
HOUSE BILL 1031

State of Washington

63rd Legislature

2013 Regular Session

By Representatives Stanford and Nealey

Prefiled 01/03/13. Read first time 01/14/13. Referred to Committee on
Judiciary.

1 AN ACT Relating to collection of debts by attorneys; amending RCW
2 19.16.100 and 19.16.250; and creating a new section.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** The legislature finds that uncertainty
5 exists as to whether attorneys who collect claims are subject to the
6 requirements of the collection agency act, with some court cases
7 holding that attorneys are subject to the act and others holding that
8 they are not. The legislature further finds that a business practice,
9 that did not exist when the act was enacted, now exists whereby some
10 attorneys as their primary business activity, perform collection
11 services beyond traditional legal services, such as collecting large
12 volumes of assigned claims on a contingency fee. It is the intent of
13 the legislature to amend the act, and the exemption for attorneys from
14 the act, to now require that attorneys whose primary activities are
15 devoted to the collection of claims through means other than
16 traditional legal services be subject to the requirements of the act,
17 and to retain the exception from the act for attorneys whose primary
18 activities are devoted to matters unrelated to collecting or attempting
19 to collect claims and for attorneys performing traditional legal

1 services related to collecting claims. Traditional legal services
2 include litigation and prelitigation services, including postjudgment
3 actions such as garnishments and executions on judgments, nonjudicial
4 and judicial real property foreclosure services, and eviction services.

5 **Sec. 2.** RCW 19.16.100 and 2003 c 203 s 1 are each amended to read
6 as follows:

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

10 (1) "Person" includes individual, firm, partnership, trust, joint
11 venture, association, or corporation.

12 (2) "Collection agency" means and includes:

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

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

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

26 (3) "Collection agency" does not mean and does not include:

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

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

34 (c) Any person whose collection activities are carried on in his,
35 her, or its true name and are confined and are directly related to the
36 operation of a business other than that of a collection agency, such as
37 but not limited to: Trust companies; savings and loan associations;

1 building and loan associations; abstract companies doing an escrow
2 business; real estate brokers; property management companies collecting
3 assessments, charges, or fines on behalf of condominium unit owners
4 associations, associations of apartment owners, or homeowners'
5 associations; public officers acting in their official capacities;
6 persons acting under court order; lawyers; insurance companies; credit
7 unions; loan or finance companies; mortgage banks; and banks;

8 (d) Attorneys while engaged in activities related to litigation, or
9 nonjudicial or judicial foreclosures and evictions concerning claims,
10 or to matters preparatory or incidental thereto, and attorneys whose
11 primary professional activities are devoted to matters unrelated to
12 collecting or attempting to collect claims;

13 (e) Any person who on behalf of another person prepares or mails
14 monthly or periodic statements of accounts due if all payments are made
15 to that other person and no other collection efforts are made by the
16 person preparing the statements of account;

17 ((+e)) (f) An "out-of-state collection agency" as defined in this
18 chapter; or

19 ((+f)) (g) Any person while acting as a debt collector for another
20 person, both of whom are related by common ownership or affiliated by
21 corporate control, if the person acting as a debt collector does so
22 only for persons to whom it is so related or affiliated and if the
23 principal business of the person is not the collection of debts.

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

32 (5) "Claim" means any obligation for the payment of money or thing
33 of value arising out of any agreement or contract, express or implied.

34 (6) "Statement of account" means a report setting forth only
35 amounts billed, invoices, credits allowed, or aged balance due.

36 (7) "Director" means the director of licensing.

37 (8) "Client" or "customer" means any person authorizing or
38 employing a collection agency to collect a claim.

1 (9) "Licensee" means any person licensed under this chapter.

2 (10) "Board" means the Washington state collection agency board.

3 (11) "Debtor" means any person owing or alleged to owe a claim.

4 (12) "Commercial claim" means any obligation for payment of money
5 or thing of value arising out of any agreement or contract, express or
6 implied, where the transaction which is the subject of the agreement or
7 contract is not primarily for personal, family, or household purposes.

8 **Sec. 3.** RCW 19.16.250 and 2011 1st sp.s. c 29 s 2 are each amended
9 to read as follows:

10 No licensee or employee of a licensee shall:

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

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

20 (3) Publish or post or cause to be published or posted, any list of
21 debtors commonly known as "bad debt lists" or threaten to do so. For
22 purposes of this chapter, a "bad debt list" means any list of natural
23 persons alleged to fail to honor their lawful debts. However, nothing
24 herein shall be construed to prohibit a licensee from communicating to
25 its customers or clients by means of a coded list, the existence of a
26 check dishonored because of insufficient funds, not sufficient funds or
27 closed account by the financial institution servicing the debtor's
28 checking account: PROVIDED, That the debtor's identity is not readily
29 apparent: PROVIDED FURTHER, That the licensee complies with the
30 requirements of subsection (10)(e) of this section.

31 (4) Have in his or her possession or make use of any badge, use a
32 uniform of any law enforcement agency or any simulation thereof, or
33 make any statements which might be construed as indicating an official
34 connection with any federal, state, county, or city law enforcement
35 agency, or any other governmental agency, while engaged in collection
36 agency business.

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

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

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

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

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

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

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

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

28 (ii) Interest or service charge, collection costs, or late payment
29 charges, if any, added to the original obligation by the original
30 creditor, customer or assignor before it was received by the licensee
31 for collection, if such information is known by the licensee or
32 employee: PROVIDED, That upon written request of the debtor, the
33 licensee shall make a reasonable effort to obtain information on such
34 items and provide this information to the debtor;

35 (iii) Interest or service charge, if any, added by the licensee or
36 customer or assignor after the obligation was received by the licensee
37 for collection;

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

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

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

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

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

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

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

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

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

35 (a) A licensee or employee of a licensee may inform a credit
36 reporting bureau of the existence of a claim. If the licensee or
37 employee of a licensee reports a claim to a credit reporting bureau,
38 the licensee shall, upon receipt of written notice from the debtor that

1 any part of the claim is disputed, notify the credit reporting bureau
2 of the dispute by written or electronic means and create a record of
3 the 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 (11) Threaten the debtor with impairment of his or her credit
3 rating if a claim is not paid: PROVIDED, That advising a debtor that
4 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 (12) Communicate with the debtor after notification in writing from
9 an attorney representing such debtor that all further communications
10 relative to a claim should be addressed to the attorney: PROVIDED,
11 That if a licensee requests in writing information from an attorney
12 regarding such claim and the attorney does not respond within a
13 reasonable time, the licensee may communicate directly with the debtor
14 until he or she or it again receives notification in writing that an
15 attorney is representing the debtor.

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

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

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

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

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

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

12 (17) Send any telegram or make any telephone calls to a debtor or
13 concerning a debt or for the purpose of demanding payment of a claim or
14 seeking information about a debtor, for which the charges are payable
15 by the addressee or by the person to whom the call is made: PROVIDED,
16 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 (18) Call, or send a text message or other electronic communication
37 to, a cellular telephone or other wireless device more than twice in
38 any day when the licensee knows or reasonably should know that the

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

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

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

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

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

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

37 (24) Upon notification by a debtor that the debtor disputes all
38 debts arising from a series of dishonored checks, automated

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

34 The licensee is not in violation of this subsection if the licensee
35 initiates oral contact with the debtor more than one time in an attempt
36 to collect debts arising from the identified series of dishonored
37 checks, automated clearinghouse transactions on a demand deposit
38 account, or other preprinted written instruments when: (i) The

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

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

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