
ENGROSSED SUBSTITUTE SENATE BILL 5400

State of Washington

61st Legislature

2009 Regular Session

By Senate Financial Institutions, Housing & Insurance (originally sponsored by Senators Tom, Berkey, Benton, McCaslin, Shin, Roach, and Kline; by request of Department of Financial Institutions)

READ FIRST TIME 02/25/09.

1 AN ACT Relating to collection of debt; amending RCW 31.04.015 and
2 31.04.115; reenacting and amending RCW 19.16.250; and adding new
3 sections to chapter 31.04 RCW.

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

5 NEW SECTION. **Sec. 1.** The definitions in this section apply
6 throughout this chapter unless the context clearly requires otherwise.

7 (1) "FHA-approved reverse mortgage" means a "home equity conversion
8 mortgage" or other reverse mortgage product guaranteed or insured by
9 the federal department of housing and urban development.

10 (2) "Owner-occupied residence" is the borrower's residence and
11 includes a life estate property the legal title for which is held in
12 the name of the borrower in a reverse mortgage transaction or in the
13 name of a trust, provided the occupant of the property is the
14 beneficiary of that trust.

15 (3) "Proprietary reverse mortgage loan" is any reverse mortgage
16 loan product that is not a home equity conversion mortgage loan or
17 other federally guaranteed or insured loan.

18 (4) "Reverse mortgage broker or lender" means a licensee under the

1 Washington state consumer loan act, chapter 31.04 RCW, or a person
2 exempt from licensing pursuant to federal law.

3 (5) "Reverse mortgage loan" means a nonrecourse consumer credit
4 obligation in which:

5 (a) A mortgage, deed of trust, or equivalent consensual security
6 interest securing one or more advances is created in the borrower's
7 dwelling;

8 (b) Any principal, interest, or shared appreciation or equity is
9 due and payable, other than in the case of default, only after:

10 (i) The consumer dies;

11 (ii) The dwelling is transferred; or

12 (iii) The consumer ceases to occupy the dwelling as a dwelling; and

13 (c) The broker or lender is licensed under Washington state law or
14 exempt from licensing under federal law.

15 NEW SECTION. **Sec. 2.** (1) For purposes of sections 1 through 9 of
16 this act, in addition to any other requirements, licensees must comply
17 with the following requirements before offering proprietary reverse
18 mortgage loans:

19 (a) Maintain an irrevocable standby letter of credit approved by
20 the director from a financial institution approved by the director in
21 favor of the licensee in an amount necessary to fund all reverse
22 mortgage loan requirements anticipated over the next twelve months for
23 loans then on the licensee's books and those expected to be made over
24 the next twelve months or three million dollars, whichever is greater.
25 The initial term of the letter of credit must be at least two years.

26 (b) The financial institution that provides the letter of credit as
27 required in (a) of this subsection may not be affiliated with the
28 licensee.

29 (c) A licensee with a rating of either 4A1 or 5A1 from Dun &
30 Bradstreet credit services for three consecutive years is exempt from
31 the requirements set forth in (a) of this subsection.

32 (2) The licensee shall maintain a minimum capital of ten million
33 dollars.

34 (3) A licensee may rely on the capital of its parent to satisfy the
35 requirement of subsection (2) of this section. However, for any year
36 in which a licensee seeks to so rely, it shall provide to the director
37 a certified financial statement of the parent showing a net worth of at

1 least one hundred million dollars as of the close of its most recent
2 fiscal year and a binding written commitment from the parent to the
3 licensee to make a minimum of ten million dollars available to the
4 licensee as a capital contribution in connection with its reverse
5 mortgage lending program.

6 (4) Subsections (2) and (3) of this section do not apply to a
7 licensee that:

8 (a) Only originates proprietary reverse mortgage loans the proceeds
9 of which are fully disbursed at the loan closing; or

10 (b) Only originates proprietary reverse mortgage loans that are
11 sold into the secondary market to an investor with either a 4A1 or 5A1
12 rating from Dun & Bradstreet credit services. A licensee that makes
13 such a sale shall obtain a written commitment to purchase the loans
14 from the investor prior to closing and shall arrange for the delivery
15 of the loans to the investor within ten days of the loan closing.

16 NEW SECTION. **Sec. 3.** The department of financial institutions has
17 specific authority to develop rules regarding the interpretation and
18 implementation of this section. A proprietary reverse mortgage loan
19 must comply with all of the following requirements:

20 (1) For the purposes of this section prepayment, in whole or in
21 part, or the refinancing of a reverse mortgage loan, is permitted
22 without penalty at any time during the term of the reverse mortgage
23 loan. For the purposes of this section, penalty does not include any
24 fees, payments, or other charges, not including interest, that would
25 have otherwise been due upon the reverse mortgage being due and
26 payable. However, when a reverse mortgage lender has paid or waived
27 all of the usual fees or costs associated with a reverse mortgage loan,
28 a prepayment penalty may be imposed, provided the penalty does not
29 exceed the total amount of the usual fees or costs that were initially
30 absorbed or waived by the reverse mortgage lender. A mortgagee may not
31 impose a prepayment penalty under this subsection if the prepayment is
32 caused by the occurrence of the death of the borrowers. A borrower
33 must be provided prior written notice of any permissible prepayment
34 penalty under this section;

35 (2) A reverse mortgage loan may provide for a fixed or adjustable
36 interest rate or combination thereof, including compound interest, and

1 may also provide for interest that is contingent on the value of the
2 property upon execution of the loan or at maturity, or on changes in
3 value between closing and maturity;

4 (3) The lender shall pay a late charge to the borrower for any late
5 advance. If the lender does not mail or electronically transfer a
6 scheduled monthly advance to the borrower on the first business day of
7 the month, or within five business days of the date the lender receives
8 the request, or such other regularly scheduled contractual date, the
9 late charge is ten percent of the entire amount that should have been
10 paid to the borrower for that month or as a result of that request.
11 For each additional day that the lender fails to make the advance, the
12 lender shall pay interest on the late advance at the interest rate
13 stated in the loan documents. If the loan documents provide for an
14 adjustable interest rate, the rate in effect when the late charge first
15 accrues is used. Any late charge is paid from the lender's funds and
16 may not be added to the unpaid principal balance. Additionally, the
17 lender forfeits the right to interest and a monthly servicing fee for
18 any months in which the advance has not been timely made. This section
19 does not affect the department of financial institution's ability to
20 impose other sanctions to protect consumers of reverse mortgage loans;

21 (4) The reverse mortgage loan may become due and payable upon the
22 occurrence of any one of the following events:

23 (a) The home securing the loan is sold or title to the home is
24 otherwise transferred;

25 (b) All borrowers cease occupying the home as a principal
26 residence, except as provided in subsection (5) of this section; or

27 (c) A defaulting event occurs which is specified in the loan
28 documents;

29 (5) Repayment of the reverse mortgage loan is subject to the
30 following additional conditions:

31 (a) Temporary absences from the home not exceeding one hundred
32 eighty consecutive days do not cause the mortgage to become due and
33 payable;

34 (b) Extended absences from the home exceeding one hundred eighty
35 consecutive days, but less than one year, do not cause the mortgage to
36 become due and payable if the borrower has taken prior action that
37 secures and protects the home in a manner satisfactory to the lender,
38 as specified in the loan documents;

1 (c) The lender's right to collect reverse mortgage loan proceeds is
2 subject to the applicable statute of limitations for written loan
3 contracts. Notwithstanding any other provision of law, the statute of
4 limitations shall commence on the date that the reverse mortgage loan
5 becomes due and payable as provided in the loan agreement; and

6 (d) Using conspicuous, bold sixteen-point or larger type, the
7 lender shall disclose in the loan agreement any interest rate or other
8 fees to be charged during the period that commences on the date that
9 the reverse mortgage loan becomes due and payable, and that ends when
10 repayment in full is made;

11 (6) The first page of any deed of trust securing a reverse mortgage
12 loan must contain the following statement in sixteen-point boldface
13 type: "This deed of trust secures a reverse mortgage loan;"

14 (7) A lender or any other party that participates in the
15 origination of a reverse mortgage loan shall not require an applicant
16 for a reverse mortgage to purchase an annuity, insurance, or another
17 product as a condition of obtaining a reverse mortgage loan. A reverse
18 mortgage lender or a broker arranging a reverse mortgage loan shall
19 not:

20 (a) Offer an annuity to the borrower prior to the closing of the
21 reverse mortgage or before the expiration of the right of the borrower
22 to rescind the reverse mortgage agreement;

23 (b) Refer the borrower to anyone for the purchase of an annuity
24 prior to the closing of the reverse mortgage or before the expiration
25 of the right of the borrower to rescind the reverse mortgage agreement;
26 or

27 (c) Provide marketing information or annuity sales leads to anyone
28 regarding the prospective borrower or borrower, or receive any
29 compensation for such an annuity sale or referral;

30 (8)(a) A lender or any other party that participates in the
31 origination of a reverse mortgage loan shall maintain safeguards,
32 acceptable to the department of financial institutions, to ensure that
33 individuals offering reverse mortgage loans do not provide reverse
34 mortgage borrowers with any other financial or insurance products and
35 that individuals participating in the origination of a reverse mortgage
36 loan have no ability or incentive to provide the borrower with any
37 other financial or insurance product;

1 (b) The borrower shall not be required, directly or indirectly, as
2 a condition of obtaining a reverse mortgage under this section, to
3 purchase any other financial or insurance products;

4 (9) Prior to accepting a final and complete application for a
5 reverse mortgage loan or assessing any fees, a lender shall refer the
6 prospective borrower to an independent housing counseling agency
7 approved by the federal department of housing and urban development for
8 counseling. The counseling must meet the standards and requirements
9 established by the federal department of housing and urban development
10 for reverse mortgage counseling. The lender shall provide the borrower
11 with a list of at least five independent housing counseling agencies
12 approved by the federal department of housing and urban development,
13 including at least two agencies that can provide counseling by
14 telephone. Telephone counseling is only available at the borrower's
15 request;

16 (10) A lender shall not accept a final and complete application for
17 a reverse mortgage loan from a prospective applicant or assess any fees
18 upon a prospective applicant without first receiving a certification
19 from the applicant or the applicant's authorized representative that
20 the applicant has received counseling from an agency as described in
21 subsection (9) of this section. The certification must be signed by
22 the borrower and the agency counselor, and must include the date of the
23 counseling and the names, addresses, and telephone numbers of both the
24 counselor and the borrower. Electronic facsimile copy of the housing
25 counseling certification satisfies the requirements of this subsection.
26 The lender shall maintain the certification in an accurate,
27 reproducible, and accessible format for the term of the reverse
28 mortgage;

29 (11) A reverse mortgage loan may not be made for a Washington state
30 resident unless that resident is a minimum of sixty years of age as of
31 the date of execution of the loan; and

32 (12) Except for the initial disbursement of moneys to the closing
33 agent, advances by the lender to the borrower must be issued directly
34 to the borrower, or his or her legal representative, and not to an
35 intermediary or third party.

36 NEW SECTION. **Sec. 4.** The borrower in a proprietary reverse

1 mortgage transaction has the same right to rescind the transaction as
2 provided in the truth in lending act, Regulation Z, 12 C.F.R. Sec. 226.

3 NEW SECTION. **Sec. 5.** (1) This section does not apply to a home
4 equity conversion mortgage or other federally administered reverse
5 mortgage product. A proprietary reverse mortgage loan product may not
6 be offered without preapproval by the department of financial
7 institutions.

8 (2) The director may make rules regarding the preapproval process,
9 and may require any documentation, information, standards, or data
10 deemed necessary by the director. The director may disapprove any
11 proprietary reverse mortgage loan products that contain or incorporate
12 by reference any inconsistent, ambiguous, or misleading provisions or
13 terms, or exceptions and conditions which unreasonably or deceptively
14 affect the reverse mortgage contract. Additional grounds for
15 disapproval may include, without limitation, the existence in the
16 proprietary product of any benefits provided to the borrower that are
17 contrary to public policy.

18 NEW SECTION. **Sec. 6.** (1) A proprietary reverse mortgage loan
19 application may not be taken by a lender unless the loan applicant has
20 received from the lender the following plain language statement in
21 conspicuous bold sixteen-point type or larger, advising the prospective
22 borrower about counseling prior to obtaining the reverse mortgage loan
23 within three business days of receipt of the completed loan
24 application:

25 **"Important notice to reverse mortgage loan applicant**

26 **A reverse mortgage is a complex financial transaction that provides**
27 **a means of using the equity you have built up in your home, or the**
28 **value of your home, as a way to access home equity.**

29 **If you decide to obtain a reverse mortgage loan, you will sign**
30 **binding legal documents that will have important legal, tax, and**
31 **financial implications for you and your estate.**

32 **It is very important for you to understand the terms of the reverse**
33 **mortgage and its effect. Before entering into this transaction, you**
34 **are required by law to consult with an independent loan counselor. A**
35 **list of approved counselors will be provided to you by the lender or**

1 **broker. You may also want to discuss your decision with family members**
2 **or others on whom you rely for financial advice."**

3 (2) As part of the disclosure required under this section, the
4 lender or servicer shall provide an annual, or more frequent,
5 disclosure statement to the borrower, providing details of the loan
6 advances, balance, other terms, and the name and telephone number of
7 the lender's employee or agent who has been specifically designated to
8 respond to inquiries concerning reverse mortgage loans.

9 (3) In addition to any other loan documentation or disclosure,
10 prior to execution of the loan and at the end of the loan term, the
11 lender may either obtain an independent appraisal of the property value
12 or use the current year's tax assessment valuation of the property.
13 Copies of these appraisals must be timely provided to the borrower
14 within five days of the borrower's written request, provided the
15 borrower has paid for the appraisal.

16 NEW SECTION. **Sec. 7.** (1) In addition to any other remedies, if a
17 lender defaults on any of the reverse mortgage loan terms and fails to
18 cure an actual default after notice as specified in the loan documents,
19 the borrower, or the borrower's estate, is entitled to treble damages.

20 (2) An arrangement, transfer, or lien subject to this chapter is
21 not invalidated solely because of the failure of a lender to comply
22 with any provision of this chapter. However, this section does not
23 preclude the application of any other existing civil remedies provided
24 by law.

25 (3) A violation of federal legal requirements for an FHA-approved
26 reverse mortgage as defined in section 1(1) of this act constitutes a
27 violation of this chapter.

28 NEW SECTION. **Sec. 8.** (1) To the extent that implementation of
29 this section does not conflict with federal law resulting in the loss
30 of federal funding, proprietary reverse mortgage loan advances made to
31 a borrower must be treated as proceeds from a loan and not as income
32 for the purpose of determining eligibility and benefits under means-
33 tested programs of aid to individuals.

34 (2) Undisbursed reverse mortgage funds must be treated as equity in
35 the borrower's home and not as proceeds from a loan, resources, or

1 assets for the purpose of determining eligibility and benefits under
2 means-tested programs of aid to individuals.

3 (3) This section applies to any law or program relating to
4 payments, allowances, benefits, or services provided on a means-tested
5 basis by this state including, but not limited to, optional state
6 supplements to the federal supplemental security income program, low-
7 income energy assistance, property tax relief, general assistance, and
8 medical assistance only to the extent this section does not conflict
9 with Title 19 of the federal social security act.

10 NEW SECTION. **Sec. 9.** The director of the department of financial
11 institutions may take the necessary steps to ensure that this act is
12 implemented on its effective date.

13 NEW SECTION. **Sec. 10.** Sections 1 through 9 of this act may be
14 known and cited as the Washington state reverse mortgage act.

15 NEW SECTION. **Sec. 11.** Sections 1 through 10 of this act are each
16 added to chapter 31.04 RCW and codified with the subchapter heading of
17 "reverse mortgage lending."

18 **Sec. 12.** RCW 31.04.015 and 2001 c 81 s 1 are each amended to read
19 as follows:

20 The definitions set forth in this section apply throughout this
21 chapter unless the context clearly requires a different meaning.

22 (1) "Person" includes individuals, partnerships, associations,
23 limited liability companies, limited liability partnerships, trusts,
24 corporations, and all other legal entities.

25 (2) "License" means a single license issued under the authority of
26 this chapter with respect to a single place of business.

27 (3) "Licensee" means a person to whom one or more licenses have
28 been issued.

29 (4) "Director" means the director of financial institutions.

30 (5) "Insurance" means life insurance, disability insurance,
31 property insurance, involuntary unemployment insurance, and such other
32 insurance as may be authorized by the insurance commissioner.

33 (6) "Add-on method" means the method of precomputing interest
34 payable on a loan whereby the interest to be earned is added to the

1 principal balance and the total plus any charges allowed under this
2 chapter is stated as the loan amount, without further provision for the
3 payment of interest except for failure to pay according to loan terms.
4 The director may adopt by rule a more detailed explanation of the
5 meaning and use of this method.

6 (7) "Simple interest method" means the method of computing interest
7 payable on a loan by applying the annual percentage interest rate or
8 its periodic equivalent to the unpaid balances of the principal of the
9 loan outstanding for the time outstanding with each payment applied
10 first to any unpaid penalties, fees, or charges, then to accumulated
11 interest, and the remainder of the payment applied to the unpaid
12 balance of the principal until paid in full. In using such method,
13 interest shall not be payable in advance nor compounded, except that on
14 a loan secured by real estate, a licensee may collect at the time of
15 the loan closing up to but not exceeding forty-five days of prepaid
16 interest. The prohibition on compounding interest does not apply to
17 reverse mortgage loans made in accordance with the Washington state
18 reverse mortgage act. The director may adopt by rule a more detailed
19 explanation of the meaning and use of this method.

20 (8) "Applicant" means a person applying for a license under this
21 chapter.

22 (9) "Borrower" means any person who consults with or retains a
23 licensee or person subject to this chapter in an effort to obtain or
24 seek information about obtaining a loan, regardless of whether that
25 person actually obtains such a loan.

26 (10) "Loan" means a sum of money lent at interest or for a fee or
27 other charge and includes both open-end and closed-end loan
28 transactions.

29 (11) "Loan originator" means a person employed, either directly or
30 indirectly, or retained as an independent contractor by a licensee, to
31 make or assist a person in applying to obtain a loan.

32 (12) "Making a loan" means closing a loan in a person's name, or
33 advancing, offering to advance, or making a commitment to advance funds
34 to a borrower for a loan.

35 (13) "Mortgage broker" means the same as defined in RCW 19.146.010,
36 except that for purposes of this chapter, a licensee or person subject
37 to this chapter cannot receive compensation as both a consumer loan

1 licensee making the loan and as a mortgage broker in the same loan
2 transaction.

3 (14) "Officer" means an official appointed by the company for the
4 purpose of making business decisions or corporate decisions.

5 (15) "Principal" means any person who controls, directly or
6 indirectly through one or more intermediaries, alone or in concert with
7 others, a ten percent or greater interest in a partnership; company;
8 association or corporation; or a limited liability company, and the
9 owner of a sole proprietorship.

10 (16) "Senior officer" means an officer of a licensee at the vice
11 president level or above.

12 (17) "Third party service provider" means any person other than the
13 licensee or a mortgage broker who provides goods or services to the
14 licensee or borrower in connection with the preparation of the
15 borrower's loan and includes, but is not limited to, credit reporting
16 agencies, real estate brokers or salespersons, title insurance
17 companies and agents, appraisers, structural and pest inspectors, or
18 escrow companies.

19 **Sec. 13.** RCW 31.04.115 and 1994 c 92 s 168 are each amended to
20 read as follows:

21 (1) As used in this section, "open-end loan" means an agreement
22 between a licensee and a borrower that expressly states that the loan
23 is made in accordance with this chapter and that provides that:

24 (a) A licensee may permit the borrower to obtain advances of money
25 from the licensee from time to time, or the licensee may advance money
26 on behalf of the borrower from time to time as directed by the
27 borrower;

28 (b) The amount of each advance and permitted charges and costs are
29 debited to the borrower's account, and payments and other credits are
30 credited to the same account;

31 (c) The charges are computed on the unpaid principal balance, or
32 balances, of the account from time to time; and

33 (d) The borrower has the privilege of paying the account in full at
34 any time without prepayment penalty or, if the account is not in
35 default, in monthly installments of fixed or determinable amounts as
36 provided in the agreement.

1 (2)(a) Interest charges on an open-end loan shall not exceed
2 twenty-five percent per annum computed in each billing cycle by any of
3 the following methods:

4 (~~(a)~~) (i) By converting the annual rate to a daily rate, and
5 multiplying the daily rate by the daily unpaid principal balance of the
6 account, in which case each daily rate is determined by dividing the
7 annual rate by three hundred sixty-five;

8 (~~(b)~~) (ii) By multiplying a monthly rate by the average daily
9 unpaid principal balance of the account in the billing cycle, in which
10 case the monthly rate is one-twelfth of the annual rate, and the
11 average daily unpaid principal balance is the sum of the amount unpaid
12 each day during the cycle divided by the number of days in the cycle;
13 or

14 (~~(c)~~) (iii) By converting the annual rate to a daily rate, and
15 multiplying the daily rate by the average daily unpaid principal
16 balance of the account in the billing cycle, in which case the daily
17 rate is determined by dividing the annual rate by three hundred sixty-
18 five, and the average daily unpaid principal balance is the sum of the
19 amount unpaid each day during the cycle divided by the number of days
20 in the cycle.

21 For all of the methods of computation specified in this subsection
22 (2)(a), the billing cycle shall be monthly, and the unpaid principal
23 balance on any day shall be determined by adding to the balance unpaid,
24 as of the beginning of that day, all advances and other permissible
25 amounts charged to the borrower, and deducting all payments and other
26 credits made or received that day. A billing cycle is considered
27 monthly if the closing date of the cycle is on the same date each
28 month, or does not vary by more than four days from that date.

29 (b) Reverse mortgage loans made in accordance with the Washington
30 state reverse mortgage act are not subject to the interest charge
31 computation restrictions or billing cycle requirements in this section.

32 (3) In addition to the charges permitted under subsection (2) of
33 this section, the licensee may contract for and receive an annual fee,
34 payable each year in advance, for the privilege of opening and
35 maintaining an open-end loan account. Except as prohibited or limited
36 by this section, the licensee may also contract for and receive on an
37 open-end loan any additional charge permitted by this chapter on other

1 loans, subject to the conditions and restrictions otherwise pertaining
2 to those charges.

3 (4)(a) If credit life or credit disability insurance is provided,
4 the additional charge for credit life insurance or credit disability
5 insurance shall be calculated in each billing cycle by applying the
6 current monthly premium rate for the insurance, at the rate approved by
7 the insurance commissioner to the entire outstanding balances in the
8 borrower's open-end loan account, or so much thereof as the insurance
9 covers using any of the methods specified in subsection (2)(a) of this
10 section for the calculation of interest charges; and

11 (b) The licensee shall not cancel credit life or disability
12 insurance written in connection with an open-end loan because of
13 delinquency of the borrower in the making of the required minimum
14 payments on the loan, unless one or more of the payments is past due
15 for a period of ninety days or more; and the licensee shall advance to
16 the insurer the amounts required to keep the insurance in force during
17 that period, which amounts may be debited to the borrower's account.

18 (5) A security interest in real or personal property may be taken
19 to secure an open-end loan. Any such security interest may be retained
20 until the open-end account is terminated. The security interest shall
21 be promptly released if (a) there has been no outstanding balance in
22 the account for twelve months and the borrower either does not have or
23 surrenders the unilateral right to create a new outstanding balance; or
24 (b) the account is terminated at the borrower's request and paid in
25 full.

26 (6) The licensee may from time to time increase the rate of
27 interest being charged on the unpaid principal balance of the
28 borrower's open-end loans if the licensee mails or delivers written
29 notice of the change to the borrower at least thirty days before the
30 effective date of the increase unless the increase has been earlier
31 agreed to by the borrower. However, the borrower may choose to
32 terminate the open-end account and the licensee shall allow the
33 borrower to repay the unpaid balance incurred before the effective date
34 of the rate increase upon the existing open-end loan account terms and
35 interest rate unless the borrower incurs additional debt on or after
36 the effective date of the rate increase or otherwise agrees to the new
37 rate.

1 (7) The licensee shall deliver a copy of the open-end loan
2 agreement to the borrower at the time the open-end account is created.
3 The agreement must contain the name and address of the licensee and of
4 the principal borrower, and must contain such specific disclosures as
5 may be required by rule of the director. In adopting the rules the
6 director shall consider Regulation Z promulgated by the board of
7 governors of the federal reserve system under the federal consumer
8 credit protection act.

9 (8) Except in the case of an account that the licensee deems to be
10 uncollectible, or with respect to which delinquency collection
11 procedures have been instituted, the licensee shall deliver to the
12 borrower at the end of each billing cycle in which there is an
13 outstanding balance of more than one dollar in the account, or with
14 respect to which interest is imposed, a periodic statement in the form
15 required by the director. In specifying such form the director shall
16 consider Regulation Z promulgated by the board of governors of the
17 federal reserve system under the federal consumer credit protection
18 act.

19 **Sec. 14.** RCW 19.16.250 and 2001 c 217 s 5 and 2001 c 47 s 2 are
20 each reenacted and amended to read as follows:

21 No licensee or employee of a licensee shall:

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

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

31 (3) Publish or post or cause to be published or posted, any list of
32 debtors commonly known as "bad debt lists" or threaten to do so. For
33 purposes of this chapter, a "bad debt list" means any list of natural
34 persons alleged to fail to honor their lawful debts. However, nothing
35 herein shall be construed to prohibit a licensee from communicating to
36 its customers or clients by means of a coded list, the existence of a
37 check dishonored because of insufficient funds, not sufficient funds or

1 closed account by the financial institution servicing the debtor's
2 checking account: PROVIDED, That the debtor's identity is not readily
3 apparent: PROVIDED FURTHER, That the licensee complies with the
4 requirements of subsection (9)(e) of this section.

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

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

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

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

21 (8) Give or send to any debtor or cause to be given or sent to any
22 debtor, any notice, letter, message, or form which represents or
23 implies that a claim exists unless it shall indicate in clear and
24 legible type:

25 (a) The name of the licensee and the city, street, and number at
26 which he is licensed to do business;

27 (b) The name of the original creditor to whom the debtor owed the
28 claim if such name is known to the licensee or employee: PROVIDED,
29 That upon written request of the debtor, the licensee shall make a
30 reasonable effort to obtain the name of such person and provide this
31 name to the debtor;

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

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

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

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

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

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

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

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

23 (a) A licensee or employee of a licensee may inform a credit
24 reporting bureau of the existence of a claim: PROVIDED, That if the
25 licensee or employee of a licensee reports a claim to a credit
26 reporting bureau, the licensee shall upon receipt of written notice
27 from the debtor that any part of the claim is disputed, forward a copy
28 of such written notice to the credit reporting bureau;

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

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

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

1 to pay the claim or has failed to agree to make payments on the claim
2 in a manner acceptable to the licensee, and

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (d) It is made in a manner that does not clearly identify the
14 communication, from the outset, as coming from a licensee acting in its
15 capacity.

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

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

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

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

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

34 (18) Collect or attempt to collect in addition to the principal
35 amount of a claim any sum other than allowable interest, collection
36 costs or handling fees expressly authorized by statute, and, in the
37 case of suit, attorney's fees and taxable court costs. A licensee may
38 collect or attempt to collect collection costs and fees, including

1 contingent collection fees, as authorized by a written agreement or
2 contract, between the licensee's client and the debtor, in the
3 collection of a commercial claim. The amount charged to the debtor for
4 collection services shall not exceed thirty-five percent of the
5 commercial claim.

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

11 (20) Upon notification by a debtor that the debtor disputes all
12 debts arising from a series of dishonored checks, automated
13 clearinghouse transactions on a demand deposit account, or other
14 preprinted written instruments, initiate oral contact with a debtor
15 more than one time in an attempt to collect from the debtor debts
16 arising from the identified series of dishonored checks, automated
17 clearinghouse transactions on a demand deposit account, or other
18 preprinted written instruments when: (a) Within the previous one
19 hundred eighty days, in response to the licensee's attempt to collect
20 the initial debt assigned to the licensee and arising from the
21 identified series of dishonored checks, automated clearinghouse
22 transactions on a demand deposit account, or other preprinted written
23 instruments, the debtor in writing notified the licensee that the
24 debtor's checkbook or other series of preprinted written instruments
25 was stolen or fraudulently created; (b) the licensee has received from
26 the debtor a certified copy of a police report referencing the theft or
27 fraudulent creation of the checkbook, automated clearinghouse
28 transactions on a demand deposit account, or series of preprinted
29 written instruments; (c) in the written notification to the licensee or
30 in the police report, the debtor identified the financial institution
31 where the account was maintained, the account number, the magnetic ink
32 character recognition number, the full bank routing and transit number,
33 and the check numbers of the stolen checks, automated clearinghouse
34 transactions on a demand deposit account, or other preprinted written
35 instruments, which check numbers included the number of the check that
36 is the subject of the licensee's collection efforts; (d) the debtor
37 provides, or within the previous one hundred eighty days provided, to
38 the licensee a legible copy of a government-issued photo

1 identification, which contains the debtor's signature and which was
2 issued prior to the date of the theft or fraud identified in the police
3 report; and (e) the debtor advised the licensee that the subject debt
4 is disputed because the identified check, automated clearinghouse
5 transaction on a demand deposit account, or other preprinted written
6 instrument underlying the debt is a stolen or fraudulently created
7 check or instrument.

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

--- END ---