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**SUBSTITUTE SENATE BILL 6348**

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**State of Washington**

**61st Legislature**

**2010 Regular Session**

**By** Senate Labor, Commerce & Consumer Protection (originally sponsored by Senators Ranker, Swecker, Pridemore, Kohl-Welles, Regala, Berkey, Hobbs, and Parlette)

READ FIRST TIME 01/27/10.

1       AN ACT Relating to prohibited communications of collection agencies  
2 and their employees; and 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 possession or make use of any badge, use a uniform  
9 of any law enforcement agency or any simulation thereof, or make any  
10 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 its current license  
23 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 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 its first notice to the debtor, an  
38 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 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 its own behalf or on the behalf of a customer or  
20 assignor.

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

25 (a) A licensee or employee of a licensee may inform a credit  
26 reporting bureau of the existence of a claim: PROVIDED, That if the  
27 licensee or employee of a licensee reports a claim to a credit  
28 reporting bureau, the licensee shall upon receipt of written notice  
29 from the debtor that any part of the claim is disputed, forward a copy  
30 of such written notice to the credit reporting bureau;

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

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

37 (i) The licensee or employee has notified or attempted to notify  
38 the debtor in writing at his last known address or place of employment

1 concerning the claim and the debtor after a reasonable time has failed  
2 to pay the claim or has failed to agree to make payments on the claim  
3 in a manner acceptable to the licensee, and

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

9 (d) A licensee may for the purpose of locating the debtor or  
10 locating assets of the debtor communicate the existence of a claim to  
11 any person who might reasonably be expected to have knowledge of the  
12 whereabouts of a debtor or the location of assets of the debtor if the  
13 claim is reduced to judgment, or if not reduced to judgment, when:

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

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

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

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

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

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

31 (11) Communicate with the debtor after notification in writing from  
32 an attorney representing such debtor that all further communications  
33 relative to a claim should be addressed to the attorney: PROVIDED,  
34 That if a licensee requests in writing information from an attorney  
35 regarding such claim and the attorney does not respond within a  
36 reasonable time, the licensee may communicate directly with the debtor  
37 until he or it again receives notification in writing that an attorney  
38 is representing the debtor.

1 (12) Communicate with a debtor or anyone else in such a manner as  
2 to harass, intimidate, threaten, or embarrass a debtor, including but  
3 not limited to communication at an unreasonable hour, with unreasonable  
4 frequency, by threats of force or violence, by threats of criminal  
5 prosecution, ~~((and))~~ by use of offensive language, or in a way that  
6 actively creates a false impression. A communication shall be presumed  
7 to have been made for the purposes of harassment if:

8 (a) It is made with a debtor ~~((or))~~, the debtor's spouse, or anyone  
9 else in any form, manner, or place, more than three times in a single  
10 week;

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

13 (c) It is made with the debtor ~~((or))~~, the debtor's spouse, or  
14 anyone else at his or her place of residence between the hours of 9:00  
15 p.m. and 7:30 a.m.

16 (13) Communicate with the debtor through use of forms or  
17 instruments that simulate the form or appearance of judicial process,  
18 the form or appearance of government documents, or the simulation of a  
19 form or appearance of a telegraphic or emergency message.

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

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

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

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

34 (18) Collect or attempt to collect in addition to the principal  
35 amount of a claim any sum other than allowable interest, collection  
36 costs or handling fees expressly authorized by statute, and, in the  
37 case of suit, attorney's fees and taxable court costs. A licensee may  
38 collect or attempt to collect collection costs and fees, including

1 contingent collection fees, as authorized by a written agreement or  
2 contract, between the licensee's client and the debtor, in the  
3 collection of a commercial claim. The amount charged to the debtor for  
4 collection services shall not exceed thirty-five percent of the  
5 commercial claim.

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

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

1 identification, which contains the debtor's signature and which was  
2 issued prior to the date of the theft or fraud identified in the police  
3 report; and (e) the debtor advised the licensee that the subject debt  
4 is disputed because the identified check, automated clearinghouse  
5 transaction on a demand deposit account, or other preprinted written  
6 instrument underlying the debt is a stolen or fraudulently created  
7 check or instrument.

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

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