

SSB 5400 - S AMD 226

By Senators Ranker, Benton

ADOPTED 03/12/2009

1 On page 14, after line 10, insert the following:

2 "Sec. 14. RCW 19.16.250 and 2001 c 217 s 5 and 2001 c 47 s 2 are
3 each reenacted and amended to read as follows:

4 No licensee or employee of a licensee shall:

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

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

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

25 (4) Have in his possession or make use of any badge, use a uniform
26 of any law enforcement agency or any simulation thereof, or make any
27 statements which might be construed as indicating an official
28 connection with any federal, state, county, or city law enforcement
29 agency, or any other governmental agency, while engaged in collection
30 agency business.

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

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

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

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

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

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

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

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

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

35 (iii) Interest or service charge, if any, added by the licensee or
36 customer or assignor after the obligation was received by the licensee
37 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

1 whereabouts of a debtor or the location of assets of the debtor if the
2 claim is reduced to judgment, or if not reduced to judgment, when:

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

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

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

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

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

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

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

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

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

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

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

3 (d) It is made in a manner that does not clearly identify the
4 communication, from the outset, as coming from a licensee acting in its
5 capacity.

6 (13) Communicate with the debtor through use of forms or
7 instruments that simulate the form or appearance of judicial process,
8 the form or appearance of government documents, or the simulation of a
9 form or appearance of a telegraphic or emergency message.

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

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

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

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

24 (18) Collect or attempt to collect in addition to the principal
25 amount of a claim any sum other than allowable interest, collection
26 costs or handling fees expressly authorized by statute, and, in the
27 case of suit, attorney's fees and taxable court costs. A licensee may
28 collect or attempt to collect collection costs and fees, including
29 contingent collection fees, as authorized by a written agreement or
30 contract, between the licensee's client and the debtor, in the
31 collection of a commercial claim. The amount charged to the debtor for
32 collection services shall not exceed thirty-five percent of the
33 commercial claim.

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

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

36 The licensee is not in violation of this subsection if the licensee
37 initiates oral contact with the debtor more than one time in an attempt
38 to collect debts arising from the identified series of dishonored

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

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27 On page 1, line 1 of the title, after "Relating to" strike the
28 remainder of the title and insert "collection of debt; amending RCW
29 31.04.015 and 31.04.115; reenacting and amending RCW 19.16.250; and
30 adding new sections to chapter 31.04 RCW."

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