized by statute, and, in the  
20 case of suit, attorney's fees and taxable court costs. However, a  
21 licensee may collect or attempt to collect collection costs and fees as  
22 authorized by a written agreement or contract, between the client and  
23 the debtor, in the course of the collection of a 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.

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