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**SUBSTITUTE SENATE BILL 6245**

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**State of Washington**

**61st Legislature**

**2010 Regular Session**

**By** Senate Judiciary (originally sponsored by Senators Kline, Carrell, and Rockefeller)

READ FIRST TIME 02/05/10.

1       AN ACT Relating to prohibited practices of collection agencies; and  
2 reenacting and amending RCW 19.16.250.

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 which represents or  
26 implies that a claim exists unless it shall indicate in clear and  
27 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 licensee may  
19 presume that a call to a telephone is received in the local time zone  
20 to which the area code of the number called is assigned for landline  
21 numbers, unless the licensee reasonably believes the telephone is  
22 located in a different time zone. If the area code is not assigned to  
23 landlines in any specific geographic area, such as with toll-free  
24 telephone numbers, a licensee may presume that a call to a telephone is  
25 received in the local time zone of the debtor's last known place of  
26 residence, unless the licensee reasonably believes the telephone is  
27 located in a different time zone.

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

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

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

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

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

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

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

23 (20) Upon notification by a debtor that the debtor disputes all  
24 debts arising from a series of dishonored checks, automated  
25 clearinghouse transactions on a demand deposit account, or other  
26 preprinted written instruments, initiate oral contact with a debtor  
27 more than one time in an attempt to collect from the debtor debts  
28 arising from the identified series of dishonored checks, automated  
29 clearinghouse transactions on a demand deposit account, or other  
30 preprinted written instruments when: (a) Within the previous one  
31 hundred eighty days, in response to the licensee's attempt to collect  
32 the initial debt assigned to the licensee and arising from the  
33 identified series of dishonored checks, automated clearinghouse  
34 transactions on a demand deposit account, or other preprinted written  
35 instruments, the debtor in writing notified the licensee that the  
36 debtor's checkbook or other series of preprinted written instruments  
37 was stolen or fraudulently created; (b) the licensee has received from  
38 the debtor a certified copy of a police report referencing the theft or

1 fraudulent creation of the checkbook, automated clearinghouse  
2 transactions on a demand deposit account, or series of preprinted  
3 written instruments; (c) in the written notification to the licensee or  
4 in the police report, the debtor identified the financial institution  
5 where the account was maintained, the account number, the magnetic ink  
6 character recognition number, the full bank routing and transit number,  
7 and the check numbers of the stolen checks, automated clearinghouse  
8 transactions on a demand deposit account, or other preprinted written  
9 instruments, which check numbers included the number of the check that  
10 is the subject of the licensee's collection efforts; (d) the debtor  
11 provides, or within the previous one hundred eighty days provided, to  
12 the licensee a legible copy of a government-issued photo  
13 identification, which contains the debtor's signature and which was  
14 issued prior to the date of the theft or fraud identified in the police  
15 report; and (e) the debtor advised the licensee that the subject debt  
16 is disputed because the identified check, automated clearinghouse  
17 transaction on a demand deposit account, or other preprinted written  
18 instrument underlying the debt is a stolen or fraudulently created  
19 check or instrument.

20 The licensee is not in violation of this subsection if the licensee  
21 initiates oral contact with the debtor more than one time in an attempt  
22 to collect debts arising from the identified series of dishonored  
23 checks, automated clearinghouse transactions on a demand deposit  
24 account, or other preprinted written instruments when: (i) The  
25 licensee acted in good faith and relied on their established practices  
26 and procedures for batching, recording, or packeting debtor accounts,  
27 and the licensee inadvertently initiates oral contact with the debtor  
28 in an attempt to collect debts in the identified series subsequent to  
29 the initial debt assigned to the licensee; (ii) the licensee is  
30 following up on collection of a debt assigned to the licensee, and the  
31 debtor has previously requested more information from the licensee  
32 regarding the subject debt; (iii) the debtor has notified the licensee  
33 that the debtor disputes only some, but not all the debts arising from  
34 the identified series of dishonored checks, automated clearinghouse  
35 transactions on a demand deposit account, or other preprinted written  
36 instruments, in which case the licensee shall be allowed to initiate  
37 oral contact with the debtor one time for each debt arising from the  
38 series of identified checks, automated clearinghouse transactions on a

1 demand deposit account, or written instruments and initiate additional  
2 oral contact for those debts that the debtor acknowledges do not arise  
3 from stolen or fraudulently created checks or written instruments; (iv)  
4 the oral contact is in the context of a judicial, administrative,  
5 arbitration, mediation, or similar proceeding; or (v) the oral contact  
6 is made for the purpose of investigating, confirming, or authenticating  
7 the information received from the debtor, to provide additional  
8 information to the debtor, or to request additional information from  
9 the debtor needed by the licensee to accurately record the debtor's  
10 information in the licensee's records.

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