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SENATE BILL 5043

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State of Washington

65th Legislature

2017 Regular Session

By Senators Angel, Mullet, and Hobbs

Read first time 01/11/17. Referred to Committee on Financial Institutions & Insurance.

1 AN ACT Relating to collection agency transaction fees for  
2 processing electronic payments; and amending RCW 19.16.100 and  
3 19.16.250.

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

5 **Sec. 1.** RCW 19.16.100 and 2015 c 201 s 3 are each amended to  
6 read as follows:

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

- 10 (1) "Board" means the Washington state collection agency board.
- 11 (2) "Claim" means any obligation for the payment of money or  
12 thing of value arising out of any agreement or contract, express or  
13 implied.
- 14 (3) "Client" or "customer" means any person authorizing or  
15 employing a collection agency to collect a claim.
- 16 (4) "Collection agency" means and includes:
- 17 (a) Any person directly or indirectly engaged in soliciting  
18 claims for collection, or collecting or attempting to collect claims  
19 owed or due or asserted to be owed or due another person;
- 20 (b) Any person who directly or indirectly furnishes or attempts  
21 to furnish, sells, or offers to sell forms represented to be a

1 collection system or scheme intended or calculated to be used to  
2 collect claims even though the forms direct the debtor to make  
3 payment to the creditor and even though the forms may be or are  
4 actually used by the creditor himself or herself in his or her own  
5 name;

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

10 (d) Any person or entity that is engaged in the business of  
11 purchasing delinquent or charged off claims for collection purposes,  
12 whether it collects the claims itself or hires a third party for  
13 collection or an attorney for litigation in order to collect such  
14 claims;

15 (e) Any person or entity attempting to enforce a lien under  
16 chapter 60.44 RCW, other than the person or entity originally  
17 entitled to the lien.

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

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

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

27 (c) Any person whose collection activities are carried on in his,  
28 her, or its true name and are confined and are directly related to  
29 the operation of a business other than that of a collection agency,  
30 such as but not limited to: Trust companies; savings and loan  
31 associations; building and loan associations; abstract companies  
32 doing an escrow business; real estate brokers; property management  
33 companies collecting assessments, charges, or fines on behalf of  
34 condominium unit owners associations, associations of apartment  
35 owners, or homeowners' associations; public officers acting in their  
36 official capacities; persons acting under court order; lawyers;  
37 insurance companies; credit unions; loan or finance companies;  
38 mortgage banks; and banks;

39 (d) Any person who on behalf of another person prepares or mails  
40 monthly or periodic statements of accounts due if all payments are

1 made to that other person and no other collection efforts are made by  
2 the person preparing the statements of account;

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

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

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

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

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

19 ~~((+8))~~ (9) "Director" means the director of licensing.

20 ~~((+9))~~ (10) "Licensee" means any person licensed under this  
21 chapter.

22 ~~((+10))~~ (11) "Out-of-state collection agency" means a person  
23 whose activities within this state are limited to collecting debts  
24 from debtors located in this state by means of interstate  
25 communications, including telephone, mail, or facsimile transmission,  
26 from the person's location in another state on behalf of clients  
27 located outside of this state, but does not include any person who is  
28 excluded from the definition of the term "debt collector" under the  
29 federal fair debt collection practices act (15 U.S.C. Sec. 1692a(6)).

30 ~~((+11))~~ (12) "Person" includes individual, firm, partnership,  
31 trust, joint venture, association, or corporation.

32 ~~((+12))~~ (13) "Statement of account" means a report setting forth  
33 only amounts billed, invoices, credits allowed, or aged balance due.

34 **Sec. 2.** RCW 19.16.250 and 2016 c 86 s 4 are each amended to read  
35 as follows:

36 No licensee or employee of a licensee shall:

37 (1) Directly or indirectly aid or abet any unlicensed person to  
38 engage in business as a collection agency in this state or receive  
39 compensation from such unlicensed person: PROVIDED, That nothing in

1 this chapter shall prevent a licensee from accepting, as forwarder,  
2 claims for collection from a collection agency or attorney whose  
3 place of business is outside the state.

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

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

18 (4) Have in his or her possession or make use of any badge, use a  
19 uniform of any law enforcement agency or any simulation thereof, or  
20 make any statements which might be construed as indicating an  
21 official connection with any federal, state, county, or city law  
22 enforcement agency, or any other governmental agency, while engaged  
23 in collection agency business.

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

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

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

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

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

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

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

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

12 (ii) Interest or service charge, collection costs, or late  
13 payment charges, if any, added to the original obligation by the  
14 original creditor, customer or assignor before it was received by the  
15 licensee for collection, if such information is known by the licensee  
16 or employee: PROVIDED, That upon written request of the debtor, the  
17 licensee shall make a reasonable effort to obtain information on such  
18 items and provide this information to the debtor;

19 (iii) Interest or service charge, if any, added by the licensee  
20 or customer or assignor after the obligation was received by the  
21 licensee for collection;

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

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

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

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

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

37 (i) The original account number or redacted original account  
38 number assigned to the debt, if known to the licensee or employee:  
39 PROVIDED, That upon written request of the debtor, the licensee must

1 make a reasonable effort to obtain this information or cease efforts  
2 to collect on the debt until this information is provided; and

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

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

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

18 (a) A licensee or employee of a licensee may inform a credit  
19 reporting bureau of the existence of a claim. If the licensee or  
20 employee of a licensee reports a claim to a credit reporting bureau,  
21 the licensee shall, upon receipt of written notice from the debtor  
22 that any part of the claim is disputed, notify the credit reporting  
23 bureau of the dispute by written or electronic means and create a  
24 record of the fact of the notification and when the notification was  
25 provided;

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

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

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

37 (ii) The debtor has not in writing to the licensee disputed any  
38 part of the claim: PROVIDED, That the licensee or employee may only  
39 communicate the existence of a claim which has not been reduced to

1 judgment to the debtor's employer once unless the debtor's employer  
2 has agreed to additional communications.

3 (d) A licensee may for the purpose of locating the debtor or  
4 locating assets of the debtor communicate the existence of a claim to  
5 any person who might reasonably be expected to have knowledge of the  
6 whereabouts of a debtor or the location of assets of the debtor if  
7 the claim is reduced to judgment, or if not reduced to judgment,  
8 when:

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

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

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

20 (i) The licensee has notified or attempted to notify the debtor  
21 in writing at his or her last known address or last known 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 disputed any part of the  
26 claim.

27 (11) Threaten the debtor with impairment of his or her credit  
28 rating if a claim is not paid: PROVIDED, That advising a debtor that  
29 the licensee has reported or intends to report a claim to a credit  
30 reporting agency is not considered a threat if the licensee actually  
31 has reported or intends to report the claim to a credit reporting  
32 agency.

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

1 receives notification in writing that an attorney is representing the  
2 debtor.

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

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

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

16 (c) It is made with the debtor or spouse at his or her place of  
17 residence between the hours of 9:00 p.m. and 7:30 a.m. A call to a  
18 telephone is presumed to be received in the local time zone to which  
19 the area code of the number called is assigned for landline numbers,  
20 unless the licensee reasonably believes the telephone is located in a  
21 different time zone. If the area code is not assigned to landlines in  
22 any specific geographic area, such as with toll-free telephone  
23 numbers, a call to a telephone is presumed to be received in the  
24 local time zone of the debtor's last known place of residence, unless  
25 the licensee reasonably believes the telephone is located in a  
26 different time zone.

27 (14) Communicate with the debtor through use of forms or  
28 instruments that simulate the form or appearance of judicial process,  
29 the form or appearance of government documents, or the simulation of  
30 a form or appearance of a telegraphic or emergency message.

31 (15) Communicate with the debtor and represent or imply that the  
32 existing obligation of the debtor may be or has been increased by the  
33 addition of attorney fees, investigation fees, service fees, or any  
34 other fees or charges when in fact such fees or charges may not  
35 legally be added to the existing obligation of such debtor.

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

38 (17) Send any telegram or make any telephone calls to a debtor or  
39 concerning a debt or for the purpose of demanding payment of a claim  
40 or seeking information about a debtor, for which the charges are



1 payable by the addressee or by the person to whom the call is made:  
2 PROVIDED, That:

3 (a) This subsection does not prohibit a licensee from attempting  
4 to communicate by way of a cellular telephone or other wireless  
5 device: PROVIDED, That a licensee cannot cause charges to be incurred  
6 to the recipient of the attempted communication more than three times  
7 in any calendar week when the licensee knows or reasonably should  
8 know that the number belongs to a cellular telephone or other  
9 wireless device, unless the licensee is responding to a communication  
10 from the debtor or the person to whom the call is made.

11 (b) The licensee is not in violation of (a) of this subsection if  
12 the licensee at least monthly updates its records with information  
13 provided by a commercial provider of cellular telephone lists that  
14 the licensee in good faith believes provides reasonably current and  
15 comprehensive data identifying cellular telephone numbers, calls a  
16 number not appearing in the most recent list provided by the  
17 commercial provider, and does not otherwise know or reasonably should  
18 know that the number belongs to a cellular telephone.

19 (c) This subsection may not be construed to increase the number  
20 of communications permitted pursuant to subsection (13)(a) of this  
21 section.

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

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

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

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

6 (a) Allowable interest, collection costs or handling fees  
7 expressly authorized by statute(~~(, and ,)~~);

8 (b) A transaction fee for processing a credit card payment in an  
9 amount that does not exceed two percent of the payment amount  
10 provided that a no-cost payment option is available to the debtor and  
11 the option is disclosed to the debtor at the same time and in the  
12 same manner as the debtor's credit card information is taken;

13 (c) In the case of suit, attorney's fees and taxable court  
14 costs(~~(. A licensee may collect or attempt to collect))~~); and

15 (d) In the case of a commercial claim, collection costs and fees,  
16 including contingent collection fees, as authorized by a written  
17 agreement or contract, between the licensee's client and the  
18 debtor(~~(, in the collection of a commercial claim))~~). The amount  
19 charged to the debtor for collection services shall not exceed  
20 thirty-five percent of the commercial claim.

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

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

31 (24) Upon notification by a debtor that the debtor disputes all  
32 debts arising from a series of dishonored checks, automated  
33 clearinghouse transactions on a demand deposit account, or other  
34 preprinted written instruments, initiate oral contact with a debtor  
35 more than one time in an attempt to collect from the debtor debts  
36 arising from the identified series of dishonored checks, automated  
37 clearinghouse transactions on a demand deposit account, or other  
38 preprinted written instruments when: (a) Within the previous one  
39 hundred eighty days, in response to the licensee's attempt to collect  
40 the initial debt assigned to the licensee and arising from the

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

26 The licensee is not in violation of this subsection if the  
27 licensee initiates oral contact with the debtor more than one time in  
28 an attempt to collect debts arising from the identified series of  
29 dishonored checks, automated clearinghouse transactions on a demand  
30 deposit account, or other preprinted written instruments when: (i)  
31 The licensee acted in good faith and relied on their established  
32 practices and procedures for batching, recording, or packeting debtor  
33 accounts, and the licensee inadvertently initiates oral contact with  
34 the debtor in an attempt to collect debts in the identified series  
35 subsequent to the initial debt assigned to the licensee; (ii) the  
36 licensee is following up on collection of a debt assigned to the  
37 licensee, and the debtor has previously requested more information  
38 from the licensee regarding the subject debt; (iii) the debtor has  
39 notified the licensee that the debtor disputes only some, but not all  
40 the debts arising from the identified series of dishonored checks,

1 automated clearinghouse transactions on a demand deposit account, or  
2 other preprinted written instruments, in which case the licensee  
3 shall be allowed to initiate oral contact with the debtor one time  
4 for each debt arising from the series of identified checks, automated  
5 clearinghouse transactions on a demand deposit account, or written  
6 instruments and initiate additional oral contact for those debts that  
7 the debtor acknowledges do not arise from stolen or fraudulently  
8 created checks or written instruments; (iv) the oral contact is in  
9 the context of a judicial, administrative, arbitration, mediation, or  
10 similar proceeding; or (v) the oral contact is made for the purpose  
11 of investigating, confirming, or authenticating the information  
12 received from the debtor, to provide additional information to the  
13 debtor, or to request additional information from the debtor needed  
14 by the licensee to accurately record the debtor's information in the  
15 licensee's records.

16 (25) Bring an action or initiate an arbitration proceeding on a  
17 claim for any amounts related to a transfer of sale of a vehicle  
18 when:

19 (a) The licensee has been informed or reasonably should know that  
20 the department of licensing transfer of sale form was filed in  
21 accordance with RCW 46.12.650 (1) through (3);

22 (b) The licensee has been informed or reasonably should know that  
23 the transfer of the vehicle either (i) was not made pursuant to a  
24 legal transfer or (ii) was not voluntarily accepted by the person  
25 designated as the purchaser/transferee; and

26 (c) Prior to the commencement of the action or arbitration, the  
27 licensee has received from the putative transferee a copy of a police  
28 report referencing that the transfer of sale of the vehicle either  
29 (i) was not made pursuant to a legal transfer or (ii) was not  
30 voluntarily accepted by the person designated as the purchaser/  
31 transferee.

32 (26) Submit an affidavit or other request pursuant to chapter  
33 6.32 RCW asking a superior or district court to transfer a bond  
34 posted by a debtor subject to a money judgment to the licensee, when  
35 the debtor has appeared as required.

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