

CERTIFICATION OF ENROLLMENT

SENATE BILL 5331

Chapter 47, Laws of 2001

57th Legislature
2001 Regular Session

COLLECTIONS--COMMERCIAL CLAIMS

EFFECTIVE DATE: 7/22/01

Passed by the Senate March 12, 2001
YEAS 44 NAYS 0

ROSA FRANKLIN
President of the Senate

Passed by the House April 4, 2001
YEAS 91 NAYS 2

FRANK CHOPP
**Speaker of the
House of Representatives**

CLYDE BALLARD
**Speaker of the
House of Representatives**

Approved April 17, 2001

GARY LOCKE
Governor of the State of Washington

CERTIFICATE

I, Tony M. Cook, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 5331** as passed by the Senate and the House of Representatives on the dates hereon set forth.

TONY M. COOK
Secretary

FILED

April 17, 2001 - 9:11 a.m.

**Secretary of State
State of Washington**

SENATE BILL 5331

Passed Legislature - 2001 Regular Session

State of Washington 57th Legislature 2001 Regular Session

By Senators Kline, McCaslin, Johnson and Long

Read first time 01/19/2001. Referred to Committee on Judiciary.

1 AN ACT Relating to collection of business to business debts; and
2 amending RCW 19.16.100 and 19.16.250.

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

4 **Sec. 1.** RCW 19.16.100 and 1994 c 195 s 1 are each amended to read
5 as follows:

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

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

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

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

15 (b) Any person who directly or indirectly furnishes or attempts to
16 furnish, sells, or offers to sell forms represented to be a collection
17 system or scheme intended or calculated to be used to collect claims
18 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;

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

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

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

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

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

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

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

10 **Sec. 2.** RCW 19.16.250 and 1983 c 107 s 1 are each amended to read
11 as follows:

12 No licensee or employee of a licensee shall:

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

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

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

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

1 (5) Perform any act or acts, either directly or indirectly,
2 constituting the 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 its current license
10 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 which represents or
13 implies that a claim exists unless it shall indicate in clear and
14 legible type:

15 (a) The name of the licensee and the city, street, and number at
16 which he 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 make a
20 reasonable effort to obtain the name of such person and provide this
21 name to the debtor;

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 its first notice to the debtor, an
25 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;

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

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

4 (vi) Any other charge or fee that the licensee is attempting to
5 collect on his or its own behalf or on the behalf of a customer or
6 assignor.

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

11 (a) A licensee or employee of a licensee may inform a credit
12 reporting bureau of the existence of a claim: PROVIDED, That if the
13 licensee or employee of a licensee reports a claim to a credit
14 reporting bureau, the licensee shall upon receipt of written notice
15 from the debtor that any part of the claim is disputed, forward a copy
16 of such written notice to the credit reporting bureau;

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

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

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

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

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

38 (i) The licensee or employee has notified or attempted to notify
39 the debtor in writing at his last known address or last known place of

1 employment concerning the claim and the debtor after a reasonable time
2 has failed to pay the claim or has failed to agree to make payments on
3 the claim in a manner acceptable to the licensee, and

4 (ii) The debtor has not in writing disputed any part of the 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 in
9 writing at his last known address or last known place of employment
10 concerning the claim and the debtor after a reasonable time has failed
11 to pay the claim or has failed to agree to make payments on the claim
12 in a manner acceptable to the licensee, and

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

14 (10) Threaten the debtor with impairment of his credit rating if a
15 claim is not paid.

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

24 (12) Communicate with a debtor or anyone else in such a manner as
25 to harass, intimidate, threaten, or embarrass a debtor, including but
26 not limited to communication at an unreasonable hour, with unreasonable
27 frequency, by threats of force or violence, by threats of criminal
28 prosecution, and by use of offensive language. A communication shall
29 be presumed to have been made for the purposes of harassment if:

30 (a) It is made with a debtor or spouse in any form, manner, or
31 place, more than three times in a single week;

32 (b) It is made with a debtor at his or her place of employment more
33 than one time in a single week;

34 (c) It is made with the debtor or spouse at his or her place of
35 residence between the hours of 9:00 p.m. and 7:30 a.m.

36 (13) Communicate with the debtor through use of forms or
37 instruments that simulate the form or appearance of judicial process,
38 the form or appearance of government documents, or the simulation of a
39 form or appearance of a telegraphic or emergency message.

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

6 (15) Threaten to take any action against the debtor which the
7 licensee cannot legally take at the time the threat is made.

8 (16) Send any telegram or make any telephone calls to a debtor or
9 concerning a debt or for the purpose of demanding payment of a claim or
10 seeking information about a debtor, for which the charges are payable
11 by the addressee or by the person to whom the call is made.

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

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

25 (19) Procure from a debtor or collect or attempt to collect on any
26 written note, contract, stipulation, promise or acknowledgment under
27 which a debtor may be required to pay any sum other than principal,
28 allowable interest, except as noted in subsection (18) of this section,
29 and, in the case of suit, attorney's fees and taxable court costs.

Passed the Senate March 12, 2001.

Passed the House April 4, 2001.

Approved by the Governor April 17, 2001.

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