

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 6093

53rd Legislature
1994 Regular Session

Passed by the Senate March 5, 1994
YEAS 44 NAYS 0

President of the Senate

Passed by the House March 3, 1994
YEAS 96 NAYS 0

**Speaker of the
House of Representatives**

Approved

Governor of the State of Washington

CERTIFICATE

I, Marty Brown, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 6093** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 6093

AS AMENDED BY THE HOUSE

Passed Legislature - 1994 Regular Session

State of Washington 53rd Legislature 1994 Regular Session

By Senate Committee on Law & Justice (originally sponsored by Senators A. Smith and Nelson)

Read first time 02/03/94.

1 AN ACT Relating to collection of debts; amending RCW 19.16.100,
2 19.16.110, 19.16.120, 19.16.140, 19.16.190, 19.16.230, 19.16.240,
3 19.16.260, 19.16.390, 19.16.430, 19.16.440, and 19.16.920.

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

5 **Sec. 1.** RCW 19.16.100 and 1990 c 190 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

1 and even though the forms may be or are actually used by the creditor
2 himself in his own name;

3 (c) Any person who in attempting to collect or in collecting his
4 own claim uses a fictitious name or any name other than his own which
5 would indicate to the debtor that a third person is collecting or
6 attempting to collect such claim.

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

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

15 (c) Any person whose collection activities are carried on in his or
16 its true name and are confined and are directly related to the
17 operation of a business other than that of a collection agency, such as
18 but not limited to trust companies, savings and loan associations,
19 building and loan associations, abstract companies doing an escrow
20 business, real estate brokers, public officers acting in their official
21 capacities, persons acting under court order, lawyers, insurance
22 companies, credit unions, loan or finance companies, mortgage banks,
23 and banks; ((~~or~~))

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

28 (e) An "out-of-state collection agency" as defined in this chapter.

29 (4) "Out-of-state collection agency" means a person whose
30 activities within this state are limited to collecting debts from
31 debtors located in this state by means of interstate communications,
32 including telephone, mail, or facsimile transmission, from the person's
33 location in another state on behalf of clients located outside of this
34 state.

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

37 ((+5)) (6) "Statement of account" means a report setting forth
38 only amounts billed, invoices, credits allowed, or aged balance due.

39 ((+6)) (7) "Director" means the director of licensing.

1 (~~(7)~~) (8) "Client" or "customer" means any person authorizing or
2 employing a collection agency to collect a claim.

3 (~~(8)~~) (9) "Licensee" means any person licensed under this
4 chapter.

5 (~~(9)~~) (10) "Board" means the Washington state collection agency
6 board.

7 (~~(10)~~) (11) "Debtor" means any person owing or alleged to owe a
8 claim.

9 **Sec. 2.** RCW 19.16.110 and 1971 ex.s. c 253 s 2 are each amended to
10 read as follows:

11 No person shall act, assume to act, or advertise as a collection
12 agency or out-of-state collection agency as defined in this chapter,
13 except as authorized by this chapter, without first having applied for
14 and obtained a license from the director.

15 Nothing contained in this section shall be construed to require a
16 regular employee of a collection agency or out-of-state collection
17 agency duly licensed under this chapter to procure a collection agency
18 license.

19 **Sec. 3.** RCW 19.16.120 and 1977 ex.s. c 194 s 1 are each amended to
20 read as follows:

21 In addition to other provisions of this chapter, any license issued
22 pursuant to this chapter or any application therefor may be denied, not
23 renewed, revoked, or suspended, or in lieu of or in addition to
24 suspension a licensee may be assessed a civil, monetary penalty in an
25 amount not to exceed one thousand dollars:

26 (1) If an individual applicant or licensee is less than eighteen
27 years of age or is not a resident of this state.

28 (2) If an applicant or licensee is not authorized to do business in
29 this state.

30 (3) If the application or renewal forms required by this chapter
31 are incomplete, fees required under RCW 19.16.140 and 19.16.150, if
32 applicable, have not been paid, and the surety bond or cash deposit or
33 other negotiable security acceptable to the director required by RCW
34 19.16.190, if applicable, has not been filed or renewed or is canceled.

35 (4) If any individual applicant, owner, officer, director, or
36 managing employee of a nonindividual applicant or licensee:

1 (a) Shall have knowingly made a false statement of a material fact
2 in any application for a collection agency license or an out-of-state
3 collection agency license or renewal thereof, or in any data attached
4 thereto and two years have not elapsed since the date of such
5 statement;

6 (b) Shall have had a license to engage in the business of a
7 collection agency or out-of-state collection agency denied, not
8 renewed, suspended, or revoked by this state, any other state, or
9 foreign country, for any reason other than the nonpayment of licensing
10 fees or failure to meet bonding requirements: PROVIDED, That the terms
11 of this subsection shall not apply if:

12 (i) Two years have elapsed since the time of any such denial,
13 nonrenewal, or revocation; or

14 (ii) The terms of any such suspension have been fulfilled;

15 (c) Has been convicted in any court of any felony involving
16 forgery, embezzlement, obtaining money under false pretenses, larceny,
17 extortion, or conspiracy to defraud and is incarcerated for that
18 offense or five years have not elapsed since the date of such
19 conviction;

20 (d) Has had any judgment entered against him in any civil action
21 involving forgery, embezzlement, obtaining money under false pretenses,
22 larceny, extortion, or conspiracy to defraud and five years have not
23 elapsed since the date of the entry of the final judgment in said
24 action: PROVIDED, That in no event shall a license be issued unless
25 the judgment debt has been discharged;

26 (e) Has had his license to practice law suspended or revoked and
27 two years have not elapsed since the date of such suspension or
28 revocation, unless he has been relicensed to practice law in this
29 state;

30 (f) Has had any judgment entered against him or it under the
31 provisions of RCW 19.86.080 or 19.86.090 involving a violation or
32 violations of RCW 19.86.020 and two years have not elapsed since the
33 entry of the final judgment: PROVIDED, That in no event shall a
34 license be issued unless the terms of such judgment, if any, have been
35 fully complied with: PROVIDED FURTHER, That said judgment shall not be
36 grounds for denial, suspension, nonrenewal, or revocation of a license
37 unless the judgment arises out of and is based on acts of the
38 applicant, owner, officer, director, managing employee, or licensee

1 while acting for or as a collection agency or an out-of-state
2 collection agency;

3 (g) Has petitioned for bankruptcy, and two years have not elapsed
4 since the filing of said petition;

5 (h) Shall be insolvent in the sense that his or its liabilities
6 exceed his or its assets or in the sense that he or it cannot meet his
7 or its obligations as they mature;

8 (i) Has failed to pay any civil, monetary penalty assessed in
9 accordance with RCW 19.16.351 or 19.16.360 within ten days after the
10 assessment becomes final; ((or))

11 (j) Has knowingly failed to comply with, or violated any provisions
12 of this chapter or any rule or regulation issued pursuant to this
13 chapter, and two years have not elapsed since the occurrence of said
14 noncompliance or violation; or

15 (k) Has been found by a court of competent jurisdiction to have
16 violated the federal fair debt collection practices act, 15 U.S.C. Sec.
17 1692 et seq., or the Washington state consumer protection act, chapter
18 19.86 RCW, and two years have not elapsed since that finding.

19 Any person who is engaged in the collection agency business as of
20 January 1, 1972 shall, upon filing the application, paying the fees,
21 and filing the surety bond or cash deposit or other negotiable security
22 in lieu of bond required by this chapter, be issued a license
23 hereunder.

24 **Sec. 4.** RCW 19.16.140 and 1985 c 7 s 81 are each amended to read
25 as follows:

26 Each applicant when submitting his application shall pay a
27 licensing fee and an investigation fee determined by the director as
28 provided in RCW 43.24.086. The licensing fee for an out-of-state
29 collection agency shall not exceed fifty percent of the licensing fee
30 for a collection agency. An out-of-state collection agency is exempt
31 from the licensing fee if the agency is licensed or registered in a
32 state that does not require payment of an initial fee by any person who
33 collects debts in the state only by means of interstate communications
34 from the person's location in another state. If a license is not
35 issued in response to the application, the license fee shall be
36 returned to the applicant.

37 An annual license fee determined by the director as provided in RCW
38 43.24.086 shall be paid to the director on or before January first of

1 each year. The annual license fee for an out-of-state collection
2 agency shall not exceed fifty percent of the annual license fee for a
3 collection agency. An out-of-state collection agency is exempt from
4 the annual license fee if the agency is licensed or registered in a
5 state that does not require payment of an annual fee by any person who
6 collects debts in the state only by means of interstate communications
7 from the person's location in another state. If the annual license fee
8 is not paid on or before January first, the licensee shall be assessed
9 a penalty for late payment in an amount determined by the director as
10 provided in RCW 43.24.086. If the fee and penalty are not paid by
11 January thirty-first, it will be necessary for the licensee to submit
12 a new application for a license: PROVIDED, That no license shall be
13 issued upon such new application unless and until all fees and
14 penalties previously accrued under this section have been paid.

15 Any license or branch office certificate issued under the
16 provisions of this chapter shall expire on December thirty-first
17 following the issuance thereof.

18 **Sec. 5.** RCW 19.16.190 and 1971 ex.s. c 253 s 10 are each amended
19 to read as follows:

20 (1) Except as limited by subsection (7) of this section, each
21 applicant shall, at the time of applying for a license, file with the
22 director a surety bond in the sum of five thousand dollars. The bond
23 shall be annually renewable on January first of each year, shall be
24 approved by the director as to form and content, and shall be executed
25 by the applicant as principal and by a surety company authorized to do
26 business in this state as surety. Such bond shall run to the state of
27 Washington as obligee for the benefit of the state and conditioned that
28 the licensee shall faithfully and truly perform all agreements entered
29 into with the licensee's clients or customers and shall, within thirty
30 days after the close of each calendar month, account to and pay to his
31 client or customer the net proceeds of all collections made during the
32 preceding calendar month and due to each client or customer less any
33 offsets due licensee under RCW 19.16.210 and 19.16.220. The bond
34 required by this section shall remain in effect until canceled by
35 action of the surety or the licensee or the director.

36 (2) An applicant for a license under this chapter may furnish,
37 file, and deposit with the director, in lieu of the surety bond
38 provided for herein, a cash deposit or other negotiable security

1 acceptable to the director. The security deposited with the director
2 in lieu of the surety bond shall be returned to the licensee at the
3 expiration of one year after the collection agency's license has
4 expired or been revoked if no legal action has been instituted against
5 the licensee or on said security deposit at the expiration of said one
6 year.

7 (3) A surety may file with the director notice of his or its
8 withdrawal on the bond of the licensee. Upon filing a new bond or upon
9 the revocation of the collection agency license or upon the expiration
10 of sixty days after the filing of notice of withdrawal as surety by the
11 surety, the liability of the former surety for all future acts of the
12 licensee shall terminate.

13 (4) The director shall immediately cancel the bond given by a
14 surety company upon being advised that the surety company's license to
15 transact business in this state has been revoked.

16 (5) Upon the filing with the director of notice by a surety of his
17 withdrawal as the surety on the bond of a licensee or upon the
18 cancellation by the director of the bond of a surety as provided in
19 this section, the director shall immediately give notice to the
20 licensee of the withdrawal or cancellation. The notice shall be sent
21 to the licensee by registered or certified mail with request for a
22 return receipt and addressed to the licensee at his or its main office
23 as shown by the records of the director. At the expiration of thirty
24 days from the date of mailing the notice, the license of the licensee
25 shall be terminated, unless the licensee has filed a new bond with a
26 surety satisfactory to the director.

27 (6) All bonds given under this chapter shall be filed and held in
28 the office of the director.

29 (7) An out-of-state collection agency need not fulfill the bonding
30 requirements under this section if the out-of-state collection agency
31 maintains an adequate bond or legal alternative as required by the
32 state in which the out-of-state collection agency is located.

33 **Sec. 6.** RCW 19.16.230 and 1987 c 85 s 1 are each amended to read
34 as follows:

35 (1) Every licensee required to keep and maintain records pursuant
36 to this section, other than an out-of-state collection agency, shall
37 establish and maintain a regular active business office in the state of
38 Washington for the purpose of conducting his or its collection agency

1 business. Said office must be open to the public during reasonable
2 stated business hours, and must be managed by a resident of the state
3 of Washington.

4 (2) Every licensee shall keep a record of all sums collected by him
5 or it and all disbursements made by him or it. All such records shall
6 be kept at the business office referred to in subsection (1) of this
7 section, unless the licensee is an out-of-state collection agency, in
8 which case the record shall be kept at the business office listed on
9 the licensee's license.

10 (3) Licensees shall maintain and preserve accounting records of
11 collections and payments to customers for a period of four years from
12 the date of the last entry thereon.

13 **Sec. 7.** RCW 19.16.240 and 1971 ex.s. c 253 s 15 are each amended
14 to read as follows:

15 Each licensee, other than an out-of-state collection agency, shall
16 at all times maintain a separate bank account in this state in which
17 all moneys collected by the licensee shall be deposited except that
18 negotiable instruments received may be forwarded directly to a
19 customer. Moneys received must be deposited within ten days after
20 posting to the book of accounts. In no event shall moneys received be
21 disposed of in any manner other than to deposit such moneys in said
22 account or as provided in this section.

23 The bank account shall bear some title sufficient to distinguish it
24 from the licensee's personal or general checking account, such as
25 "Customer's Trust Fund Account". There shall be sufficient funds in
26 said trust account at all times to pay all moneys due or owing to all
27 customers and no disbursements shall be made from such account except
28 to customers or to remit moneys collected from debtors on assigned
29 claims and due licensee's attorney or to refund over payments except
30 that a licensee may periodically withdraw therefrom such moneys as may
31 accrue to licensee.

32 Any money in such trust account belonging to a licensee may be
33 withdrawn for the purpose of transferring the same into the possession
34 of licensee or into a personal or general account of licensee.

35 **Sec. 8.** RCW 19.16.260 and 1971 ex.s. c 253 s 17 are each amended
36 to read as follows:

1 No collection agency or out-of-state collection agency may bring or
2 maintain an action in any court of this state involving the collection
3 of a claim of any third party without alleging and proving that he or
4 it is duly licensed under this chapter and has satisfied the bonding
5 requirements hereof, if applicable: PROVIDED, That in any case where
6 judgment is to be entered by default, it shall not be necessary for the
7 collection agency or out-of-state collection agency to prove such
8 matters.

9 A copy of the current collection agency license or out-of-state
10 collection agency license, certified by the director to be a true and
11 correct copy of the original, shall be prima facie evidence of the
12 licensing and bonding of such collection agency or out-of-state
13 collection agency as required by this chapter.

14 **Sec. 9.** RCW 19.16.390 and 1971 ex.s. c 253 s 30 are each amended
15 to read as follows:

16 Personal service of any process in an action under this chapter may
17 be made upon any person outside the state if such person has engaged in
18 conduct in violation of this chapter which has had the impact in this
19 state which this chapter reprehends. Such persons shall be deemed to
20 have thereby submitted themselves to the jurisdiction of the courts of
21 this state within the meaning of RCW 4.28.180 and 4.28.185. A holder
22 of an out-of-state collection agency license is deemed to have
23 appointed the director or the director's designee to be the licensee's
24 true and lawful agent upon whom may be served any legal process against
25 that licensee arising or growing out of any violation of this chapter.

26 **Sec. 10.** RCW 19.16.430 and 1973 1st ex.s. c 20 s 6 are each
27 amended to read as follows:

28 (1) Any person who knowingly operates as a collection agency or
29 out-of-state collection agency without a license or knowingly aids and
30 abets such violation is punishable by a fine not exceeding five hundred
31 dollars or by imprisonment not exceeding one year or both.

32 (2) Any person who operates as a collection agency or out-of-state
33 collection agency in the state of Washington without a valid license
34 issued pursuant to this chapter shall not charge or receive any fee or
35 compensation on any moneys received or collected while operating
36 without a license or on any moneys received or collected while
37 operating with a license but received or collected as a result of his

1 or its acts as a collection agency or out-of-state collection agency
2 while not licensed hereunder. All such moneys collected or received
3 shall be forthwith returned to the owners of the accounts on which the
4 moneys were paid.

5 **Sec. 11.** RCW 19.16.440 and 1973 1st ex.s. c 20 s 7 are each
6 amended to read as follows:

7 The operation of a collection agency or out-of-state collection
8 agency without a license as prohibited by RCW 19.16.110 and the
9 commission by a licensee or an employee of a licensee of an act or
10 practice prohibited by RCW 19.16.250 are declared to be unfair acts or
11 practices or unfair methods of competition in the conduct of trade or
12 commerce for the purpose of the application of the Consumer Protection
13 Act found in chapter 19.86 RCW.

14 **Sec. 12.** RCW 19.16.920 and 1971 ex.s. c 253 s 42 are each amended
15 to read as follows:

16 (1) The provisions of this chapter relating to the licensing and
17 regulation of collection agencies and out-of-state collection agencies
18 shall be exclusive and no county, city, or other political subdivision
19 of this state shall enact any laws or rules and regulations licensing
20 or regulating collection agencies.

21 (2) This section shall not be construed to prevent a political
22 subdivision of this state from levying a business and occupation tax
23 upon collection agencies or out-of-state collection agencies
24 maintaining an office within that political subdivision if a business
25 and occupation tax is levied by it upon other types of businesses
26 within its boundaries.

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