

SSB 5222 - S AMD 614
By Senator Mullet

PULLED 02/16/2016

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 19.16.100 and 2015 c 201 s 3 are each amended to
4 read as follows:

5 Unless a different meaning is plainly required by the context,
6 the following words and phrases as hereinafter used in this chapter
7 shall have the following meanings:

8 (1) "Board" means the Washington state collection agency board.

9 (2) "Claim" means any obligation for the payment of money or
10 thing of value arising out of any agreement or contract, express or
11 implied.

12 (3) "Client" or "customer" means any person authorizing or
13 employing a collection agency to collect a claim.

14 (4) "Collection agency" means and includes:

15 (a) Any person directly or indirectly engaged in soliciting
16 claims for collection, or collecting or attempting to collect claims
17 owed or due or asserted to be owed or due another person;

18 (b) Any person who directly or indirectly furnishes or attempts
19 to furnish, sells, or offers to sell forms represented to be a
20 collection system or scheme intended or calculated to be used to
21 collect claims even though the forms direct the debtor to make
22 payment to the creditor and even though the forms may be or are
23 actually used by the creditor himself or herself in his or her own
24 name;

25 (c) Any person who in attempting to collect or in collecting his
26 or her own claim uses a fictitious name or any name other than his or
27 her own which would indicate to the debtor that a third person is
28 collecting or attempting to collect such claim;

29 (d) Any person or entity that is engaged in the business of
30 purchasing delinquent or charged off claims for collection purposes,
31 whether it collects the claims itself or hires a third party for

1 collection or an attorney for litigation in order to collect such
2 claims;

3 (e) Any person or entity attempting to enforce a lien under
4 chapter 60.44 RCW, other than the person or entity originally
5 entitled to the lien.

6 (5) "Collection agency" does not mean and does not include:

7 (a) Any individual engaged in soliciting claims for collection,
8 or collecting or attempting to collect claims on behalf of a licensee
9 under this chapter, if said individual is an employee of the
10 licensee;

11 (b) Any individual collecting or attempting to collect claims for
12 not more than one employer, if all the collection efforts are carried
13 on in the name of the employer and if the individual is an employee
14 of the employer;

15 (c) Any person whose collection activities are carried on in his,
16 her, or its true name and are confined and are directly related to
17 the operation of a business other than that of a collection agency,
18 such as but not limited to: Trust companies; savings and loan
19 associations; building and loan associations; abstract companies
20 doing an escrow business; real estate brokers; property management
21 companies collecting assessments, charges, or fines on behalf of
22 condominium unit owners associations, associations of apartment
23 owners, or homeowners' associations; public officers acting in their
24 official capacities; persons acting under court order; lawyers;
25 insurance companies; credit unions; loan or finance companies;
26 mortgage banks; and banks;

27 (d) Any person who on behalf of another person prepares or mails
28 monthly or periodic statements of accounts due if all payments are
29 made to that other person and no other collection efforts are made by
30 the person preparing the statements of account;

31 (e) An "out-of-state collection agency" as defined in this
32 chapter; or

33 (f) Any person while acting as a debt collector for another
34 person, both of whom are related by common ownership or affiliated by
35 corporate control, if the person acting as a debt collector does so
36 only for persons to whom it is so related or affiliated and if the
37 principal business of the person is not the collection of debts.

38 (6) "Commercial claim" means any obligation for payment of money
39 or thing of value arising out of any agreement or contract, express
40 or implied, where the transaction which is the subject of the

1 agreement or contract is not primarily for personal, family, or
2 household purposes.

3 (7) "Credit card payment" means any payment made by a payment
4 card that incurs a credit card interchange fee to the collection
5 agency, regardless of the type of payment card used.

6 (8) "Debtor" means any person owing or alleged to owe a claim.

7 ((+8)) (9) "Director" means the director of licensing.

8 ((+9)) (10) "Licensee" means any person licensed under this
9 chapter.

10 ((+10)) (11) "Out-of-state collection agency" means a person
11 whose activities within this state are limited to collecting debts
12 from debtors located in this state by means of interstate
13 communications, including telephone, mail, or facsimile transmission,
14 from the person's location in another state on behalf of clients
15 located outside of this state, but does not include any person who is
16 excluded from the definition of the term "debt collector" under the
17 federal fair debt collection practices act (15 U.S.C. Sec. 1692a(6)).

18 ((+11)) (12) "Person" includes individual, firm, partnership,
19 trust, joint venture, association, or corporation.

20 ((+12)) (13) "Statement of account" means a report setting forth
21 only amounts billed, invoices, credits allowed, or aged balance due.

22 **Sec. 2.** RCW 19.16.250 and 2013 c 148 s 2 are each amended to
23 read as follows:

24 No licensee or employee of a licensee shall:

25 (1) Directly or indirectly aid or abet any unlicensed person to
26 engage in business as a collection agency in this state or receive
27 compensation from such unlicensed person: PROVIDED, That nothing in
28 this chapter shall prevent a licensee from accepting, as forwarder,
29 claims for collection from a collection agency or attorney whose
30 place of business is outside the state.

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

34 (3) Publish or post or cause to be published or posted, any list
35 of debtors commonly known as "bad debt lists" or threaten to do so.
36 For purposes of this chapter, a "bad debt list" means any list of
37 natural persons alleged to fail to honor their lawful debts. However,
38 nothing herein shall be construed to prohibit a licensee from
39 communicating to its customers or clients by means of a coded list,

1 the existence of a check dishonored because of insufficient funds,
2 not sufficient funds or closed account by the financial institution
3 servicing the debtor's checking account: PROVIDED, That the debtor's
4 identity is not readily apparent: PROVIDED FURTHER, That the licensee
5 complies with the requirements of subsection (10)(e) of this section.

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

12 (5) Perform any act or acts, either directly or indirectly,
13 constituting the unauthorized practice of law.

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

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

22 (8) Give or send to any debtor or cause to be given or sent to
23 any debtor, any notice, letter, message, or form, other than through
24 proper legal action, process, or proceedings, which represents or
25 implies that a claim exists unless it shall indicate in clear and
26 legible type:

27 (a) The name of the licensee and the city, street, and number at
28 which he or she is licensed to do business;

29 (b) The name of the original creditor to whom the debtor owed the
30 claim if such name is known to the licensee or employee: PROVIDED,
31 That upon written request of the debtor, the licensee shall provide
32 this name to the debtor or cease efforts to collect on the debt until
33 this information is provided;

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

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

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

8 (iii) Interest or service charge, if any, added by the licensee
9 or customer or assignor after the obligation was received by the
10 licensee for collection;

11 (iv) Collection costs, if any, that the licensee is attempting to
12 collect;

13 (v) Attorneys' fees, if any, that the licensee is attempting to
14 collect on his or her or its behalf or on the behalf of a customer or
15 assignor; and

16 (vi) Any other charge or fee that the licensee is attempting to
17 collect on his or her or its own behalf or on the behalf of a
18 customer or assignor;

19 (d) If the notice, letter, message, or form concerns a judgment
20 obtained against the debtor, no itemization of the amounts contained
21 in the judgment is required, except postjudgment interest, if
22 claimed, and the current account balance;

23 (e) If the notice, letter, message, or form is the first notice
24 to the debtor, an itemization of the claim asserted must be made
25 including the following information:

26 (i) The original account number or redacted original account
27 number assigned to the debt, if known to the licensee or employee:
28 PROVIDED, That upon written request of the debtor, the licensee must
29 make a reasonable effort to obtain this information or cease efforts
30 to collect on the debt until this information is provided; and

31 (ii) The date of the last payment to the creditor on the subject
32 debt by the debtor, if known to the licensee or employee: PROVIDED,
33 That upon written request of the debtor, the licensee must make a
34 reasonable effort to obtain this information or cease efforts to
35 collect on the debt until this information is provided.

36 (9) Communicate in writing with a debtor concerning a claim
37 through a proper legal action, process, or proceeding, where such
38 communication is the first written communication with the debtor,
39 without providing the information set forth in subsection (8)(c) of
40 this section in the written communication.

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

6 (a) A licensee or employee of a licensee may inform a credit
7 reporting bureau of the existence of a claim. If the licensee or
8 employee of a licensee reports a claim to a credit reporting bureau,
9 the licensee shall, upon receipt of written notice from the debtor
10 that any part of the claim is disputed, notify the credit reporting
11 bureau of the dispute by written or electronic means and create a
12 record of the fact of the notification and when the notification was
13 provided;

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

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

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

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

30 (d) A licensee may for the purpose of locating the debtor or
31 locating assets of the debtor communicate the existence of a claim to
32 any person who might reasonably be expected to have knowledge of the
33 whereabouts of a debtor or the location of assets of the debtor if
34 the claim is reduced to judgment, or if not reduced to judgment,
35 when:

36 (i) The licensee or employee has notified or attempted to notify
37 the debtor in writing at his or her last known address or last known
38 place of employment concerning the claim and the debtor after a
39 reasonable time has failed to pay the claim or has failed to agree to

1 make payments on the claim in a manner acceptable to the licensee,
2 and

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

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

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

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

15 (11) Threaten the debtor with impairment of his or her credit
16 rating if a claim is not paid: PROVIDED, That advising a debtor that
17 the licensee has reported or intends to report a claim to a credit
18 reporting agency is not considered a threat if the licensee actually
19 has reported or intends to report the claim to a credit reporting
20 agency.

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

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

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

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

4 (c) It is made with the debtor or spouse at his or her place of
5 residence between the hours of 9:00 p.m. and 7:30 a.m. A call to a
6 telephone is presumed to be received in the local time zone to which
7 the area code of the number called is assigned for landline numbers,
8 unless the licensee reasonably believes the telephone is located in a
9 different time zone. If the area code is not assigned to landlines in
10 any specific geographic area, such as with toll-free telephone
11 numbers, a call to a telephone is presumed to be received in the
12 local time zone of the debtor's last known place of residence, unless
13 the licensee reasonably believes the telephone is located in a
14 different time zone.

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

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

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

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

31 (a) This subsection does not prohibit a licensee from attempting
32 to communicate by way of a cellular telephone or other wireless
33 device: PROVIDED, That a licensee cannot cause charges to be incurred
34 to the recipient of the attempted communication more than three times
35 in any calendar week when the licensee knows or reasonably should
36 know that the number belongs to a cellular telephone or other
37 wireless device, unless the licensee is responding to a communication
38 from the debtor or the person to whom the call is made.

39 (b) The licensee is not in violation of (a) of this subsection if
40 the licensee at least monthly updates its records with information

1 provided by a commercial provider of cellular telephone lists that
2 the licensee in good faith believes provides reasonably current and
3 comprehensive data identifying cellular telephone numbers, calls a
4 number not appearing in the most recent list provided by the
5 commercial provider, and does not otherwise know or reasonably should
6 know that the number belongs to a cellular telephone.

7 (c) This subsection may not be construed to increase the number
8 of communications permitted pursuant to subsection (13)(a) of this
9 section.

10 (18) Call, or send a text message or other electronic
11 communication to, a cellular telephone or other wireless device more
12 than twice in any day when the licensee knows or reasonably should
13 know that the number belongs to a cellular telephone or other
14 wireless device, unless the licensee is responding to a communication
15 from the debtor or the person to whom the call, text message, or
16 other electronic communication is made. The licensee is not in
17 violation of this subsection if the licensee at least monthly updates
18 its records with information provided by a commercial provider of
19 cellular telephone lists that the licensee in good faith believes
20 provides reasonably current and comprehensive data identifying
21 cellular telephone numbers, calls a number not appearing in the most
22 recent list provided by the commercial provider, and does not
23 otherwise know or reasonably should know that the number belongs to a
24 cellular telephone. Nothing in this subsection may be construed to
25 increase the number of communications permitted pursuant to
26 subsection (13)(a) of this section.

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

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

32 (21) Collect or attempt to collect in addition to the principal
33 amount of a claim any sum other than:

34 (a) Allowable interest, collection costs or handling fees
35 expressly authorized by statute(~~(τ and τ)~~);

36 (b) A transaction fee for processing a credit card payment in an
37 amount that does not exceed fifty cents plus two percent of the
38 payment amount provided that a no-cost payment option is available to
39 the debtor and the option is disclosed to the debtor at the same time

1 and in the same manner as the debtor's credit card information is
2 taken;

3 (c) In the case of suit, attorneys' fees and taxable court
4 costs(~~(. A licensee may collect or attempt to collect))~~); and

5 (d) In the case of a commercial claim, collection costs and fees,
6 including contingent collection fees, as authorized by a written
7 agreement or contract, between the licensee's client and the
8 debtor(~~(, in the collection of a commercial claim))~~). The amount
9 charged to the debtor for collection services shall not exceed
10 thirty-five percent of the commercial claim.

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

17 (23) Bring an action or initiate an arbitration proceeding on a
18 claim when the licensee knows, or reasonably should know, that such
19 suit or arbitration is barred by the applicable statute of
20 limitations.

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

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

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

1 of investigating, confirming, or authenticating the information
2 received from the debtor, to provide additional information to the
3 debtor, or to request additional information from the debtor needed
4 by the licensee to accurately record the debtor's information in the
5 licensee's records.

6 (25) Submit an affidavit or other request pursuant to chapter
7 6.32 RCW asking a superior or district court to transfer a bond
8 posted by a debtor subject to a money judgment to the licensee, when
9 the debtor has appeared as required."

SSB 5222 - S AMD 614
By Senator Mullet

PULLED 02/16/2016

10 On page 1, line 2 of the title, after "payments;" strike the
11 remainder of the title and insert "amending RCW 19.16.100 and
12 19.16.250."

EFFECT: Updates RCW 19.16.100 to reflect 2015 amendment.
Changes the maximum credit card transaction fee that may be
charged by a collection agency from \$0.50 plus 3 percent of the
payment amount to \$0.50 plus 2 percent of the payment amount.

--- END ---