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**SUBSTITUTE SENATE BILL 5574**

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**State of Washington                      62nd Legislature                      2011 Regular Session**

**By Senate Judiciary (originally sponsored by Senators Harper and Kline)**

READ FIRST TIME 02/17/11.

1            AN ACT Relating to collection agencies; amending RCW 19.16.500; 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))~~) (10)(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, other than through proper  
26 legal action, process, or proceedings, which represents or implies that  
27 a claim exists unless it shall indicate in clear and 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 is required, except postjudgment interest, if claimed, and  
24 the current account balance.

25 (9) Communicate in writing with a debtor concerning a claim through  
26 a proper legal action, process, or proceeding, where such communication  
27 is the first written communication with the debtor, without providing  
28 the information set forth in subsection (8)(c) of this section in the  
29 written communication.

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

34 (a) A licensee or employee of a licensee may inform a credit  
35 reporting bureau of the existence of a claim(~~(:—PROVIDED, That)~~). If  
36 the licensee or employee of a licensee reports a claim to a credit  
37 reporting bureau, the licensee shall, upon receipt of written notice  
38 from the debtor that any part of the claim is disputed, (~~forward a~~

1 ~~copy of such written notice to~~) notify the credit reporting bureau of  
2 the dispute by written or electronic means and create a record of the  
3 fact of the notification and when the notification was provided;

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

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

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

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

20 (d) A licensee may for the purpose of locating the debtor or  
21 locating assets of the debtor communicate the existence of a claim to  
22 any person who might reasonably be expected to have knowledge of the  
23 whereabouts of a debtor or the location of assets of the debtor if the  
24 claim is reduced to judgment, or if not reduced to judgment, when:

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

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

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

34 (i) The licensee has notified or attempted to notify the debtor in  
35 writing at his or her last known address or last known place of  
36 employment concerning the claim and the debtor after a reasonable time  
37 has failed to pay the claim or has failed to agree to make payments on  
38 the claim in a manner acceptable to the licensee, and

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

2 ~~((+10+))~~ (11) Threaten the debtor with impairment of his or her  
3 credit rating if a claim is not paid: PROVIDED, That advising a debtor  
4 that the licensee has reported or intends to report a claim to a credit  
5 reporting agency is not considered a threat if the licensee actually  
6 has reported or intends to report the claim to a credit reporting  
7 agency.

8 ~~((+11+))~~ (12) Communicate with the debtor after notification in  
9 writing from an attorney representing such debtor that all further  
10 communications relative to a claim should be addressed to the attorney:  
11 PROVIDED, That if a licensee requests in writing information from an  
12 attorney regarding such claim and the attorney does not respond within  
13 a reasonable time, the licensee may communicate directly with the  
14 debtor until he or she or it again receives notification in writing  
15 that an attorney is representing the debtor.

16 ~~((+12+))~~ (13) Communicate with a debtor or anyone else in such a  
17 manner as to harass, intimidate, threaten, or embarrass a debtor,  
18 including but not limited to communication at an unreasonable hour,  
19 with unreasonable frequency, by threats of force or violence, by  
20 threats of criminal prosecution, and by use of offensive language. A  
21 communication shall be presumed to have been made for the purposes of  
22 harassment if:

23 (a) It is made with a debtor or spouse in any form, manner, or  
24 place, more than three times in a single week, unless the licensee is  
25 responding to a communication from the debtor or spouse;

26 (b) It is made with a debtor at his or her place of employment more  
27 than one time in a single week, unless the licensee is responding to a  
28 communication from the debtor;

29 (c) It is made with the debtor or spouse at his or her place of  
30 residence between the hours of 9:00 p.m. and 7:30 a.m. A call to a  
31 telephone is presumed to be received in the local time zone to which  
32 the area code of the number called is assigned for landline numbers,  
33 unless the licensee reasonably believes the telephone is located in a  
34 different time zone. If the area code is not assigned to landlines in  
35 any specific geographic area, such as with toll-free telephone numbers,  
36 a call to a telephone is presumed to be received in the local time zone  
37 of the debtor's last known place of residence, unless the licensee  
38 reasonably believes the telephone is located in a different time zone.

1           (~~(13)~~) (14) Communicate with the debtor through use of forms or  
2 instruments that simulate the form or appearance of judicial process,  
3 the form or appearance of government documents, or the simulation of a  
4 form or appearance of a telegraphic or emergency message.

5           (~~(14)~~) (15) Communicate with the debtor and represent or imply  
6 that the existing obligation of the debtor may be or has been increased  
7 by the addition of attorney fees, investigation fees, service fees, or  
8 any other fees or charges when in fact such fees or charges may not  
9 legally be added to the existing obligation of such debtor.

10          (~~(15)~~) (16) Threaten to take any action against the debtor which  
11 the licensee cannot legally take at the time the threat is made.

12          (~~(16)~~) (17) Send any telegram or make any telephone calls to a  
13 debtor or concerning a debt or for the purpose of demanding payment of  
14 a claim or seeking information about a debtor(~~(, for which the charges~~  
15 ~~are payable by the addressee or by the person to whom the call is~~  
16 ~~made))): PROVIDED, That:~~

17          (a) This subsection does not prohibit a licensee from attempting to  
18 communicate by way of a cellular telephone or other wireless device:  
19 PROVIDED, That a licensee cannot cause charges to be incurred to the  
20 recipient of the attempted communication more than three times in any  
21 calendar week when the licensee knows or reasonably should know that  
22 the number belongs to a cellular telephone or other wireless device,  
23 unless the licensee is responding to a communication from the debtor or  
24 the person to whom the call is made.

25          (b) The licensee is not in violation of (a) of this subsection if  
26 the licensee at least monthly updates its records with information  
27 provided by a commercial provider of cellular telephone lists that the  
28 licensee in good faith believes provides reasonably current and  
29 comprehensive data identifying cellular telephone numbers, calls a  
30 number not appearing in the most recent list provided by the commercial  
31 provider, and does not otherwise know or reasonably should know that  
32 the number belongs to a cellular telephone.

33          (c) This subsection may not be construed to increase the number of  
34 communications permitted pursuant to subsection (13)(a) of this  
35 section.

36          (~~(17)~~) (18) Call, or send a text message or other electronic  
37 communication to, a cellular telephone or other wireless device more  
38 than twice in any day when the licensee knows or reasonably should know

1 that the number belongs to a cellular telephone or other wireless  
2 device, unless the licensee is responding to a communication from the  
3 debtor or the person to whom the call, text message, or other  
4 electronic communication is made. The licensee is not in violation of  
5 this subsection if the licensee at least monthly updates its records  
6 with information provided by a commercial provider of cellular  
7 telephone lists that the licensee in good faith believes provides  
8 reasonably current and comprehensive data identifying cellular  
9 telephone numbers, calls a number not appearing in the most recent list  
10 provided by the commercial provider, and does not otherwise know or  
11 reasonably should know that the number belongs to a cellular telephone.  
12 Nothing in this subsection may be construed to increase the number of  
13 communications permitted pursuant to subsection (13)(a) of this  
14 section.

15 (19) Intentionally block its telephone number from displaying on a  
16 debtor's telephone.

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

20 ~~((+18+))~~ (21) Collect or attempt to collect in addition to the  
21 principal amount of a claim any sum other than allowable interest,  
22 collection costs or handling fees expressly authorized by statute, and,  
23 in the case of suit, attorney's fees and taxable court costs. A  
24 licensee may collect or attempt to collect collection costs and fees,  
25 including contingent collection fees, as authorized by a written  
26 agreement or contract, between the licensee's client and the debtor, in  
27 the collection of a commercial claim. The amount charged to the debtor  
28 for collection services shall not exceed thirty-five percent of the  
29 commercial claim.

30 ~~((+19+))~~ (22) Procure from a debtor or collect or attempt to  
31 collect on any written note, contract, stipulation, promise or  
32 acknowledgment under which a debtor may be required to pay any sum  
33 other than principal, allowable interest, except as noted in subsection  
34 ~~((+18+))~~ (21) of this section, and, in the case of suit, attorney's  
35 fees and taxable court costs.

36 ~~((+20+))~~ (23) Bring an action or initiate an arbitration proceeding  
37 on a claim when the licensee knows, or reasonably should know, that

1 such suit or arbitration is barred by the applicable statute of  
2 limitations.

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



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

30           **Sec. 2.** RCW 19.16.500 and 1997 c 387 s 1 are each amended to read  
31 as follows:

32           (1)(a) Agencies, departments, taxing districts, political  
33 subdivisions of the state, counties, and cities may retain, by written  
34 contract, collection agencies licensed under this chapter for the  
35 purpose of collecting public debts owed by any person, including any  
36 restitution that is being collected on behalf of a crime victim.

1           (b) Any governmental entity as described in (a) of this subsection  
2 using a collection agency may add a reasonable fee, payable by the  
3 debtor, to the outstanding debt for the collection agency fee incurred  
4 or to be incurred. The amount to be paid for collection services shall  
5 be left to the agreement of the governmental entity and its collection  
6 agency or agencies, but a contingent fee of up to fifty percent of the  
7 first one hundred thousand dollars of the unpaid debt per account and  
8 up to thirty-five percent of the unpaid debt over one hundred thousand  
9 dollars per account is reasonable, and a minimum fee of the full amount  
10 of the debt up to one hundred dollars per account is reasonable. Any  
11 fee agreement entered into by a governmental entity is presumptively  
12 reasonable.

13           (2) No debt may be assigned to a collection agency unless (a) there  
14 has been an attempt to advise the debtor (i) of the existence of the  
15 debt and (ii) that the debt may be assigned to a collection agency for  
16 collection if the debt is not paid, and (b) at least thirty days have  
17 elapsed from the time notice was attempted.

18           (3) Collection agencies assigned debts under this section shall  
19 have only those remedies and powers which would be available to them as  
20 assignees of private creditors.

21           (4) For purposes of this section, the term debt shall include fines  
22 and other debts, including the fee (~~required~~) allowed under  
23 subsection (1)(b) of this section.

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