
SENATE BILL 6245

State of Washington 61st Legislature 2010 Regular Session

By Senators Kline, Carrell, and Rockefeller

Read first time 01/11/10. Referred to Committee on Judiciary.

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 (1) No licensee or employee of a licensee shall:

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

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

16 ~~((+3))~~ (c) Publish or post or cause to be published or posted, any
17 list of debtors commonly known as "bad debt lists" or threaten to do
18 so. For purposes of this chapter, a "bad debt list" means any list of
19 natural persons alleged to fail to honor their lawful debts. However,

1 nothing herein shall be construed to prohibit a licensee from
2 communicating to its customers or clients by means of a coded list, the
3 existence of a check dishonored because of insufficient funds, not
4 sufficient funds or closed account by the financial institution
5 servicing the debtor's checking account: PROVIDED, That the debtor's
6 identity is not readily apparent: PROVIDED FURTHER, That the licensee
7 complies with the requirements of (i)(v) of this subsection (~~((9)(e) of~~
8 ~~this section))~~).

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

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

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

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

25 ~~((8))~~ (h) Give or send to any debtor or cause to be given or sent
26 to any debtor, any notice, letter, message, or form which represents or
27 implies that a claim exists unless it shall indicate in clear and
28 legible type:

29 ~~((a))~~ (i) The name of the licensee and the city, street, and
30 number at which he is licensed to do business;

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

36 ~~((c))~~ (iii) If the notice, letter, message, or form is the first
37 notice to the debtor (~~or if the licensee is attempting to collect a~~

1 ~~different amount than indicated in his or its first notice to the~~
2 ~~debtor)),~~ an itemization of the claim asserted must be made including:

3 ((+i)) (A) Amount owing on the original obligation at the time it
4 was received by the licensee for collection or by assignment;

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

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

15 ((+iv)) (D) Collection costs, if any, that the licensee is
16 attempting to collect;

17 ((+v)) (E) Attorneys' fees, if any, that the licensee is
18 attempting to collect on his or its behalf or on the behalf of a
19 customer or assignor;

20 ((+vi)) (F) Any other charge or fee that the licensee is
21 attempting to collect on his or its own behalf or on the behalf of a
22 customer or assignor;

23 (iv) If the notice, letter, message, or form is a subsequent notice
24 to the debtor and the licensee is attempting to collect a different
25 amount than indicated in the first notice, an itemization of the
26 portions of the claim that are different must be made: PROVIDED, That
27 if the only difference in the amounts is the addition of interest, no
28 itemization is required: AND PROVIDED FURTHER, That an itemization
29 need be provided only in the subsequent notice that first indicates a
30 different amount, and not in notices thereafter unless further changes
31 occur in the amounts other than interest;

32 (v) If the notice, letter, message, or form concerns a judgment
33 obtained against the debtor, no itemization of the amounts is required.

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

1 ~~((a))~~ (i) A licensee or employee of a licensee may inform a
2 credit reporting bureau of the existence of a claim: PROVIDED, That if
3 the licensee or employee of a licensee reports a claim to a credit
4 reporting bureau, the licensee shall upon receipt of written notice
5 from the debtor that any part of the claim is disputed, ~~((forward a~~
6 ~~copy of such written notice to))~~ notify the credit reporting bureau of
7 the dispute and create a record of the fact of the notification and
8 when the notification was provided;

9 ~~((b))~~ (ii) A licensee or employee in collecting or attempting to
10 collect a claim may communicate the existence of a claim to a debtor's
11 employer if the claim has been reduced to a judgment;

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

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

20 ~~((ii))~~ (B) The debtor has not in writing to the licensee disputed
21 any part of the claim: PROVIDED, That the licensee or employee may
22 only communicate the existence of a claim which has not been reduced to
23 judgment to the debtor's employer once unless the debtor's employer has
24 agreed to additional communications~~((-))~~;

25 ~~((d))~~ (iv) A licensee may for the purpose of locating the debtor
26 or locating assets of the debtor communicate the existence of a claim
27 to any person who might reasonably be expected to have knowledge of the
28 whereabouts of a debtor or the location of assets of the debtor if the
29 claim is reduced to judgment, or if not reduced to judgment, when:

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

35 ~~((ii))~~ (B) The debtor has not in writing disputed any part of the
36 claim~~((-))~~;

37 ~~((e))~~ (v) A licensee may communicate the existence of a claim to

1 its customers or clients if the claim is reduced to judgment, or if not
2 reduced to judgment, when:

3 ~~((+i))~~ (A) The licensee has notified or attempted to notify the
4 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))~~ (B) The debtor has not in writing disputed any part of the
9 claim.

10 ~~((+10))~~ (j) Falsely threaten the debtor with impairment of his
11 credit rating if a claim is not paid.

12 ~~((+11))~~ (k) Communicate with the debtor after notification in
13 writing from an attorney representing such debtor that all further
14 communications relative to a claim should be addressed to the attorney:
15 PROVIDED, That if a licensee requests in writing information from an
16 attorney regarding such claim and the attorney does not respond within
17 a reasonable time, the licensee may communicate directly with the
18 debtor until he or it again receives notification in writing that an
19 attorney is representing the debtor.

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

27 ~~((+a))~~ (i) It is other than a written communication sent through
28 the United States postal service, and it is made with a debtor or
29 spouse in any form, manner, or place, more than three times in a single
30 week, unless the licensee is responding to a communication from the
31 debtor or spouse;

32 ~~((+b))~~ (ii) It is made with a debtor at his or her place of
33 employment more than one time in a single week;

34 ~~((+c))~~ (iii) It is a telephone communication made with the debtor
35 or spouse at his or her place of residence between the hours of 9:00
36 p.m. and 7:30 a.m.

37 ~~((+13))~~ (m) Communicate with the debtor through use of forms or

1 instruments that simulate the form or appearance of judicial process,
2 the form or appearance of government documents, or the simulation of a
3 form or appearance of a telegraphic or emergency message.

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

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

11 ~~((+16) Send)~~ (p) Cause charges to be incurred for any telegram or
12 (make) any telephone call(~~(s)~~) to a debtor or concerning a debt or
13 for the purpose of demanding payment of a claim or seeking information
14 about a debtor, ~~((for which the charges are payable by the addressee or~~
15 ~~by the person to whom the call is made))~~ by concealment of the true
16 purpose of the communication. This subsection does not prohibit a debt
17 collector from communicating with a debtor by way of a debtor's
18 cellular telephone or other wireless device.

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

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

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

1 ~~((+20+))~~ (t)(i) Upon notification by a debtor that the debtor
2 disputes all debts arising from a series of dishonored checks,
3 automated clearinghouse transactions on a demand deposit account, or
4 other preprinted written instruments, initiate oral contact with a
5 debtor more than one time in an attempt to collect from the debtor
6 debts arising from the identified series of dishonored checks,
7 automated clearinghouse transactions on a demand deposit account, or
8 other preprinted written instruments when: ~~((+a+))~~ (A) Within the
9 previous one hundred eighty days, in response to the licensee's attempt
10 to collect the initial debt assigned to the licensee and arising from
11 the 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+))~~ (B) the licensee has
16 received from the debtor a certified copy of a police report
17 referencing the theft or fraudulent creation of the checkbook,
18 automated clearinghouse transactions on a demand deposit account, or
19 series of preprinted written instruments; ~~((+c+))~~ (C) in the written
20 notification to the licensee or in the police report, the debtor
21 identified the financial institution where the account was maintained,
22 the account number, the magnetic ink character recognition number, the
23 full bank routing and transit number, and the check numbers of the
24 stolen checks, automated clearinghouse transactions on a demand deposit
25 account, or other preprinted written instruments, which check numbers
26 included the number of the check that is the subject of the licensee's
27 collection efforts; ~~((+d+))~~ (D) the debtor provides, or within the
28 previous one hundred eighty days provided, to the licensee a legible
29 copy of a government-issued photo identification, which contains the
30 debtor's signature and which was issued prior to the date of the theft
31 or fraud identified in the police report; and ~~((+e+))~~ (E) the debtor
32 advised the licensee that the subject debt is disputed because the
33 identified check, automated clearinghouse transaction on a demand
34 deposit account, or other preprinted written instrument underlying the
35 debt is a stolen or fraudulently created check or instrument.

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

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

28 (2) For purposes of this section, "communicate" or "communication"
29 means the following:

30 (a) Any contact with a debtor or spouse initiated by the licensee,
31 in person, by telephone, or in writing, including e-mails, text
32 messages, and other electronic writing, regarding the collection of a
33 claim, but does not include any of the following:

34 (i) Contact while a debtor is physically present in the licensee's
35 place of business;

36 (ii) A telephone call which is not answered by a live person and in
37 which no message, other than a caller ID, is left; unless the call is
38 made in violation of subsection (1)(1)(iii) of this section;

1 (iii) A letter to the debtor that includes initial disclosures
2 intended to comply with the federal fair debt collection practices act
3 or that is intended to comply with any other federal, state, or local
4 law or regulation;

5 (iv) Any pleading or other document or notice served or provided in
6 connection with a legal proceeding, mediation, or arbitration;

7 (v) Contact responding to a communication from a debtor or spouse;
8 or

9 (vi) Contact with an attorney for a debtor or spouse.

10 (b) A telephone contact initiated by a debtor where substantive
11 discussion of the debt with the licensee occurs: PROVIDED That, the
12 contact does not qualify as a communication at the place of employment
13 of the debtor, nor as a communication in excess of the third
14 communication in a week: AND PROVIDED FURTHER, That a telephone
15 contact initiated by a debtor which results in a request for an
16 employee of the licensee to call the debtor back does not qualify as a
17 communication, whether the message is left with a recording device or
18 with a live person.

19 (3) For purposes of subsection (1)(1)(iii) of this section, a
20 licensee may presume that a call to a cellular telephone is received in
21 the local time zone to which the area code of the number called is
22 assigned for landline numbers, unless the licensee reasonably believes
23 the cellular telephone is located in a different time zone. If the
24 area code is not assigned to landlines in any specific geographic area,
25 such as with toll-free telephone numbers, a licensee may presume that
26 a call to a cellular telephone is received in the local time zone of
27 the debtor's last known place of residence, unless the licensee
28 reasonably believes the cellular telephone is located in a different
29 time zone.

30 (4) For purposes of this section, a call to a number that the
31 licensee reasonably believes is the debtor's cellular telephone does
32 not constitute a communication with a debtor at the debtor's place of
33 employment.

34 (5) For purposes of this section, "week" means a series of seven
35 consecutive days beginning on a Sunday.

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