

CERTIFICATION OF ENROLLMENT

SENATE BILL 5956

62nd Legislature
2011 1st Special Session

Passed by the Senate May 11, 2011
YEAS 42 NAYS 0

President of the Senate

Passed by the House May 21, 2011
YEAS 86 NAYS 0

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 5956** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SENATE BILL 5956

Passed Legislature - 2011 1st Special Session

State of Washington 62nd Legislature 2011 1st Special Session

By Senators Harper, Pflug, and Kline

Read first time 05/11/11.

1 AN ACT Relating to the prohibited practices of collection agencies;
2 reenacting and amending RCW 19.16.250; creating a new section;
3 providing an effective date; and declaring an emergency.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that a drafting error
6 occurred in Substitute Senate Bill No. 5574 (2011 regular session) and
7 section 1, chapter 57, Laws of 2011, resulting in the unintended
8 deletion of a phrase in RCW 19.16.250. The intent of this legislation
9 is to remedy that error, and retroactively apply this legislation to
10 the effective date of section 1, chapter 57, Laws of 2011.

11 **Sec. 2.** RCW 19.16.250 and 2011 c 162 s 1 and 2011 c 57 s 1 are
12 each reenacted and amended to read as follows:

13 No licensee or employee of a licensee shall:

14 (1) Directly or indirectly aid or abet any unlicensed person to
15 engage in business as a collection agency in this state or receive
16 compensation from such unlicensed person: PROVIDED, That nothing in
17 this chapter shall prevent a licensee from accepting, as forwarder,

1 claims for collection from a collection agency or attorney whose place
2 of business is outside the state.

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

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

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

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

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

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

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

37 (a) The name of the licensee and the city, street, and number at
38 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 to
7 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 debtor,
9 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 payment
13 charges, if any, added to the original obligation by the original
14 creditor, customer or assignor before it was received by the licensee
15 for collection, if such information is known by the licensee or
16 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 or
20 customer or assignor after the obligation was received by the licensee
21 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 customer
29 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 in
32 the judgment is required, except postjudgment interest, if claimed, and
33 the current account balance;

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

37 (i) The original account number or redacted original account number
38 assigned to the debt, if known to the licensee or employee: PROVIDED,

1 That upon written request of the debtor, the licensee must make a
2 reasonable effort to obtain this information or cease efforts to
3 collect on the debt until this information is provided; and

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

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

14 (10) Communicate or threaten to communicate, the existence of a
15 claim to a person other than one who might be reasonably expected to be
16 liable on the claim in any manner other than through proper legal
17 action, process, or proceedings except under the following 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 that
22 any part of the claim is disputed, notify the credit reporting bureau
23 of the dispute by written or electronic means and create a record of
24 the fact of the notification and when the notification was provided;

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

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

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

36 (ii) The debtor has not in writing to the licensee disputed any
37 part of the claim: PROVIDED, That the licensee or employee may only

1 communicate the existence of a claim which has not been reduced to
2 judgment to the debtor's employer once unless the debtor's employer has
3 agreed to additional communications.

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

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

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

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

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

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

30 (12) 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 she or it again receives notification in writing that an
37 attorney is representing the debtor.

1 (13) 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, unless the licensee is
9 responding to a communication from the debtor or spouse;

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

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

23 (14) Communicate with the debtor through use of forms or
24 instruments that simulate the form or appearance of judicial process,
25 the form or appearance of government documents, or the simulation of a
26 form or appearance of a telegraphic or emergency message.

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

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

34 (17) Send any telegram or make any telephone calls to a debtor or
35 concerning a debt or for the purpose of demanding payment of a claim or
36 seeking information about a debtor, for which the charges are payable
37 by the addressee or by the person to whom the call is made: PROVIDED,
38 That:

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

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

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

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

36 (19) Intentionally block its telephone number from displaying on a
37 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 of
3 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 allowable interest, collection
6 costs or handling fees expressly authorized by statute, and, in the
7 case of suit, attorney's fees and taxable court costs. A licensee may
8 collect or attempt to collect collection costs and fees, including
9 contingent collection fees, as authorized by a written agreement or
10 contract, between the licensee's client and the debtor, in the
11 collection of a commercial claim. The amount charged to the debtor for
12 collection services shall not exceed thirty-five percent of the
13 commercial claim.

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

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

22 (24) Upon notification by a debtor that the debtor disputes all
23 debts arising from a series of dishonored checks, automated
24 clearinghouse transactions on a demand deposit account, or other
25 preprinted written instruments, initiate oral contact with a debtor
26 more than one time in an attempt to collect from the debtor debts
27 arising from the identified series of dishonored checks, automated
28 clearinghouse transactions on a demand deposit account, or other
29 preprinted written instruments when: (a) Within the previous one
30 hundred eighty days, in response to the licensee's attempt to collect
31 the initial debt assigned to the licensee and arising from the
32 identified series of dishonored checks, automated clearinghouse
33 transactions on a demand deposit account, or other preprinted written
34 instruments, the debtor in writing notified the licensee that the
35 debtor's checkbook or other series of preprinted written instruments
36 was stolen or fraudulently created; (b) the licensee has received from
37 the debtor a certified copy of a police report referencing the theft or
38 fraudulent creation of the checkbook, automated clearinghouse

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

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

1 oral contact for those debts that the debtor acknowledges do not arise
2 from stolen or fraudulently created checks or written instruments; (iv)
3 the oral contact is in the context of a judicial, administrative,
4 arbitration, mediation, or similar proceeding; or (v) the oral contact
5 is made for the purpose of investigating, confirming, or authenticating
6 the information received from the debtor, to provide additional
7 information to the debtor, or to request additional information from
8 the debtor needed by the licensee to accurately record the debtor's
9 information in the licensee's records.

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

14 NEW SECTION. **Sec. 3.** This act is necessary for the immediate
15 preservation of the public peace, health, or safety, or support of the
16 state government and its existing public institutions, and takes effect
17 July 22, 2011.

--- END ---