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IN THE SUPREME COURT
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ON CERTIFICATION FROM THE UNITED STATES DISTRICT
COURT, EASTERN DISTRICT OF WASHINGTON AT SPOKANE

IN

KELLI GRAY, ET AL., PETITIONERS,

vs.

SUTTELL & ASSOCIATES, ET AL., RESPONDENTS.

BRIEF OF RESPONDENTS/DEFENDANTS MIDLAND FUNDING,
LLC, MIDLAND CREDIT MANAGEMENT, INC., AND ENCORE
CAPITAL GROUP, INC.,

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 ORIGINAL

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I. **INTRODUCTION AND SUMMARY OF ARGUMENT**

In response to the questions certified to this Court, the Petitioners ask this Court to step behind the Legislature, go back in time, and retroactively rewrite the language of the Washington Collection Agency Act (the "CAA"), RCW 19.16.100(2), to state that debt purchasers were required to be licensed as collection agencies. However, there is nothing to indicate that the CAA was ever meant to include debt purchasers within the definition of a "collection agency."

Indeed, the Washington Department of Licensing ("Licensing Department") and the Collection Agency Board (the "Collection Agency Board")—the state entities that govern the licensing and enforcement of the CAA—long held that debt purchasers were not a "collection agency," and thus, not required to be licensed as such. The Licensing Department and Collection Agency Board based their position upon analysis provided by the Washington Attorney General.

The only arguments put forth by the Petitioners that debt purchasers were required to be licensed under the CAA: that "soliciting claims for collection" meant that the CAA applied to debt purchasers; and that the definition of a "debt collector" under the

federal Fair Debt Collection Practices Act ("FDCPA") is the same as "collection agency" under the CAA—were rejected by the Collection Agency Board. Thus, it can be presumed that debt purchasers relied upon the Collection Agency Board's position when deciding whether they needed to obtain a collection agency license. This was especially true in the case of entities such as Respondent/Defendant Midland Funding, LLC ("Midland Funding"), which merely purchased debts that its parent Midland Credit Management, Inc. ("MCM")—a licensed Washington Collection Agency—then collected upon.

Over the past several years, the Collection Agency Board, recognizing that the CAA did not deem debt purchasers to be collection agencies, moved to support the amendment of the CAA to include debt purchasers. Thereafter, a broad based coalition of Washington consumer groups, creditor groups, debt collectors and debt purchasers put their support behind legislation to amend the CAA to include debt purchasers. This legislation was then passed by unanimous vote in both the Washington House and Senate.

On May 7, 2013, several months after the United States District Court for the Eastern District of Washington (the "Federal Court") had certified the questions regarding whether a debt

purchaser was required to be licensed under CAA, the governor signed legislation which explicitly amended the definition of the "collection agency" in the CAA to add a new sub-section that includes **"Any person or entity that is engaged in the business of purchasing delinquent or charged off claims for collection purposes, whether it collects the claims itself or hires a third party for collection or an attorney for litigation in order to collect such claims."** RCW 19.16.100(2)(d). In addition, the CAA was amended to require a debt purchaser to be licensed before filing a lawsuit on **"its own claim."** RCW 19.16.260. Prior to the 2013 Amendments, the CAA only required that a "collection agency" be licensed in order to file a lawsuit **"involving the collection of a claim of any third party."** See RCW 19.16.260. (emphasis added). These amendments become effective on October 1, 2013 and are not retroactive.

The Petitioners make no mention of the Collection Agency Board's interpretation of the previous definition of "collection agency" nor the amendments to the CAA to specifically add sections placing debt purchasers with the statute's purview, both of which completely undercut any argument that the CAA previously applied to debt purchasers. The amendments also arguably negate

the need for this Court to answer the certified questions, which is within this Court's complete discretion under RCW 2.60.020. See *also* RAP 16.16(u).

The Petitioners use most of their brief to attempt to shift the focus away from the CAA and toward factual issues litigated in other matters brought against the Respondents, most of which relate to a nationwide class action settlement. These issues are not even in the Federal Court case from which this Court's involvement has been requested. In other words, these factual issues, which the Respondents dispute, are well beyond the questions certified to this Court and appear to only be designed to improperly color the Court's view of the Respondents.

II. CERTIFIED QUESTIONS

On February 2, 2013, the Federal Court certified the following two questions to this Court:

1. Does the definition of "collection agency" in RCW 19.16.100(2) include a person who 1) purchases claims that are owed or due or asserted to be owed or due another, 2) undertakes no activity on said delinquent consumer account but rather contracts with an affiliated collection agency to collect the purchased claims, and 3) is the named plaintiff in a subsequent collection lawsuit for said purchased claims?

2. Can a company, such as Midland Credit, file lawsuits in the [sic] Washington on delinquent consumer accounts without being licensed as a collection agency as defined by RCW 19.16.100(2)?

See ECF 446, pp. 6-7; ECF 447, p.2.¹

As a threshold matter, Respondents point out that the second certified question contains a significant typographical error. The entity listed should be Midland Funding, not "Midland Credit," as Midland Credit—referred to here and throughout the Federal Court proceedings as "MCM"—is and has been throughout the duration of this lawsuit a debt collector licensed in the state of Washington. ECF 446, p. 4, ¶ 5.² Midland Funding is a debt purchaser, which is not licensed as a debt collection agency in the state of Washington. ECF 446, p. 4, ¶¶ 1-7.

As Respondents argue below, the correct answer to the first certified question is "No" and the correct answer to the second certified question is "Yes," because Midland Funding, a debt purchaser, did not satisfy the definition of "collection agency" under

¹ Other than the items set forth in the Appendix, Respondents' citations are to those documents that are within the Federal Court docket submitted to this Court, and thus, are referred to as "ECF__."

² The Petitioners have no dispute with this as they took the liberty to self-correct the second question to read "Midland Funding" instead of "Midland Credit" in their statement of the certified questions. Petitioners' Brief at p. 1.

RCW 19.16.100(2), nor was a collection agency license required for Midland Funding to be a plaintiff in lawsuits seeking the collection of debts owed to Midland Funding.

III. COUNTER-STATEMENT OF THE CASE

Midland Funding purchases defaulted receivables, i.e., consumers' unpaid financial commitments to credit originators, such as banks, credit unions, consumer finance companies, commercial retailers, auto finance companies, and telecommunication companies. ECF 446, p. 3, ¶ 1. Midland Funding has no employees and is merely a holding company for the delinquent accounts it purchases. ECF 446, p. 3, ¶ 2. Midland Funding is a subsidiary of Encore. ECF 446, p. 3, ¶ 1.

MCM is an indirect parent of Midland Funding and also a subsidiary of Encore. ECF 446, p. 4, ¶ 3. Midland Funding and MCM entered into a Servicing Agreement. ECF 446, p. 4. Pursuant to the Servicing Agreement, 1) MCM has all decision-making authority regarding the collection of the owed monies under the defaulted accounts purchased by Midland Funding, and 2) MCM's employees manage the collection process and perform the collection acts for these defaulted accounts. ECF 446, p. 4, ¶ 4. MCM is licensed by the state of Washington as a collection agency.

ECF 446, p. 4, ¶ 5.³ MCM contracts directly with attorneys to file lawsuits in Midland Funding's name to collect on these defaulted accounts. ECF 446, p. 4, ¶ 6.

Between August 2004 and November 2010, Midland Funding, through the MCM-contracted attorneys, was the plaintiff in such collection lawsuits in Washington. ECF 446, p. 4, ¶ 7.

On December 4, 2007, Midland Funding purchased Petitioner/Plaintiff Kelli Gray's defaulted Spiegel account. Midland Funding then sent the account to MCM, which turned the account over to a collection agency to collect the debt. ECF 416, p. 3. Ultimately, Co-Respondents/Defendants Suttell & Associates ("Suttell") filed a lawsuit against Gray in Spokane County Superior Court. *Id.*

On August 12, 2009, Gray filed her own lawsuit in the Federal Court, which alleged that the Suttell and Midland Funding violated the FDCPA, 15 U.S.C. § 1692, et seq., the Washington Consumer Protection Act ("WCPA"), RCW ch. 19.86, and that Midland Funding violated the CAA, RCW ch. 19.16, by (1) serving

³ MCM has been a licensed out-of-state collection agency since 2000. *Id*; see also, Washington State Department of Revenue website for Business Licensing Searches, which shows MCM's collection agency license at <http://bls.dor.wa.gov/LicenseSearch/lqsLicenseDetail.aspx?RefID=2010813>. A court may take judicial notice of public records. *State v. Hoffman*, 116 Wash.2d 51, 67, 804 P.2d 577 (Wash. 1991); E.R. 201(b)-(d).

and filing time-barred lawsuits; (2) requesting unreasonable attorney fees; and (3) acting as a collection agency without a collection agency license. *Id.*

On November 10, 2010, Plaintiffs Eva Lauber, Dane Scott, Scott Boolean, and Joel Finch (collectively, "Lauber Plaintiffs"), who like Gray, were "obligated to pay a debt and failed to do so," filed a complaint against the Respondents, including MCM and Encore, that also alleged violations of the FDCPA, WCPA, and CAA (but not Suttell), based on: (1) the filing of affidavits in Washington state courts; and (2) acting as a collection agency without a collection license. *Id.*

On December 29, 2010, the Federal Court consolidated the *Gray* lawsuit with the *Lauber* lawsuit. ECF 182. Thereafter, the Federal Court, acknowledging the pending class settlement of affidavit claims in a matter pending in the United States District Court for the Northern District of Ohio, *Vassalle et al. v. Midland Funding et al.*, Origination Case No. 3:11-cv-00096, stopped the pursuit of such claims against Midland Funding, MCM, and Encore. ECF 416, p. 5. On April 8, 2011, the Plaintiffs filed an Amended Complaint alleging FDCPA, WCPA, and CAA (but not against

Suttell) claims, but removing all allegations and claims relating to affidavits. ECF 297.

In response to the Amended Complaint, all of the Respondents filed motions to dismiss. Suttell sought to dismiss the FDCPA and WCPA claims; Midland Funding, Encore, and MCM only moved to dismiss the WCPA claim. ECF 306 and 310. Midland Funding, MCM, and Encore also moved to compel the arbitration of Plaintiff Lauber's claims, which the Federal Court granted on March 19, 2012. ECF 410.

On March 28, 2012, the Federal Court, granted in part, and denied in part, the pending motions to dismiss. ECF 416. The Federal Court dismissed the FDCPA claims brought against Suttell, dismissed the WCPA claims brought against all of the Defendants by Plaintiffs Gray, Boolean, and Finch, but denied the motions with respect to Plaintiff Scott, deeming that he had satisfied the WCPA's injury requirement. ECF 416, pp. 6-15. The Plaintiffs sought no further amendment of their claims after the Federal Court's Dismissal Order.

On February 8, 2013 the Federal Court certified questions, *supra*, relating to whether Midland Funding needed to be licensed as a collection agency under the CAA to this Court. ECF 446.

IV. ARGUMENT

A. Standard Of Review

"The decision whether to answer a certified question pursuant to chapter 2.60 RCW is within the discretion of the court." *Broad v. Mannesman Analgenbarr, A.G.*, 141 Wash. 2d, 670, 676, 10, P.3d 371 (2000)(citing *Hoffman v. Regence Blue Shield*, 140 Wash. 2d 121, 128, 991, P. 2d 77 (2000)).

If the Court does decide to answer a certified question under RCW 2.60.020 it does so as "a pure question of law" applying a *de novo* standard of review. See, e.g., *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 149 Wash. 2d 660, 670, 72 P.3d 151 (2003) (citing *Rivett v. City of Tacoma*, 123 Wash. 2d 573, 578, 870 P.2d 299 (1994)). Once the Court has decided to rule on a certified question pursuant to RCW 2.60.020, the ruling is not advisory but resolves actual issues pending in the federal proceeding, and will be legal precedent in all future controversies involving same legal question. *In re Elliott*, 74 Wash. 2d 600, 446 P.2d 347 (1968).

B. Prior To The Recent Amendments to the CAA, Which Were Enacted While The Certified Questions Were Pending, A Debt Purchaser Was Not A "Collection Agency" Subject to Licensure Under The CAA.

1. The Current and Former Definitions of "Collection Agency" in CAA Show The Legislative Intent That Debt Purchasers Were Not Required to be Licensed.

The first certified question requires interpretation of the definition of "collection agency" under RCW 19.16.100. In doing so, the Court should look first to the relevant statutory language. *Everett Concrete Prods., Inc. v. Dep't of Labor & Indus.*, 109 Wash. 2d 819, 823, 748 P.2d 1112 (1988). If the statute is unambiguous, its meaning must be derived from its language alone. *Stewart Carpet Serv., Inc. v. Contractors Bonding & Ins. Co.*, 105 Wash. 2d 353, 358, 715 P.2d 115 (1986). However, if the Court deems the statute to be ambiguous, "resort may be had to other sources to determine its meaning." *PUD 1 v. WPPSS*, 104 Wash. 2d 353, 369, 705 P.2d 1195, 713 P.2d 1109 (1985).

As the Court recently stated:

The fundamental purpose in construing statutes is to ascertain and carry out legislative intent. The legislature's intent can be discovered from the plain meaning of the statute, which is determined from all that the Legislature has said in the statute and related statutes which disclose legislative intent about the provision in question. The court must not add words where the legislature has chosen not to include them, and the statute must be construed so that all language is given effect. If the statute remains susceptible to more than one reasonable meaning, it is ambiguous and the legislative history and

circumstances surrounding its enactment may be considered. Constructions that yield unlikely, absurd, or strained consequences must be avoided.

City of Seattle v. Fuller, 300 P.3d 340, 342-43 (Wash. 2013).

Section 19.16.100 of the CAA states, in relevant part, that “[u]nless a different meaning is plainly required by the context, the following words and phrases shall have the following meaning:”

(2) “Collection agency” means and includes:

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

(b) Any person who directly or indirectly furnishes or attempts to furnish, sells, or offers to sell forms represented to be a collection system or scheme intended or calculated to be used to collect claims even though the forms direct the debtor to make payment to the creditor and even though the forms may be or are actually used by the creditor himself or herself in his or her own name;

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

See RCW 19.16.100(2)(a)-(c)(emphasis added).

On May 7, 2013, however, RCW 19.16.100(2) was amended to add an entirely new sub-section (d) to add a provision that includes debt purchasers within the definition of “collection agency”:

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

See 1822-S.S.L, Section 1(2)(d) ("2013 Amendments"). **Appendix pp. 6, 18.** Sub-section (d) is **effective on October 1, 2013.** See 1822-S.S.L, Section 4. **Appendix pp. 12, 28.**

Prior to the 2013 Amendments, debt purchasers were plainly not included in the definition of "collection agency," a fact Petitioners entirely ignore. See Senate Bill Report, SHB 1822, p. 1, **Appendix p. 14** ("[The CAA] does not specifically address people or entities purchasing delinquent claims and taking action to collect on those claims. This practice is commonly referred to as debt buying."). Indeed, the Petitioners make no mention of the amendments to the CAA in their Opening Brief. This silence speaks volumes.

As this Court has explained, "[t]he Legislature 'does not engage in unnecessary or meaningless acts, and we presume some significant purpose or objective in every legislative enactment.'" *In re Recall of Pearsall-Stipek*, 141 Wash. 2d 756, 769; 10 P.3d 1034 (2000). Thus, "where a material change is made in the wording of a statute, a change in legislative purpose

must be presumed." *Boeing Airplane Co. v. Employment Sec. Dept.*, 63 Wash. 2d 83, 89; 385 P.2d 545 (1963). In other words, "the Legislature is presumed not to pass meaningless legislation, and in enacting an amending statute, a presumption exists that a change was intended." *Spokane County Health Dist. v. Brockett*, 120 Wash. 2d 140, 154, 839 P.2d 324 (1992). See also, *Longview Co. v. Lynn*, 6 Wash. 2d 507, 524, 108 P.2d 365 (1940) ("In construing a statute which amends or supplements a prior act, it will be assumed that some change in meaning was intended, and in the light of that principle, effect should be given to the amendment."); *Bailey v. State*, 147 Wash. App. 251, 262-63; 191 P.3d 1285 (2008) (explaining that "[w]hen engaging in statutory construction, the court must **presume that the legislature was aware of its prior interpretations of legislative enactments....The more recent provision prevails if it is more specific than its predecessor.**") (emphasis added).

In the case of the CAA, the Legislature's recent amendment added provisions to specifically include a debt purchaser as an entity that is required to be licensed. The Court cannot presume that this was meant to be a meaningless addition. On the contrary, given the above cited principles of statutory construction employed

by this Court, the amendment to the CAA can only mean that debt purchasers did not previously fall within the definition of a "collection agency." In sum, this Court's analysis need go no further to answer the first certified question: "No."

Nevertheless, Petitioners argue that Midland Funding (and Encore) fall under the definition of "collection agency." Petitioners' Brief, p. 5. However, the statutory definition of "collection agency", especially when construing the previous language in light of the recent amendment to the CAA, *supra*, does not support that interpretation.

For example, as noted above, sub-section (a) of RCW 19.16.100(2) defines a "collection agency" as "[a]ny person directly or indirectly engaged in soliciting claims for collection, or collecting or attempting to collect claims owed or due or asserted to be owed or due another person."⁴ Thus, the question, as enumerated by the Federal Court, is whether a debt purchaser (Midland Funding), by purchasing delinquent consumer accounts, by contracting with a licensed collection agency (MCM) to collect on those accounts, and

⁴ Petitioners do not argue that sub-sections (b) or (c) of RCW 19.16.100(2) apply to Midland Funding (nor Encore). Indeed, Midland Funding and Encore do not engage in selling forms as contemplated by sub-section (b) and do not use a fictitious name as contemplated by sub-section (c) and Petitioners have not made allegations to indicate application of (b) or (c).

by being the named plaintiff in lawsuits regarding the accounts can be considered to have “engaged in *soliciting* claims for collection.” RCW 19.16.100(2)(a) (emphasis added).⁵

Petitioners argue without any support that Midland Funding as a debt purchaser “solicits claims to purchase,” which Petitioners assert falls under the statutory language of “soliciting claims for collection.” Petitioners’ Brief, p. 8. This is false.

The CAA does not define the term “soliciting.” See RCW 19.16 *et seq.* However, when a statute does not provide the meaning of a statutory term, courts may look to other statutes that do provide a definition of the term. See *City of Seattle v. Fuller*, 300 P.3d 340, 342-43 (Wash. 2013); *Dep’t of Ecology v. Campbell & Gwinn, LLC*, 146 Wash. 2d 1, 11-12, 43 P.3d 4 (2002). In this regard, other Washington statutes define the term “solicit” as initiating oral or written contact with another person in the context of selling goods, services, or seeking charitable contributions. See, e.g., RCW 19.158.020 (defining “solicit” as “to initiate contact” with someone in the context of cold calling to sell goods or services);

⁵ Contrary to the Petitioners’ mention of Encore in their Brief, there is nothing to support any claim that Encore has ever filed any lawsuits in Washington, nor that it engages in any actions subject to CAA. Thus, Encore is not the subject of any of the certified questions.

RCW 19.09.010(19)(a)(defining "solicitation" as "any oral or written request" for a charitable contribution). Thus, as expressed in other Washington statutes, "soliciting" means to contact someone with the intent to sell goods, services, or to request contributions for charitable service. Further, the term "Claim" is defined in RCW 19.16.100(5) as "any obligation for the payment of money or thing of value arising out of any agreement or contract, express or implied." RCW 19.16.100(5). Accordingly, contrary to what Petitioners want to read into the statute, "soliciting claims for collection" means initiating contact with creditors for the purpose of offering to provide collection services for money (or other items, such as tangible goods) that the creditors are owed pursuant to an agreement or contract with the debtor.

The above comports with the purpose of the CAA to protect creditors, as well as debtors. In other words, ensuring that debt collectors that solicit "claims" from creditors to collect upon are subject to the Washington licensure provisions. As discussed *infra*, this is an interpretation of the CAA long-supported by the Licensing Department, the Collection Agency Board, and the Attorney General. Simply put, there is nothing "plainly required by the context" of the CAA to support that the definition of "collection

agency" was ever intended to encompass the concept of a passive debt buyer, such as Midland Funding, who purchases delinquent accounts and then engages a licensed collection agency (MCM) to attempt collection on debt owed to Midland Funding. RCW 19.16.100. Indeed, such an interpretation would place the intent of the CAA on its head and yield a "strained consequence." *City of Seattle*, 300 P. 3d at 342-43. At bottom, that is why nothing in the definition of "collection agency" in RCW 19.16.100 suggests that purchasing delinquent accounts qualifies one as a "collection agency."

Again, this is all shown by the Washington Legislature's 2013 Amendments to RCW 19.16.100(2). To put this another way, enacting an entirely new sub-section (d) to add debt purchasers to the definition of "collection agency" demonstrates that the definition **did not** previously include debt purchasers. See 1822-S.S.L, Section 1(2)(d), Appendix pp. 6, 18. "Statutes are presumed to apply prospectively, absent contrary legislative intent." *In re Estate of Haviland*, 177 Wash.2d 68, 301 P.3d 31, ¶ 10. As nothing in the 2013 Amendments indicate that they are retroactive, debt purchasers are not subject to RCW 19.16 prior to the 2013 Amendments going into effect on October 1, 2013.

Moreover, the comprehensive definition of "collection agency" further suggests that debt purchasers were not included. RCW 19.16.100(2) defines the term "collection agency" while RCW 19.16.100(3) excludes certain persons, and RCW 19.16.100(4) defines "out of state collection agency." See RCW 19.16.100(3)-(4). This comprehensive definition shows that the Legislature considered the broad range of entities that it could have included in the definition of "collection agency" but chose not to include debt purchasers until RCW 19.16.100 was recently amended. See other amendments to definition of "collection agency" at Washington Senate Bill Report, 2003 Reg. Sess. S.B. 5211 (excluding property management companies); Washington Bill History, 2001 Reg. Sess. H.B. 1983 (excluding servicer-related affiliates of creditors).

Further, the Senate Bill Report for the 2013 Amendments to RCW 19.16 points out that the amendment "[r]evises the definition of "collection agency," for purposes of the collection agency act, to include a person or entity engaged in the business of purchasing delinquent or charged off claims for collection purposes, whether it collects the claims itself or hires a third party for collection or an attorney for litigation in order to collect such claims." **Appendix p. 16.** Thus, prior to the 2013 Amendments,

debt purchasers were not included in the definition of "collection agency" and were not subject to RCW 19.16 *et seq.*

2. The Collection Agency Board and The Licensing Department, Relying Upon Analysis Provided By the Attorney General, Construed The CAA To Not Apply To Debt Purchasers.

The CAA provides for creation of the Collection Agency Board to "adopt rules, make specific decisions, orders, and rulings . . ." relating to the enforcement of the CAA, including on licensing issues. RCW 19.16.280 and 19.16.410. This Court has long-recognized that under such circumstances it is "a well-established rule of statutory construction that considerable judicial deference should be given to the construction of an ordinance by those officials charged with its enforcement." *Keller v. Bellingham*, 92 Wash. 2d 726, 731, 600 P.2d 1276 (1979). *See also Bostain v. Food Express, Inc.*, 159 Wash. 2d 700, 716, 153 P.3d 846 (2007) (explaining that deference should be accorded to agency's interpretation of a statute where the agency is charged with administration and enforcement of a statute). Further, this Court has explained that "we may engage in de novo review [of questions of law], but should accord substantial weight to the agency interpretation" of the meaning of a statute. *Everett Concrete*

Prods., Inc. v. Dep't of Labor & Indus., 109 Wash. 2d 819, 823, 748 P.2d 1112 (1988).

Since at least 2004 and prior to the 2013 Amendments to RCW 19.16 *et seq.*, the Collection Agency Board and the Attorney General analyzed RCW 19.16 to determine whether debt purchasers were subject to it and found that they were not. The Department of Licensing, in turn, relied on that determination to provide at least one affidavit to a Washington court stating that debt purchasers are not subject to RCW 19.16 *et seq.* In this regard, the Collection Agency Board's determinations must be accorded deference and should be given significant weight in interpreting RCW 19.16.100.

On July 14, 2004, the Board held a meeting at which the Attorney General presented on the issue of whether debt buyers fall within the definition of collection agency as defined RCW 19.16.100(2)(a). ECF 429, Exhibit C, p. 17. The Attorney General explained that debt buyers who collect only on debts that they own are not covered by RCW 19.16, because the CAA covers collection by third parties and was intended "**mainly to protect the creditors.**" *Id.* (emphasis added). The Attorney General further explained that the phrase "**soliciting claims for collection**" in

RCW 19.16.100(2)(a) meant doing so “**for another**” indicating that it encompasses third party debt collectors, not debt purchasers. *Id.* (emphasis added).

As part of its analysis, the Attorney General compared RCW 19.16 *et seq.* and RCW 19.16.100(2) in particular to a very similar collection law in Michigan, the Michigan Collection Practices Act, M.C.L.A. § 339.900 *et seq.* (“MCPA”). *Id.*; M.C.L.A. § 339.901 (West 2013). Under § 339.901(b), “collection agency” is defined very similarly to that under RCW 19.16.100(2):

a person directly or indirectly engaged in soliciting a claim for collection or collecting or attempting to collect a claim owed or due or asserted to be owed or due another, or repossessing or attempting to repossess a thing of value owed or due or asserted to be owed or due another arising out of an expressed or implied agreement.

See M.C.L.A. § 339.901(b) (West 2013) (in relevant part) (emphasis added).⁶

Further, the Attorney General looked to a decision by the Michigan Court of Appeals, *Asset Acceptance Corp. v. Robinson*, 244 Mich. App. 728, 625 N.W.2d 804 (2001), in which the court

⁶ Like RCW 19.16.100(2)-(4), the definition of collection agency in § 339.901(b) includes persons who furnish or sell forms and person who use fictitious names to collect their own debt and excludes businesses whose primary purposes is not collection of debts. See Mich. Comp. Laws Ann. § 339.901(b) (West 2013).

held that a debt purchaser was not a collection agency under § 339.901(b) and did not need to be licensed to file a collection lawsuit in Michigan because the MCPA was intended “**to protect the debtor and the creditor from the potentially improper acts of a third-party collection agency.**” *Id.* at 732 (emphasis added).

Further relying upon the reasoning of the court in *Asset Acceptance Corp. v. Robinson*, the Attorney General noted that the FDCPA covered debt buyers and that the Washington Consumer Protection Act did too. The Attorney General further pointed out that the Federal Trade Commission and the Attorney General’s Office of Consumer Protection Division could also pursue unscrupulous debt buyers. ECF 429, Exhibit B, July 11, 2004 Collection Agency Board Meeting Minutes, p. 17.

Following the Attorney’s General presentation of their findings, the Board moved and held that “**debt buyers that collect solely on their own claims and in their own names are not covered by Chapter 19.16 RCW**” and that the CAA would have to be amended to include debt buyers. ECF 429, Exhibit C, pp. 17-18 (emphasis added).

On January 11, 2011, the Board relied on its July 14, 2004 decision in advising another debt buyer that it did not need to be

licensed in the State of Washington. ECF 429, Exhibit A, pp. 9-13. There, the debt buyer, like Midland Funding, had no employees, did not take any action to collect on any claims for itself, all collection efforts were made by collection agencies licensed in Washington State, and the debt buyer did not collect claims for third parties. ECF 429, Exhibit A, p. 8.

Two days after that, the Department of Licensing provided an affidavit in *Cach, LLC v. Volk*, Superior Court for King County Case No. 09-2-22506-1SEA, certifying that the Department relied upon the Board's meeting minutes from July 14, 2004, to inform a debt purchaser that it did not have to be licensed under RCW 19.16. ECF 429, Ex. A, pp. 4-5.

On October 14, 2011, Fred Corbit, a member of the Board,⁷ presented a proposal to the Board for a legislative amendment that would require debt purchasers to be subject to RCW 19.16.250. ECF 429, Ex. C, p. 31, ¶ 2.2. The Collection Agency Board staff reminded Mr. Corbit that debt purchasers were not required to be licensed under the Collection Agency Board's 2004 decision. *Id.*

⁷ See ECF 429, Ex. D, p. 37, ¶ 2.2 (showing Mr. Corbit is an attorney for the Northwest Justice Project). Mr. Corbit, as counsel for the Northwest Justice Project, has also submitted an amicus brief in this matter to which the Respondents will respond to in a separate filing.

Then Mr. Corbit changed his original proposal to requesting that the Board investigate requiring debt buyers to be licensed. *Id.* After discussion, the Board asked the Attorney General to research whether debt buyers fall under RCW 19.16.100. *Id.*

At the next Board meeting on February 10, 2012, the Attorney General reported on whether debt purchasers were covered by RCW 19.16, however the minutes of that meeting do not state what the Attorney General concluded. ECF 429, Ex. D, p. 37, ¶ 2.1. Tellingly, Mr. Corbit then moved to recommend that RCW 19.16 be amended to include debt purchasers and the motion passed. *Id.*

On February 22, 2013, the 2013 Amendments to RCW 19.16 to add debt purchasers was first read in the Legislature. *See* 1822-S.SL, p. 1. As noted above, the provision adding debt purchasers goes into effect on October 1, 2013. *Id.* p. 12. Thus, debt purchasers, such as Midland Funding (and Encore), were not subject to RCW 19.16 at any time prior to October 1, 2013, and certainly not during the events alleged in the federal lawsuit for which these certified questions are pending.⁸

⁸ As part of their Motion to Certify filings in the Federal Court (but not referenced in their Opening Brief in this Court), the Petitioners offered a declaration by Mr. Corbit in an effort to counter the Attorney General's reasoning, the Collection

3. The Definition of a "Debt Collector" Under The FDCPA Differs from the Definition of a "Collection Agency" Under The CAA, And Thus, Even Though A Debt Purchaser May Be Deemed A "Debt Collector" Under the FDCPA, Such Does Not Also Make It a "Collection Agency" Under the CAA.

Petitioners fail to show how the definition of "debt collector" in the FDCPA transforms the defined term "collection agency" under RCW 19.16.100 to include debt purchasers. Petitioners' Brief, p. 6. Indeed, while this court has noted that "[t]he CAA is Washington's counterpart to the FDCPA," *Panag v. Farmers Ins. Co. of Washington*, 166 Wash. 2d 27, 54, 204 P.3d 885, 897 (2009), the definition of "debt collector" in the FDCPA differs from the definition of "collection agency" in RCW 19.16.100. As noted above, this distinction was noted by the Attorney General in its presentation on the issue to the Collection Board. **ECF 429, Ex. B, p. 17.** The FDCPA defines "debt collector" as:

any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debt, or who regularly collects or attempts to collect, directly or indirectly, debt owed or due or asserted to be owed or due another.

Agency Board's 2004 ruling, and the Licensing Department's subsequent reliance on the ruling that debt buyers are not collection agencies under RCW 19.16.100. **ECF 431.** Nothing in Mr. Corbit's affidavit, however, offers any real support for any suggestion that RCW 19.16 governed debt purchasers, or required them to be licensed to file a lawsuit in Washington courts, prior to the recent amendment of the CAA.

See 15 U.S.C. § 1692a(6) (in relevant part).

Further, other portions of the CAA, unlike the section defining "collection agency" specifically adopted the FDCPA definition of a "debt collector." See RCW 19.16.100(4) (noting that under the definition of "out-of-state collection agency" (such as MCM) does not include any person who is excluded from the term "debt collector" under the "fair debt collection practices act (15 U.S.C. Sec. 1692a(6)"). In other words, if the Legislature had intended for the FDCPA definition of a "debt collector" to also apply to a "collection agency" under the CAA, it could have done so. The fact that it did not shows its intent that debt purchasers, such as Midland Funding, were not subject to licensure.

Nevertheless, the Petitioners cite to several cases in which Midland Funding was found to be a "debt collector" under the FDCPA and cite to Encore's SEC filings regarding being in the "collection business." Petitioners' Brief, pp. 6-8. Respondents do not deny that Midland Funding purchases debts, nor that Encore is a publicly traded consumer debt management company, nor that Midland Funding has been found to be a "debt collector" under the FDCPA. *Id.* at 8. However, none of those citations provide any

support for finding that RCW 19.16.100, prior to the 2013 Amendments going into effect, should be retroactively interpreted to include debt purchasers.

Accordingly, the answer to the first certified question is "No."

4. Petitioners' Other Arguments Raise Factual Issues Not in the Record, Are Well Outside the Certified Questions, And Do Not Support Their Interpretation of RCW 19.16.100.

Petitioners include citations to various documents that are irrelevant to the interpretation of RCW 19.16 and should not be considered, as they are beyond Washington law and the scope of the certified questions. *See Carlsen v. Global Client Solutions, LLC*, 171 Wash. 2d 486, 495, 256 P.3d 321, 325 fn. 2 (Wash. 2011) (declining to look beyond Washington law for statutory interpretation and to address issues beyond the scope of the certified questions); *Glaubach v. Regence BlueShield*, 149 Wash. 2d 827, 835, 74 P.3d 115, 119 fn. 2 (Wash. 2003) (court declined to consider issues outside the strict scope of the certified question) ("We are restricted in our review to the four corners of the question" citing *Broad v. Mannesmann Anlagenbau, A.G.*, 141 Wash. 2d 670, 676, 10 P.3d 371 (2000)).

Petitioners' citations to various FTC reports also does not

provide any support for their interpretation of RCW 19.16 that Midland Funding must be licensed before filing any lawsuits in Washington. Petitioners' Brief, pp. 11-12. The FTC reports do not interpret Washington state law or provide any insight on how to interpret it. Rather, the FTC reports address the FDCPA and the FTC's related enforcement efforts. *Id.* Simply put, Petitioners do not offer any logical connection between the FTC reports and Petitioners' claim that RCW 19.16 should be interpreted to include debt buyers prior to the 2013 Amendments.

Thereafter, Petitioners devote the remaining portion of their Opening Brief to unsupported assertions regarding the Respondents' alleged collection practices, including an extended discussion of affidavits filed in lawsuits. Petitioners' Brief, pp. 12-24. These factual assertions are not at all germane to the questions certified to this Court and Petitioners fail to assert how affidavits in any way relate to their interpretation of RCW 19.16 *et seq.* Unfortunately, this appears to simply be a smear campaign to draw this Court away from the indisputable fact that the plain language of the CAA did not apply to debt purchasers. Irrespective, the Federal Court in *Gray* has already made clear that there are no affidavit claims at issue in that litigation and

Petitioners' Amended Complaint in that case contains no such claims. ECF 297 and 416.

Instead, Petitioner Gray's affidavit claims are the subject of class action settlement litigation currently pending in the U.S. District Court for the Northern District of Ohio, *Vassalle et al. v. Midland Funding et al.*, Origination Case No. 3:11-cv-00096. Petitioner Gray objected to the settlement, primarily on the grounds that she believed that the federal court lacked jurisdiction over her affidavit claims. See *Vassalle v. Midland Funding LLC*, 708 F. 3d 747 (6th Cir. 2103). Although the Sixth Circuit affirmed most of the federal district court's findings on the class settlement, including that the district court had jurisdiction over Gray's affidavit claims, *Id.* at 753-54, it found that the class settlement in its current form should not have been approved and ordered that the case be remanded back to the district court for further proceedings. *Id.* at 754-60. Irrespective, the affidavit issues are factual and not within the purview of the questions certified to this Court.

Finally, Petitioners engage in a lengthy discussion of factual and evidentiary issues, Petitioners' Brief at 18-26, but again fail to explain how any of these support Petitioners' interpretation of RCW 19.16.100 to include debt purchasers, especially prior to the 2013

Amendments. It is plain that it did not, and once again Petitioners' arguments fall well-beyond the provision of the certified questions.

C. Under the CAA, Unlicensed Debt Purchasers, Such as Midland Funding, Were Allowed to Be Plaintiffs In Lawsuits Filed In Washington Courts By Their Counsel.

With respect to the second certified question set forth by the Federal Court: whether a company, such as Midland Funding, was allowed to be the plaintiff in lawsuits in the Washington courts on delinquent consumer accounts, without being licensed as a collection agency; the answer is "Yes," for the reasons set forth below.

1. An Unlicensed Debt Purchaser May Bring Suit Under RCW 19.16.

Washington law recognized that an unlicensed debt purchaser may file a lawsuit without being licensed as a collection agency. Under RCW 19.16.110, a "person" must be licensed under RCW 19.16 before acting as a "collection agency." See RCW 19.16.110. Under RCW 19.16.260, a "collection agency" may not bring a lawsuit in the state of Washington without showing that it is licensed as a collection agency:

No collection agency or out-of-state collection agency may bring or maintain an action in any court of this state involving the collection of a claim of any third party without alleging and proving that he, she, or it is

duly licensed under this chapter and has satisfied the bonding requirements hereof...

See RCW 19.16.260 (in relevant part).

As argued above in Section IV.A and incorporated here by reference, a debt purchaser is not considered a "collection agency" under RCW 19.16.100 and the 2013 Amendments that include debt purchasers do not go into effect until October 1, 2013. Thus, the provision in RCW 19.16.260 that requires a "collection agency" to be licensed before filing a lawsuit did not apply to debt purchasers at the time at issue in the Federal Court action.

Moreover, the 2013 Amendments also included an amendment to RCW 19.16.260 to add for the first time that a "collection agency" must be licensed before filing a lawsuit on "its own claim." See 1822-S.SL, Section 3, line 12 (emphasis added), Appendix pp. 12, 28. Again, the 2013 Amendment to RCW 19.16.260 goes into effect on October 1, 2013. See 1822-S.SL, Section 4; Appendix pp. 12, 28; see *supra* Section IV.A.2 (addressing amendment to RCW 19.16.100(2)).

Prior to the 2013 Amendments, RCW 19.16.260 required only that a "collection agency" be licensed in order to file a lawsuit "involving the collection of a claim of any third party." See

RCW 19.16.260. (emphasis added). This language could only have meant that licensing was a prerequisite to file suit for a third-party. This is irreconcilable with any argument, such as the one intimated by the Petitioners, that a party that sued on its own debt—be it original or purchased—was required to have been licensed in order to do so. In other words, Petitioners are asking that this Court write the above language out of the statute. This cannot be done. Thus, RCW 19.16.260 did not govern whether debt purchasers must have been licensed before filing lawsuits in Washington courts on their own claims.

Petitioners cited only one case in support of their argument that licensing is required for debt purchasers before filing suit, but *Audit & Adjustment Co. v. Earl*, 165 Wash. App. 4897, 267 P.3d 441 (2nd Div. 2011) does not rule on that issue. See Petitioners' Brief. at p. 10; *Audit & Adjustment Co. v. Earl*, 165 Wash. App. 4897, 267 P.3d 441 (2nd Div. 2011). In *Earl*, the appellant received medical care and failed to pay. The hospital assigned the claim to a third party collection agency who filed a lawsuit on its behalf. *Id.* at 500, ¶¶ 2-4. The court refused to consider the appellant's argument that the collection agency had not properly complied with RCW 19.16.260 by not attaching a copy of the assignment or its

license to the complaint because the appellant raised it for the first time on appeal. *Id.* at 506, ¶¶ 22-25.

Petitioners provide no other justification for why Midland Funding was required to be licensed as a collection agency before filing lawsuits under RCW 19.16, prior to the 2013 Amendments that go into effect on October 1, 2013. At most, the Petitioners—again, apparently ignorant of the amendments to the CAA—ask that “debt purchasers” be read into the CAA as being a “collection agency” to promote regulation. Petitioners’ Brief, pp. 22-26. Other than asking this Court to make factual determinations on the Respondents’ alleged conduct and corporate structure, no support is provided for this view. Also, this Court’s role is only to “answer questions of law but not determine facts.” *Bain v. Metropolitan Mortg. Group, Inc.*, 175 Wash. 2d 83 (2012) (declining to answer second certified question before the Court, because plaintiff raised factual issues beyond the scope of the Court’s review). In any event, this argument seems more than moot now that the CAA has been amended to require the licensure of debt purchasers such as Midland Funding.

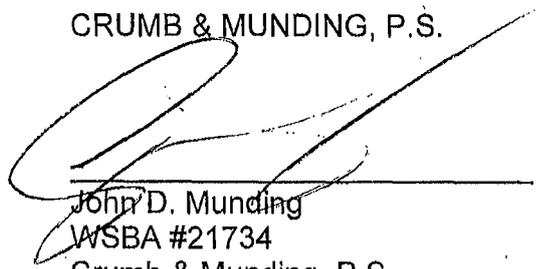
Accordingly, the correct answer to the second certified question is “Yes.”

V. CONCLUSION

If the Court decides to answer the certified questions, the correct answer to the first certified question is "No" and the correct answer to the second certified question is "Yes," because Midland Funding, a debt purchaser, was not a "collection agency" as defined by RCW 19.16.100, and thus was not required to be licensed under RCW 19.16 prior to filing any lawsuits in Washington on debts that it was owed.

Respectfully submitted this 15th day of July, 2013.

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VI. APPENDIX

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|----------------------|--------------------------------------|
| Appendix pages 1-3 | RCW 19.16.100 |
| Appendix pages 4-5 | RCW 19.16.260 |
| Appendix pages 6-13 | 1822-S.SL Amendments to RCW 19.16 |
| Appendix pages 14-95 | Senate Bill Report, SHB 1822 |

CERTIFICATE OF SERVICE

I, Benjamin J. McDonnell, certify that on the 15th day of July, 2013, I caused true and correct copies of the foregoing Brief of Respondents/Defendants Midland Funding, LLC, Midland Credit Management, Inc., and Encore Capital Group, Inc., together with the Appendix thereto, to be served on the following persons by First Class U.S. Mail, postage prepaid:

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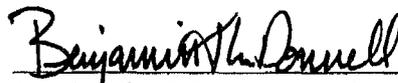
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APPENDIX

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West's Revised Code of Washington Annotated
Title 19. Business Regulations--Miscellaneous (Refs & Annos)
Chapter 19.16. Collection Agencies (Refs & Annos)

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BY RONALD R. CARPENTER

West's RCWA 19.16.100

CLERK

19.16.100. Definitions

Currentness

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

- (1) "Person" includes individual, firm, partnership, trust, joint venture, association, or corporation.
- (2) "Collection agency" means and includes:
 - (a) Any person directly or indirectly engaged in soliciting claims for collection, or collecting or attempting to collect claims owed or due or asserted to be owed or due another person;
 - (b) Any person who directly or indirectly furnishes or attempts to furnish, sells, or offers to sell forms represented to be a collection system or scheme intended or calculated to be used to collect claims even though the forms direct the debtor to make payment to the creditor and even though the forms may be or are actually used by the creditor himself or herself in his or her own name;
 - (c) Any person who in attempting to collect or in collecting his or her own claim uses a fictitious name or any name other than his or her own which would indicate to the debtor that a third person is collecting or attempting to collect such claim.
- (3) "Collection agency" does not mean and does not include:
 - (a) Any individual engaged in soliciting claims for collection, or collecting or attempting to collect claims on behalf of a licensee under this chapter, if said individual is an employee of the licensee;
 - (b) Any individual collecting or attempting to collect claims for not more than one employer, if all the collection efforts are carried on in the name of the employer and if the individual is an employee of the employer;
 - (c) Any person whose collection activities are carried on in his, her, or its true name and are confined and are directly related to the operation of a business other than that of a collection agency, such as but not limited to: Trust companies; savings and loan associations; building and loan associations; abstract companies doing an escrow business; real estate brokers; property management companies collecting assessments, charges, or fines on behalf of condominium unit owners associations, associations of apartment owners, or homeowners' associations; public officers acting in their official capacities; persons acting under court order; lawyers; insurance companies; credit unions; loan or finance companies; mortgage banks; and banks;

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

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

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

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

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

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

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

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

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

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

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

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

Credits

[2003 c 203 § 1, eff. July 27, 2003. Prior: 2001 c 47 § 1; 2001 c 43 § 1; 1994 c 195 § 1; 1990 c 190 § 1; 1979 c 158 § 81; 1971 ex.s. c 253 § 1.]

Editors' Notes

LIBRARY REFERENCES

Consumer Protection § 10.
Licenses § 11(1).
Westlaw Topic Nos. 238, 92H.
C.J.S. Architects § 2.
C.J.S. Credit Reporting Agencies; Consumer Protection §§ 74 to 87.
C.J.S. Licenses §§ 30 to 34.

RESEARCH REFERENCES

Treatises and Practice Aids

27 Wash. Prac. Series § 1:41, Overview.
27 Wash. Prac. Series § 1.43, "Collection Agency" Defined.
27 Wash. Prac. Series § 1.48, Private Remedies for CAA Violations.

Notes of Decisions (8)

West's RCWA 19.16.100, WA ST 19.16.100
Current with 2013 Legislation effective through July 1, 2013

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West's Revised Code of Washington Annotated
Title 19. Business Regulations--Miscellaneous (Refs & Annos)
Chapter 19.16. Collection Agencies (Refs & Annos)

West's RCWA 19.16.260

19.16.260. Licensing prerequisite to suit

Effective: July 22, 2011

Currentness

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

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

Credits

[2011 c 336 § 521, eff. July 22, 2011; 1994 c 195 § 8; 1971 ex.s. c 253 § 17.]

Editors' Notes

LAW REVIEW AND JOURNAL COMMENTARIES

Defending against debt collection. David W. Freese, 41 Wash.St.B.News 23 (Nov. 1987).

LIBRARY REFERENCES

Action ~~§~~10.
Consumer Protection ~~§~~10.
Licenses ~~§~~19(3).
Westlaw Topic Nos. 13, 238, 92H.
C.J.S. Actions § 46.
C.J.S. Agriculture § 3.
C.J.S. Architects § 11.
C.J.S. Credit Reporting Agencies; Consumer Protection §§ 74 to 87.
C.J.S. Licenses § 35.

RESEARCH REFERENCES

Treatises and Practice Aids

27 Wash. Prac. Series § 1.31, Relation to State Laws.
27 Wash. Prac. Series § 1.44, Suits by Collection Agencies.

Notes of Decisions (2)

19.16.260. Licensing prerequisite to suit, WA ST 19.16.260

West's RCWA 19.16.260, WA ST 19.16.260
Current with 2013 Legislation effective through July 1, 2013

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2013 Wash. Legis. Serv. Ch. 148 (S.H.B. 1822) (WEST)

WASHINGTON 2013 LEGISLATIVE SERVICE

63rd Legislature, 2013 Regular Session

Additions are indicated by Text; deletions by
~~Text~~.

Vetoed are indicated by ~~Text~~;
stricken material by Text.

CHAPTER 148
S.H.B. No. 1822
COLLECTION AGENCIES—DEBTORS AND CREDITORS—CLAIMS

AN ACT Relating to debt collection practices; amending RCW 19.16.100, 19.16.250, and 19.16.260; and providing an effective date.

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

Sec. 1. RCW 19.16.100 and 2003 c 203 s 1 are each amended to read as follows:

<< WA ST 19.16.100 >>

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

- (1) "Person" includes individual, firm, partnership, trust, joint venture, association, or corporation.
- (2) "Collection agency" means and includes:
 - (a) Any person directly or indirectly engaged in soliciting claims for collection, or collecting or attempting to collect claims owed or due or asserted to be owed or due another person;
 - (b) Any person who directly or indirectly furnishes or attempts to furnish, sells, or offers to sell forms represented to be a collection system or scheme intended or calculated to be used to collect claims even though the forms direct the debtor to make payment to the creditor and even though the forms may be or are actually used by the creditor himself or herself in his or her own name;
 - (c) Any person who in attempting to collect or in collecting his or her own claim uses a fictitious name or any name other than his or her own which would indicate to the debtor that a third person is collecting or attempting to collect such claim;
 - (d) Any person or entity that is engaged in the business of purchasing delinquent or charged off claims for collection purposes, whether it collects the claims itself or hires a third party for collection or an attorney for litigation in order to collect such claims.
- (3) "Collection agency" does not mean and does not include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 2. RCW 19.16.250 and 2011 1st sp.s. c 29 s 2 are each amended to read as follows:

<< WA ST 19.16.250 >>

No licensee or employee of a licensee shall:

- (1) Directly or indirectly aid or abet any unlicensed person to engage in business as a collection agency in this state or receive compensation from such unlicensed person: PROVIDED, That nothing in this chapter shall prevent a licensee from accepting, as forwarder, claims for collection from a collection agency or attorney whose place of business is outside the state.
- (2) Collect or attempt to collect a claim by the use of any means contrary to the postal laws and regulations of the United States postal department.
- (3) Publish or post or cause to be published or posted, any list of debtors commonly known as "bad debt lists" or threaten to do so. For purposes of this chapter, a "bad debt list" means any list of natural persons alleged to fail to honor their lawful debts. However, nothing herein shall be construed to prohibit a licensee from communicating to its customers or clients by means of a coded list, the existence of a check dishonored because of insufficient funds, not sufficient funds or closed account by the financial institution servicing the debtor's checking account: PROVIDED, That the debtor's identity is not readily apparent: PROVIDED FURTHER, That the licensee complies with the requirements of subsection (10)(e) of this section.
- (4) Have in his or her possession or make use of any badge, use a uniform of any law enforcement agency or any simulation thereof, or make any statements which might be construed as indicating an official connection with any federal, state, county, or city law enforcement agency, or any other governmental agency, while engaged in collection agency business.
- (5) Perform any act or acts, either directly or indirectly, constituting the unauthorized practice of law.
- (6) Advertise for sale or threaten to advertise for sale any claim as a means of endeavoring to enforce payment thereof or agreeing to do so for the purpose of soliciting claims, except where the licensee has acquired claims as an assignee for the benefit of creditors or where the licensee is acting under court order.
- (7) Use any name while engaged in the making of a demand for any claim other than the name set forth on his or her or its current license issued hereunder.
- (8) Give or send to any debtor or cause to be given or sent to any debtor, any notice, letter, message, or form, other than through proper legal action, process, or proceedings, which represents or implies that a claim exists unless it shall indicate in clear and legible type:
 - (a) The name of the licensee and the city, street, and number at which he or she is licensed to do business;
 - (b) The name of the original creditor to whom the debtor owed the claim if such name is known to the licensee or employee: PROVIDED, That upon written request of the debtor, the licensee shall provide this name to the debtor or cease efforts to collect on the debt until this information is provided;
 - (c) If the notice, letter, message, or form is the first notice to the debtor or if the licensee is attempting to collect a different amount than indicated in his or her or its first notice to the debtor, an itemization of the claim asserted must be made including:
 - (i) Amount owing on the original obligation at the time it was received by the licensee for collection or by assignment;
 - (ii) Interest or service charge, collection costs, or late payment charges, if any, added to the original obligation by the original creditor, customer or assignor before it was received by the licensee for collection, if such information is known by the licensee or employee: PROVIDED, That upon written request of the debtor, the licensee shall make a reasonable effort to obtain information on such items and provide this information to the debtor;
 - (iii) Interest or service charge, if any, added by the licensee or customer or assignor after the obligation was received by the licensee for collection;

- (iv) Collection costs, if any, that the licensee is attempting to collect;
- (v) Attorneys' fees, if any, that the licensee is attempting to collect on his or her or its behalf or on the behalf of a customer or assignor; and
- (vi) Any other charge or fee that the licensee is attempting to collect on his or her or its own behalf or on the behalf of a customer or assignor;
- (d) If the notice, letter, message, or form concerns a judgment obtained against the debtor, no itemization of the amounts contained in the judgment is required, except postjudgment interest, if claimed, and the current account balance;
- (e) If the notice, letter, message, or form is the first notice to the debtor, an itemization of the claim asserted must be made including the following information:
 - (i) The original account number or redacted original account number assigned to the debt, if known to the licensee or employee: PROVIDED, That upon written request of the debtor, the licensee must make a reasonable effort to obtain this information or cease efforts to collect on the debt until this information is provided; and
 - (ii) The date of the last payment to the creditor on the subject debt by the debtor, if known to the licensee or employee: PROVIDED, That upon written request of the debtor, the licensee must make a reasonable effort to obtain this information or cease efforts to collect on the debt until this information is provided.
- (9) Communicate in writing with a debtor concerning a claim through a proper legal action, process, or proceeding, where such communication is the first written communication with the debtor, without providing the information set forth in subsection (8)(c) of this section in the written communication.
- (10) Communicate or threaten to communicate, the existence of a claim to a person other than one who might be reasonably expected to be liable on the claim in any manner other than through proper legal action, process, or proceedings except under the following conditions:
 - (a) A licensee or employee of a licensee may inform a credit reporting bureau of the existence of a claim. If the licensee or employee of a licensee reports a claim to a credit reporting bureau, the licensee shall, upon receipt of written notice from the debtor that any part of the claim is disputed, notify the credit reporting bureau of the dispute by written or electronic means and create a record of the fact of the notification and when the notification was provided;
 - (b) A licensee or employee in collecting or attempting to collect a claim may communicate the existence of a claim to a debtor's employer if the claim has been reduced to a judgment;
 - (c) A licensee or employee in collecting or attempting to collect a claim that has not been reduced to judgment, may communicate the existence of a claim to a debtor's employer if:
 - (i) The licensee or employee has notified or attempted to notify the debtor in writing at his or her last known address or place of employment concerning the claim and the debtor after a reasonable time has failed to pay the claim or has failed to agree to make payments on the claim in a manner acceptable to the licensee, and
 - (ii) The debtor has not in writing to the licensee disputed any part of the claim: PROVIDED, That the licensee or employee may only communicate the existence of a claim which has not been reduced to judgment to the debtor's employer once unless the debtor's employer has agreed to additional communications.
 - (d) A licensee may for the purpose of locating the debtor or locating assets of the debtor communicate the existence of a claim to any person who might reasonably be expected to have knowledge of the whereabouts of a debtor or the location of assets of the debtor if the claim is reduced to judgment, or if not reduced to judgment, when:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(17) Send any telegram or make any telephone calls to a debtor or concerning a debt or for the purpose of demanding

payment of a claim or seeking information about a debtor, for which the charges are payable by the addressee or by the person to whom the call is made: PROVIDED, That:

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

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

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

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

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

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

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

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

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

(24) Upon notification by a debtor that the debtor disputes all debts arising from a series of dishonored checks, automated clearinghouse transactions on a demand deposit account, or other preprinted written instruments, initiate oral contact with a debtor more than one time in an attempt to collect from the debtor debts arising from the identified series of dishonored checks, automated clearinghouse transactions on a demand deposit account, or other preprinted written instruments when: (a) Within the previous one hundred eighty days, in response to the licensee's attempt to collect the initial debt assigned to the licensee and arising from the identified series of dishonored checks, automated clearinghouse transactions on a demand deposit account, or other preprinted written instruments, the debtor in writing notified the licensee that the debtor's checkbook or other series of preprinted written instruments was stolen or fraudulently created; (b) the licensee has received

from the debtor a certified copy of a police report referencing the theft or fraudulent creation of the checkbook, automated clearinghouse transactions on a demand deposit account, or series of preprinted written instruments; (c) in the written notification to the licensee or in the police report, the debtor identified the financial institution where the account was maintained, the account number, the magnetic ink character recognition number, the full bank routing and transit number, and the check numbers of the stolen checks, automated clearinghouse transactions on a demand deposit account, or other preprinted written instruments, which check numbers included the number of the check that is the subject of the licensee's collection efforts; (d) the debtor provides, or within the previous one hundred eighty days provided, to the licensee a legible copy of a government-issued photo identification, which contains the debtor's signature and which was issued prior to the date of the theft or fraud identified in the police report; and (e) the debtor advised the licensee that the subject debt is disputed because the identified check, automated clearinghouse transaction on a demand deposit account, or other preprinted written instrument underlying the debt is a stolen or fraudulently created check or instrument.

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

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

Sec. 3. RCW 19.16.260 and 2011 c 336 s 521 are each amended to read as follows:

<< WA ST 19.16.260 >>

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

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

<< Note: WA ST 19.16.100, 19.16.260 >>

NEW SECTION. Sec. 4. Sections 1 and 3 of this act take effect October 1, 2013.

Approved May 7, 2013.

Effective July 28, 2013, except sections 1 and 3,
which become effective October 1, 2013. End of
Document

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SENATE BILL REPORT

SHB 1822

As Reported by Senate Committee On:
Financial Institutions, Housing & Insurance, March 28, 2013

Title: An act relating to debt collection practices.

Brief Description: Concerning debt collection practices.

Sponsors: House Committee on Judiciary (originally sponsored by Representative Stanford).

Brief History: Passed House: 3/09/13, 97-0.

Committee Activity: Financial Institutions, Housing & Insurance: 3/26/13, 3/28/13 [DP].

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & INSURANCE

Majority Report: Do pass.

Signed by Senators Hobbs, Chair; Mullet, Vice Chair; Benton, Ranking Member; Fain, Hatfield, Nelson and Roach.

Staff: Alison Mendiola (786-7483)

Background: Scope of Federal and State Governing Laws. Collection agencies are regulated by both state and federal law. Collection agencies are licensed by the Department of Licensing under the state Collection Agency Act (CAA), and are also subject to the federal Fair Debt Collection Practices Act (FDCPA) when collecting consumer debt. The CAA and FDCPA define collection agencies, called debt collectors under the FDCPA, as persons or entities directly or indirectly engaged in soliciting claims for collection, or collecting or attempting to collect claims owed or due, or asserted to be owed or due to another person. Also included are those collecting on their own behalf under another name, which would indicate to the debtor that a third person is attempting to collect the claim.

CAA does not specifically address people or entities purchasing delinquent claims and taking action to collect on those claims. This practice is commonly referred to as debt buying.

Prohibited Practices. Both CAA and FDCPA permit and prohibit certain practices, and in general have similar provisions as to what is and is not allowed. Where there is an inconsistency with state law, FDCPA supersedes state law; however, a state law is not inconsistent with FDCPA if it affords greater consumer protection than FDCPA. Examples of prohibited practices under both acts include publishing or threatening to publish bad debt

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

lists, purporting to be associated with law enforcement, failing to follow certain requirements in communications with debtors, and engaging in harassing or threatening tactics, among other things. The practice of law is listed as a prohibited practice for collection agencies under CAA.

Summary of Bill: Persons or entities engaged in the business of purchasing delinquent or charged-off debt for collection – debt buyers – are collection agencies for purposes of CAA, even if the collection of those claims is performed by a third party or an attorney through litigation. Debt buyers must be licensed as collection agencies and comply with the other requirements of CAA.

The list of prohibited practices under CAA is amended to prohibit the unauthorized practice of law.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed, except for sections 1 and 3 which take effect October 1, 2013.

Staff Summary of Public Testimony: PRO: The stakeholders worked hard negotiating this issue and as a result this bill is supported by the stakeholders. This bill is the first step in many steps of putting more consumer protections on the issue of debt buying. This bill is a good bill that represents a small piece of a larger issue.

Persons Testifying: PRO: Representative Stanford, prime sponsor; Bruce Neas, Columbia Legal Services; Ray Henning, DBA International, WA Collectors Assn.; Greg Luhn, Kevin Underwood, WA Collectors Assn.

HB 1822-S - DIGEST

(DIGEST AS ENACTED)

Revises the definition of "collection agency," for purposes of the collection agency act, to include a person or entity engaged in the business of purchasing delinquent or charged off claims for collection purposes, whether it collects the claims itself or hires a third party for collection or an attorney for litigation in order to collect such claims.

Prohibits a licensee and employee of a licensee, under the collection agency act, from performing an act constituting the unauthorized practice of law.

SUBSTITUTE HOUSE BILL 1822

State of Washington

63rd Legislature

2013 Regular Session

By House Judiciary (originally sponsored by Representative Stanford)

READ FIRST TIME 02/22/13.

1 AN ACT Relating to debt collection practices; amending RCW
2 19.16.100, 19.16.250, and 19.16.260; and providing an effective date.

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

4 **Sec. 1.** RCW 19.16.100 and 2003 c 203 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 or herself in his or her own name;

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

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

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

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

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

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

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

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

37 (f) Any person while acting as a debt collector for another person,
38 both of whom are related by common ownership or affiliated by corporate

1 control, if the person acting as a debt collector does so only for
2 persons to whom it is so related or affiliated and if the principal
3 business of the person is not the collection of debts.

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

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

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

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

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

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

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

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

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

26 **Sec. 2.** RCW 19.16.250 and 2011 1st sp.s. c 29 s 2 are each amended
27 to read as follows:

28 No licensee or employee of a licensee shall:

29 (1) Directly or indirectly aid or abet any unlicensed person to
30 engage in business as a collection agency in this state or receive
31 compensation from such unlicensed person: PROVIDED, That nothing in
32 this chapter shall prevent a licensee from accepting, as forwarder,
33 claims for collection from a collection agency or attorney whose place
34 of business is outside the state.

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

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

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

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

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

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

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

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

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

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

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

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

14 (iii) Interest or service charge, if any, added by the licensee or
15 customer or assignor after the obligation was received by the licensee
16 for collection;

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

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

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

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

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

32 (i) The original account number or redacted original account number
33 assigned to the debt, if known to the licensee or employee: PROVIDED,
34 That upon written request of the debtor, the licensee must make a
35 reasonable effort to obtain this information or cease efforts to
36 collect on the debt until this information is provided; and

37 (ii) The date of the last payment to the creditor on the subject
38 debt by the debtor, 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.

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

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

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

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

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

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

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

36 (d) A licensee may for the purpose of locating the debtor or
37 locating assets of the debtor communicate the existence of a claim to

1 any person who might reasonably be expected to have knowledge of the
2 whereabouts of a debtor or the location of assets of the debtor if the
3 claim is reduced to judgment, or if not reduced to judgment, when:

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

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

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

13 (i) The licensee has notified or attempted to notify the debtor in
14 writing at his or her 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 (11) Threaten the debtor with impairment of his or her credit
20 rating if a claim is not paid: PROVIDED, That advising a debtor that
21 the licensee has reported or intends to report a claim to a credit
22 reporting agency is not considered a threat if the licensee actually
23 has reported or intends to report the claim to a credit reporting
24 agency.

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

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

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

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

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

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

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

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

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

33 (a) This subsection does not prohibit a licensee from attempting to
34 communicate by way of a cellular telephone or other wireless device:
35 PROVIDED, That a licensee cannot cause charges to be incurred to the
36 recipient of the attempted communication more than three times in any
37 calendar week when the licensee knows or reasonably should know that

1 the number belongs to a cellular telephone or other wireless device,
2 unless the licensee is responding to a communication from the debtor or
3 the person to whom the call is made.

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

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

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

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

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

36 (21) Collect or attempt to collect in addition to the principal
37 amount of a claim any sum other than allowable interest, collection
38 costs or handling fees expressly authorized by statute, and, in the

1 case of suit, attorney's fees and taxable court costs. A licensee may
2 collect or attempt to collect collection costs and fees, including
3 contingent collection fees, as authorized by a written agreement or
4 contract, between the licensee's client and the debtor, in the
5 collection of a commercial claim. The amount charged to the debtor for
6 collection services shall not exceed thirty-five percent of the
7 commercial claim.

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

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

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

1 transactions on a demand deposit account, or other preprinted written
2 instruments, which check numbers included the number of the check that
3 is the subject of the licensee's collection efforts; (d) the debtor
4 provides, or within the previous one hundred eighty days provided, to
5 the licensee a legible copy of a government-issued photo
6 identification, which contains the debtor's signature and which was
7 issued prior to the date of the theft or fraud identified in the police
8 report; and (e) the debtor advised the licensee that the subject debt
9 is disputed because the identified check, automated clearinghouse
10 transaction on a demand deposit account, or other preprinted written
11 instrument underlying the debt is a stolen or fraudulently created
12 check or instrument.

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

1 information to the debtor, or to request additional information from
2 the debtor needed by the licensee to accurately record the debtor's
3 information in the licensee's records.

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

8 **Sec. 3.** RCW 19.16.260 and 2011 c 336 s 521 are each amended to
9 read as follows:

10 No collection agency or out-of-state collection agency may bring or
11 maintain an action in any court of this state involving the collection
12 of its own claim or a claim of any third party without alleging and
13 proving that he, she, or it is duly licensed under this chapter and has
14 satisfied the bonding requirements hereof, if applicable: PROVIDED,
15 That in any case where judgment is to be entered by default, it shall
16 not be necessary for the collection agency or out-of-state collection
17 agency to prove such matters.

18 A copy of the current collection agency license or out-of-state
19 collection agency license, certified by the director to be a true and
20 correct copy of the original, shall be prima facie evidence of the
21 licensing and bonding of such collection agency or out-of-state
22 collection agency as required by this chapter.

23 NEW SECTION. **Sec. 4.** Sections 1 and 3 of this act take effect
24 October 1, 2013.

--- END ---

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1822

63rd Legislature
2013 Regular Session

Passed by the House March 9, 2013
Yeas 97 Nays 0

Speaker of the House of Representatives

Passed by the Senate April 17, 2013
Yeas 48 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1822** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1822

Passed Legislature - 2013 Regular Session

State of Washington 63rd Legislature 2013 Regular Session

By House Judiciary (originally sponsored by Representative Stanford)

READ FIRST TIME 02/22/13.

1 AN ACT Relating to debt collection practices; amending RCW
2 19.16.100, 19.16.250, and 19.16.260; and providing an effective date.

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

4 **Sec. 1.** RCW 19.16.100 and 2003 c 203 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 or herself in his or her own name;

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

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

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

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

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

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

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

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

37 (f) Any person while acting as a debt collector for another person,
38 both of whom are related by common ownership or affiliated by corporate

1 control, if the person acting as a debt collector does so only for
2 persons to whom it is so related or affiliated and if the principal
3 business of the person is not the collection of debts.

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

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

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

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

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

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

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

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

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

26 **Sec. 2.** RCW 19.16.250 and 2011 1st sp.s. c 29 s 2 are each amended
27 to read as follows:

28 No licensee or employee of a licensee shall:

29 (1) Directly or indirectly aid or abet any unlicensed person to
30 engage in business as a collection agency in this state or receive
31 compensation from such unlicensed person: PROVIDED, That nothing in
32 this chapter shall prevent a licensee from accepting, as forwarder,
33 claims for collection from a collection agency or attorney whose place
34 of business is outside the state.

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

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

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

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

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

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

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

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

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

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

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

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

14 (iii) Interest or service charge, if any, added by the licensee or
15 customer or assignor after the obligation was received by the licensee
16 for collection;

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

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

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

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

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

32 (i) The original account number or redacted original account number
33 assigned to the debt, if known to the licensee or employee: PROVIDED,
34 That upon written request of the debtor, the licensee must make a
35 reasonable effort to obtain this information or cease efforts to
36 collect on the debt until this information is provided; and

37 (ii) The date of the last payment to the creditor on the subject
38 debt by the debtor, 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.

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

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

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

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

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

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

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

36 (d) A licensee may for the purpose of locating the debtor or
37 locating assets of the debtor communicate the existence of a claim to

1 any person who might reasonably be expected to have knowledge of the
2 whereabouts of a debtor or the location of assets of the debtor if the
3 claim is reduced to judgment, or if not reduced to judgment, when:

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

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

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

13 (i) The licensee has notified or attempted to notify the debtor in
14 writing at his or her 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 (11) Threaten the debtor with impairment of his or her credit
20 rating if a claim is not paid: PROVIDED, That advising a debtor that
21 the licensee has reported or intends to report a claim to a credit
22 reporting agency is not considered a threat if the licensee actually
23 has reported or intends to report the claim to a credit reporting
24 agency.

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

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

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

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

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

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

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

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

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

33 (a) This subsection does not prohibit a licensee from attempting to
34 communicate by way of a cellular telephone or other wireless device:
35 PROVIDED, That a licensee cannot cause charges to be incurred to the
36 recipient of the attempted communication more than three times in any
37 calendar week when the licensee knows or reasonably should know that

1 the number belongs to a cellular telephone or other wireless device,
2 unless the licensee is responding to a communication from the debtor or
3 the person to whom the call is made.

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

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

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

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

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

36 (21) Collect or attempt to collect in addition to the principal
37 amount of a claim any sum other than allowable interest, collection
38 costs or handling fees expressly authorized by statute, and, in the

1 case of suit, attorney's fees and taxable court costs. A licensee may
2 collect or attempt to collect collection costs and fees, including
3 contingent collection fees, as authorized by a written agreement or
4 contract, between the licensee's client and the debtor, in the
5 collection of a commercial claim. The amount charged to the debtor for
6 collection services shall not exceed thirty-five percent of the
7 commercial claim.

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

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

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

1 transactions on a demand deposit account, or other preprinted written
2 instruments, which check numbers included the number of the check that
3 is the subject of the licensee's collection efforts; (d) the debtor
4 provides, or within the previous one hundred eighty days provided, to
5 the licensee a legible copy of a government-issued photo
6 identification, which contains the debtor's signature and which was
7 issued prior to the date of the theft or fraud identified in the police
8 report; and (e) the debtor advised the licensee that the subject debt
9 is disputed because the identified check, automated clearinghouse
10 transaction on a demand deposit account, or other preprinted written
11 instrument underlying the debt is a stolen or fraudulently created
12 check or instrument.

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

1 information to the debtor, or to request additional information from
2 the debtor needed by the licensee to accurately record the debtor's
3 information in the licensee's records.

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

8 **Sec. 3.** RCW 19.16.260 and 2011 c 336 s 521 are each amended to
9 read as follows:

10 No collection agency or out-of-state collection agency may bring or
11 maintain an action in any court of this state involving the collection
12 of its own claim or a claim of any third party without alleging and
13 proving that he, she, or it is duly licensed under this chapter and has
14 satisfied the bonding requirements hereof, if applicable: PROVIDED,
15 That in any case where judgment is to be entered by default, it shall
16 not be necessary for the collection agency or out-of-state collection
17 agency to prove such matters.

18 A copy of the current collection agency license or out-of-state
19 collection agency license, certified by the director to be a true and
20 correct copy of the original, shall be prima facie evidence of the
21 licensing and bonding of such collection agency or out-of-state
22 collection agency as required by this chapter.

23 NEW SECTION. **Sec. 4.** Sections 1 and 3 of this act take effect
24 October 1, 2013.

--- END ---

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1822

Chapter 148, Laws of 2013

63rd Legislature
2013 Regular Session

DEBT COLLECTION PRACTICES

EFFECTIVE DATE: 07/28/13 - Except sections 1 and 3, which become effective 10/01/13.

Passed by the House March 9, 2013
Yeas 97 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 17, 2013
Yeas 48 Nays 0

BRAD OWEN

President of the Senate

Approved May 7, 2013, 2:05 p.m.

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1822** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER

Chief Clerk

FILED

May 7, 2013

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1822

Passed Legislature - 2013 Regular Session

State of Washington **63rd Legislature** **2013 Regular Session**

By House Judiciary (originally sponsored by Representative Stanford)

READ FIRST TIME 02/22/13.

1 AN ACT Relating to debt collection practices; amending RCW
2 19.16.100, 19.16.250, and 19.16.260; and providing an effective date.

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

4 **Sec. 1.** RCW 19.16.100 and 2003 c 203 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 or herself in his or her own name;

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

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

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

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

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

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

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

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

37 (f) Any person while acting as a debt collector for another person,
38 both of whom are related by common ownership or affiliated by corporate

1 control, if the person acting as a debt collector does so only for
2 persons to whom it is so related or affiliated and if the principal
3 business of the person is not the collection of debts.

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

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

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

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

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

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

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

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

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

26 **Sec. 2:** RCW 19.16.250 and 2011 1st sp.s. c 29 s 2 are each amended
27 to read as follows:

28 No licensee or employee of a licensee shall:

29 (1) Directly or indirectly aid or abet any unlicensed person to
30 engage in business as a collection agency in this state or receive
31 compensation from such unlicensed person: PROVIDED, That nothing in
32 this chapter shall prevent a licensee from accepting, as forwarder,
33 claims for collection from a collection agency or attorney whose place
34 of business is outside the state.

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

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

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

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

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

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

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

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

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

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

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

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

14 (iii) Interest or service charge, if any, added by the licensee or
15 customer or assignor after the obligation was received by the licensee
16 for collection;

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

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

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

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

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

32 (i) The original account number or redacted original account number
33 assigned to the debt, if known to the licensee or employee: PROVIDED,
34 That upon written request of the debtor, the licensee must make a
35 reasonable effort to obtain this information or cease efforts to
36 collect on the debt until this information is provided; and

37 (ii) The date of the last payment to the creditor on the subject
38 debt by the debtor, 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.

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

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

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

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

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

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

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

36 (d) A licensee may for the purpose of locating the debtor or
37 locating assets of the debtor communicate the existence of a claim to

1 any person who might reasonably be expected to have knowledge of the
2 whereabouts of a debtor or the location of assets of the debtor if the
3 claim is reduced to judgment, or if not reduced to judgment, when:

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

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

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

13 (i) The licensee has notified or attempted to notify the debtor in
14 writing at his or her 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 (11) Threaten the debtor with impairment of his or her credit
20 rating if a claim is not paid: PROVIDED, That advising a debtor that
21 the licensee has reported or intends to report a claim to a credit
22 reporting agency is not considered a threat if the licensee actually
23 has reported or intends to report the claim to a credit reporting
24 agency.

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

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

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

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

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

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

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

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

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

33 (a) This subsection does not prohibit a licensee from attempting to
34 communicate by way of a cellular telephone or other wireless device:
35 PROVIDED, That a licensee cannot cause charges to be incurred to the
36 recipient of the attempted communication more than three times in any
37 calendar week when the licensee knows or reasonably should know that

1 the number belongs to a cellular telephone or other wireless device,
2 unless the licensee is responding to a communication from the debtor or
3 the person to whom the call is made.

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

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

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

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

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

36 (21) Collect or attempt to collect in addition to the principal
37 amount of a claim any sum other than allowable interest, collection
38 costs or handling fees expressly authorized by statute, and, in the

1 case of suit, attorney's fees and taxable court costs. A licensee may
2 collect or attempt to collect collection costs and fees, including
3 contingent collection fees, as authorized by a written agreement or
4 contract, between the licensee's client and the debtor, in the
5 collection of a commercial claim. The amount charged to the debtor for
6 collection services shall not exceed thirty-five percent of the
7 commercial claim.

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

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

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

1 transactions on a demand deposit account, or other preprinted written
2 instruments, which check numbers included the number of the check that
3 is the subject of the licensee's collection efforts; (d) the debtor
4 provides, or within the previous one hundred eighty days provided, to
5 the licensee a legible copy of a government-issued photo
6 identification, which contains the debtor's signature and which was
7 issued prior to the date of the theft or fraud identified in the police
8 report; and (e) the debtor advised the licensee that the subject debt
9 is disputed because the identified check, automated clearinghouse
10 transaction on a demand deposit account, or other preprinted written
11 instrument underlying the debt is a stolen or fraudulently created
12 check or instrument.

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

1 information to the debtor, or to request additional information from
2 the debtor needed by the licensee to accurately record the debtor's
3 information in the licensee's records.

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

8 **Sec. 3.** RCW 19.16.260 and 2011 c 336 s 521 are each amended to
9 read as follows:

10 No collection agency or out-of-state collection agency may bring or
11 maintain an action in any court of this state involving the collection
12 of its own claim or a claim of any third party without alleging and
13 proving that he, she, or it is duly licensed under this chapter and has
14 satisfied the bonding requirements hereof, if applicable: PROVIDED,
15 That in any case where judgment is to be entered by default, it shall
16 not be necessary for the collection agency or out-of-state collection
17 agency to prove such matters.

18 A copy of the current collection agency license or out-of-state
19 collection agency license, certified by the director to be a true and
20 correct copy of the original, shall be prima facie evidence of the
21 licensing and bonding of such collection agency or out-of-state
22 collection agency as required by this chapter.

23 NEW SECTION. **Sec. 4.** Sections 1 and 3 of this act take effect
24 October 1, 2013.

Passed by the House March 9, 2013.

Passed by the Senate April 17, 2013.

Approved by the Governor May 7, 2013.

Filed in Office of Secretary of State May 7, 2013.

SENATE BILL REPORT

SHB 1822

As of March 28, 2013

Title: An act relating to debt collection practices.

Brief Description: Concerning debt collection practices.

Sponsors: House Committee on Judiciary (originally sponsored by Representative Stanford).

Brief History: Passed House: 3/09/13, 97-0.

Committee Activity: Financial Institutions, Housing & Insurance: 3/26/13.

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & INSURANCE

Staff: Alison Mendiola (786-7483)

Background: Scope of Federal and State Governing Laws. Collection agencies are regulated by both state and federal law. Collection agencies are licensed by the Department of Licensing under the state Collection Agency Act (CAA), and are also subject to the federal Fair Debt Collection Practices Act (FDCPA) when collecting consumer debt. The CAA and FDCPA define collection agencies, called debt collectors under the FDCPA, as persons or entities directly or indirectly engaged in soliciting claims for collection, or collecting or attempting to collect claims owed or due, or asserted to be owed or due to another person. Also included are those collecting on their own behalf under another name, which would indicate to the debtor that a third person is attempting to collect the claim.

CAA does not specifically address people or entities purchasing delinquent claims and taking action to collect on those claims. This practice is commonly referred to as debt buying.

Prohibited Practices. Both CAA and FDCPA permit and prohibit certain practices, and in general have similar provisions as to what is and is not allowed. Where there is an inconsistency with state law, FDCPA supersedes state law; however, a state law is not inconsistent with FDCPA if it affords greater consumer protection than FDCPA. Examples of prohibited practices under both acts include publishing or threatening to publish bad debt lists, purporting to be associated with law enforcement, failing to follow certain requirements in communications with debtors, and engaging in harassing or threatening tactics, among other things. The practice of law is listed as a prohibited practice for collection agencies under CAA.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Summary of Bill: Persons or entities engaged in the business of purchasing delinquent or charged-off debt for collection – debt buyers – are collection agencies for purposes of CAA, even if the collection of those claims is performed by a third party or an attorney through litigation. Debt buyers must be licensed as collection agencies and comply with the other requirements of CAA.

The list of prohibited practices under CAA is amended to prohibit the unauthorized practice of law.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed, except for sections 1 and 3 which take effect October 1, 2013.

Staff Summary of Public Testimony: PRO: The stakeholders worked hard negotiating this issue and as a result this bill is supported by the stakeholders. This bill is the first step in many steps of putting more consumer protections on the issue of debt buying. This bill is a good bill that represents a small piece of a larger issue.

Persons Testifying: PRO: Representative Stanford, prime sponsor; Bruce Neas, Columbia Legal Services; Ray Henning, DBA International, WA Collectors Assn.; Greg Luhn, Kevin Underwood, WA Collectors Assn.

Judiciary Committee

HB 1822

Title: An act relating to debt collection practices.

Brief Description: Concerning debt collection practices.

Sponsors: Representative Stanford.

Brief Summary of Bill

- Makes changes and additions to the Collection Agency Act (CAA), including:
 1. defining "debt buyers" and requiring them to be licensed as collection agencies;
 2. prohibiting debt buyers from collecting time-barred debt;
 3. requiring debt buyers to provide specific documentation to the debtor and court that indicates that they are entitled to collect the debt; and
 4. imposing penalties on debt buyers who violate the CAA.

Hearing Date:

Staff: Omeara Harrington (786-7136).

Background:

Scope of Federal and State Governing Laws.

Collection agencies are regulated by both state and federal law. Collection agencies are licensed by the Department of Licensing under the state Collection Agency Act (CAA), and are also subject to the federal Fair Debt Collection Practices Act (FDCPA) when collecting on consumer debt. The CAA and FDCPA define collection agencies (called "debt collectors" under the FDCPA) as persons or entities directly or indirectly engaged in soliciting claims for collection, or collecting or attempting to collect claims owed or due or asserted to be owed or due another person. Also included are those collecting on their own behalf under another name, which would indicate to the debtor that a third person is attempting to collect the claim.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

There are a number of exceptions to the definition of collection agency for purposes of the CAA. "Out-of-state" collection agencies are not considered collection agencies for purposes of the CAA as a whole, or for purposes of licensing, although out-of-state collection agencies must comply with select provisions of the CAA.

The CAA does not specifically address debt buyers, who purchase delinquent claims and take action to collect on those claims.

Prohibited Practices.

Both the CAA and the FDCPA permit and prohibit certain practices, and in general have similar provisions as to what is and is not allowed. Where there is an inconsistency with state law, the FDCPA supersedes state law; however, a state law is not inconsistent with the FDCPA if it affords greater consumer protection than the FDCPA.

Examples of prohibited practices under both acts include publishing or threatening to publish "bad debt lists," purporting to be associated with law enforcement, failing to follow certain requirements in communications with debtors, and engaging in harassing or threatening tactics, among other things.

Penalties.

Federal.

Violation of the FDCPA subjects the violator to liability for any actual damage resulting from the violation, and additional damages. The additional damages may be up to \$1000, for an individual action, or, if a class action, the same for each named plaintiff, and up to the lesser of \$500,000 or 1 percent of the net worth of the debt collector for the pool of other class members. The court is given criteria to consider in determining the amount of liability that should be imposed, and no liability may be imposed if the violation was an unintentional bona fide error that occurred despite the maintenance of error-avoidance procedures.

State.

Violation of the licensing requirement of the CAA subjects the violator to a fine not to exceed \$500, imprisonment of up to one year, or both, and monies collected or received must be returned. Violation of the prohibited practices provisions of the CAA prohibits anyone (either the collection agency, its client, or any subsequent purchaser of the debt) from ever recovering any interest, service charge, attorneys' fee, or other associated costs or charges related to the claim; instead, only the amount of the original claim or obligation may be collected. Violations of either the licensing or prohibited practices provisions of the CAA are statutorily declared to be unfair acts or practices or unfair methods of competition for purposes of the Washington's Consumer Protection Act.

Procedural Requirements for Claims Brought by Collection Agencies.

Prior to bringing an action on a claim, collection agencies must allege and provide proof of valid licensing under the CAA and satisfaction of any necessary bonding requirements, unless the judgment is to be entered by default (meaning the defendant did not answer the complaint). The assignment of the claim to the collection agency is presumed valid, if the assignment is filed in court with the complaint, absent debtor objection.

The statute of limitations during which the collection agency must bring a claim will vary depending on the underlying obligation, but typically claims must be commenced within six years. It is a prohibited practice for a collection agency to attempt to collect debt that the collection agency knows or reasonably should know is time barred.

Summary of Bill:

Debt Buyers.

The CAA is amended to define "debt buyers" and require them to be licensed as collection agencies. Debt buyers are defined as people or entities engaged in the business of purchasing delinquent consumer debt for collection purposes. Debt buyers can be those who collect the debt themselves, as well as those who hire third parties to do so, or who hire attorneys to engage in litigation to collect the debt.

"Consumer debt" is defined as the financial obligation associated with transactions in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes.

Prohibited Practices.

Certain acts are added to the list of prohibited practices. Debt buyers violate the CAA by attempting to collect debt they know or reasonably should know is time barred. Also prohibited is bringing suit without meeting certain requirements; specifically the debt buyer must have proof that they own the debt and of the amount of debt owed, and must give 30 days' notice prior to filing a legal action.

All collection agencies are prohibited from seeking a warrant for the arrest of a debtor (absent the debtor's violation of criminal law), and from failing to be licensed as a collection agency or failing to comply with notice and other procedural requirements.

Debt buyers who fail to comply with any provision of the CAA are liable for actual damage and civil penalties that range between \$500 and \$5,000 per violation for each individual plaintiff, or each named plaintiff in a class action, and up to the same amount for other class members, plus costs and attorneys' fees. In determining the amount of liability, the court must consider the frequency, persistence, and nature of non-compliance, and, in class actions, the resources of the debt buyer and number of people affected.

Claims by Debt Buyers.

Debt buyers must comply with specific requirements in bringing an action to collect consumer debt. The complaint or claim must be accompanied by debtor-signed proof of the original debt, proof of ownership and evidence of each previous transfer, and an itemization of the amount sought.

The presumption of validity in claims brought by collection agencies does not apply to debt buyers. To obtain a judgment, the plaintiff debt buyer must file:

- an authenticated copy of the contract or writing evidencing the debt and signed by the debtor;
- business records establishing specific information about the amount and nature of the debt;

- an affidavit and exhibits indicating that the plaintiff debt buyer is the sole owner of the debt, including a complete chronological record of previous owners and transfers;
- an affidavit by the original creditor, affidavits authenticating the contract, and specific evidence of each assignment or sale; and
- an affidavit indicating that the claim is not time-barred.

Failure to comply with these requirements results in the case being dismissed, with prejudice. Plaintiff debt buyers must appear for trial and be ready to proceed, otherwise default judgment is entered in favor of the debtor, with prejudice, and the court may award the debtor costs, attorneys' fees, and other expenses.

Judgment entered in favor of a debt buyer will bear interest at a maximum rate equal to the weekly average one-year constant maturity treasury yield for the calendar week preceding the date of judgment, regardless of any interest rate included in the underlying contract. Before a court may enforce an attorneys' fees provision in a contract in favor of a debt buyer, the debt buyer must provide the court with certain information evidencing ownership of the debt, and detailing the chain of prior ownership.

The statute of limitations during which a debt buyer may bring an action to collect consumer debt is three years, unless a shorter time period is cited in the contract or elsewhere in statute. Payment made after default does not restart the statute of limitations.

Other Changes.

Receipts bearing certain specified information must be provided to debtors within 10 days of payment on a consumer debt, and copies must be furnished within 10 days of a request. Collection agencies must retain receipts for four years.

The exemption for out-of-state collection agencies in the CAA definition of "collection agency" is removed, as is the definition, and references to out-of-state collection agencies are removed from the provision requiring proof of licensing and bonding prior to bringing suit.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

HOUSE BILL REPORT

HB 1822

As Reported by House Committee On:

Judiciary

Appropriations Subcommittee on General Government

Title: An act relating to debt collection practices.

Brief Description: Concerning debt collection practices.

Sponsors: Representative Stanford.

Brief History:

Committee Activity:

Judiciary: 2/21/13 [DPS];

Appropriations Subcommittee on General Government: 2/25/13 [DPS(JUDI)].

Brief Summary of Substitute Bill

- Requires persons or entities engaged in the business of purchasing delinquent debt for collection purposes to be licensed as collection agencies under the Collection Agency Act (CAA) and to comply with all other requirements of the CAA.
- Amends the list of prohibited practices in the CAA to prohibit the "unauthorized" practice of law, rather than the practice of law in general.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Pedersen, Chair; Hansen, Vice Chair; Rodne, Ranking Minority Member; O'Ban, Assistant Ranking Minority Member; Goodman, Hope, Jinkins, Kirby, Klippert, Nealey, Orwall, Roberts and Shea.

Staff: Omeara Harrington (786-7136).

Background:

Scope of Federal and State Governing Laws.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Collection agencies are regulated by both state and federal law. Collection agencies are licensed by the Department of Licensing under the state Collection Agency Act (CAA), and are also subject to the federal Fair Debt Collection Practices Act (FDCPA) when collecting consumer debt. The CAA and FDCPA define collection agencies (called "debt collectors" under the FDCPA) as persons or entities directly or indirectly engaged in soliciting claims for collection, or collecting or attempting to collect claims owed or due or asserted to be owed or due another person. Also included are those collecting on their own behalf under another name, which would indicate to the debtor that a third person is attempting to collect the claim.

The CAA does not specifically address people or entities purchasing delinquent claims and taking action to collect on those claims. This practice is commonly referred to as "debt buying."

Prohibited Practices.

Both the CAA and the FDCPA permit and prohibit certain practices, and in general have similar provisions as to what is and is not allowed. Where there is an inconsistency with state law, the FDCPA supersedes state law; however, a state law is not inconsistent with the FDCPA if it affords greater consumer protection than the FDCPA.

Examples of prohibited practices under both acts include publishing or threatening to publish "bad debt lists," purporting to be associated with law enforcement, failing to follow certain requirements in communications with debtors, and engaging in harassing or threatening tactics, among other things. The practice of law is listed as a prohibited practice for collection agencies under the CAA.

Summary of Substitute Bill:

Persons or entities engaged in the business of purchasing delinquent or charged-off debt for collection (debt buyers) are collection agencies for purposes of the CAA, even if the collection of those claims is performed by a third party or an attorney through litigation. Debt buyers must be licensed as collection agencies and comply with the other requirements of the CAA.

The list of prohibited practices in the CAA is amended to prohibit the "unauthorized" practice of law, rather than the practice of law in general.

Substitute Bill Compared to Original Bill:

The definition of debt buyers is expanded to include persons or entities purchasing any delinquent debt for collection, rather than specifically consumer debt. The effective date of the provisions related to debt buyers is delayed to October 1, 2013.

The CAA prohibited practices list is amended to prohibit the "unauthorized" practice of law, rather than the practice of law in general.

A number of provisions are removed from the underlying proposal, including:

- requirements specific to debt buyers that added prohibited practices, imposed filing and procedural requirements, limited judgment interest, and imposed additional penalties for violations of the CAA;
- a prohibition against collection agencies seeking a warrant for the arrest of a debtor;
- a requirement that collection agencies provide debtors with receipts bearing specific information; and
- amendments to current law that removed language specific to out-of-state collection agencies.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for sections 1 and 3 relating to debt buyers, which take effect October 1, 2013.

Staff Summary of Public Testimony:

(In support-from testimony on HB 1069, which is identical to HB 1822 except for the title, on 1/16/2013) Debt buying is a new practice in the debt collection industry that is not technically covered by the CAA. Stakeholders in this area are working toward a compromise that will safeguard fairness for consumers while keeping the collection industry alive and efficient in Washington.

The bill is carefully drafted to not affect debt collection agencies, just debt buyers. Many of the worst abuses in the debt collection industry are by debt buyers. Debt buyers purchase mass portfolios of charged off debt for pennies on the dollar, with little evidentiary basis, and get massive default judgments because the consumers have no notice of the lawsuit. Consumers have had to go to great lengths to rectify judgments based on fraudulent or paid-off claims that were sold to debt buyers who did not know they were buying illegitimate claims. There should be requirements to verify and authenticate the debt so that courts can know that the judgment they are issuing is legitimate.

Debt collection practices can be harmful to life progress and self-esteem. Consumers are harassed over the same debt for extended periods of time. The elderly are especially vulnerable to unethical collection practices, and brain research has revealed that older people have difficulty identifying untrustworthy situations and are less concerned by future losses than younger people.

(Opposed-from testimony on HB 1069, which is identical to HB 1822 except for the title, on 1/16/2013) There is agreement that debt buyers are collection agencies and are subject to the CAA, but this bill goes too far. It is unfair to treat debt buyers differently just because they have purchased the debt they are collecting. It is untrue that a large proportion of complaints are against debt buyers. A study revealed that there are fewer complaints against debt buyers

than collection agencies. The federal law protects consumers. If there is fraud, the debtor can go to Federal Trade Commission website and file a claim, and then the company will stop collections.

A lot of debt buyer companies keep proof of the background of the debt and abide by the statute of limitations and notice requirements. The courts require evidence before entering a default judgment. The rules of evidence should not be legislated.

The provisions of the bill are too restrictive. The requirement to provide a mailed receipt will ultimately hurt clients, because the extra expense will force collection agencies to limit small payment options. The interest rate under the bill would be capped at 1 percent, when normally it would be 12 percent. The new penalties are very high, particularly when coupled with those in the FDCPA and the Washington Consumer Protection Act.

Persons Testifying: (In support-from testimony on HB 1069, which is identical to HB 1822 except for the title, on 1/16/2013) Representative Stanford, prime sponsor; Sara Ellen Hutchinson, Law Office of Sara Ellen Hutchinson PLLC; Melissa Commodore; Sally DeLeon; Jim Richards; Ingrid McDonald, AARP; Marcy Bowers, Statewide Poverty Action Network; and Bruce Neas, Columbia Legal.

(Opposed-from testimony on HB 1069, which is identical to HB 1822 except for the title, on 1/16/2013) Greg Luhn and Kevin Underwood, Washington Collector's Association; Ray Henning and Brian Fair, DBA International Washington; and Patrick Layman, Suttell and Hammer.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS SUBCOMMITTEE ON GENERAL GOVERNMENT

Majority Report: The substitute bill by Committee on Judiciary be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Hudgins, Chair; Parker, Ranking Minority Member; Buys, Chandler, Dunshee, Hunt, Pedersen, Springer and Taylor.

Staff: Danielle Cruver (786-7157).

Summary of Recommendation of Committee On Appropriations Subcommittee on General Government Compared to Recommendation of Committee On Judiciary:

No new changes were recommended.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for sections 1 and 3 relating to debt buyers, which take effect October 1, 2013.

Staff Summary of Public Testimony:

(In support) This bill will update debt collection practices, and it is a targeted and narrow bill.

(Opposed) None.

Persons Testifying: Representative Stanford, prime sponsor.

Persons Signed In To Testify But Not Testifying: None.

HOUSE BILL REPORT

HB 1822

As Reported by House Committee On:
Judiciary

Title: An act relating to debt collection practices.

Brief Description: Concerning debt collection practices.

Sponsors: Representative Stanford.

Brief History:

Committee Activity:

Judiciary: 2/21/13 [DPS].

Brief Summary of Substitute Bill

- Requires persons or entities engaged in the business of purchasing delinquent debt for collection purposes to be licensed as collection agencies under the Collection Agency Act (CAA) and to comply with all other requirements of the CAA.
- Amends the list of prohibited practices in the CAA to prohibit the "unauthorized" practice of law, rather than the practice of law in general.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Pedersen, Chair; Hansen, Vice Chair; Rodne, Ranking Minority Member; O'Ban, Assistant Ranking Minority Member; Goodman, Hope, Jinkins, Kirby, Klippert, Nealey, Orwall, Roberts and Shea.

Staff: Omeara Harrington (786-7136).

Background:

Scope of Federal and State Governing Laws.

Collection agencies are regulated by both state and federal law. Collection agencies are licensed by the Department of Licensing under the state Collection Agency Act (CAA), and are also subject to the federal Fair Debt Collection Practices Act (FDCPA) when collecting

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consumer debt. The CAA and FDCPA define collection agencies (called "debt collectors" under the FDCPA) as persons or entities directly or indirectly engaged in soliciting claims for collection, or collecting or attempting to collect claims owed or due or asserted to be owed or due another person. Also included are those collecting on their own behalf under another name, which would indicate to the debtor that a third person is attempting to collect the claim.

The CAA does not specifically address people or entities purchasing delinquent claims and taking action to collect on those claims. This practice is commonly referred to as "debt buying."

Prohibited Practices.

Both the CAA and the FDCPA permit and prohibit certain practices, and in general have similar provisions as to what is and is not allowed. Where there is an inconsistency with state law, the FDCPA supersedes state law; however, a state law is not inconsistent with the FDCPA if it affords greater consumer protection than the FDCPA.

Examples of prohibited practices under both acts include publishing or threatening to publish "bad debt lists," purporting to be associated with law enforcement, failing to follow certain requirements in communications with debtors, and engaging in harassing or threatening tactics, among other things. The practice of law is listed as a prohibited practice for collection agencies under the CAA.

Summary of Substitute Bill:

Persons or entities engaged in the business of purchasing delinquent or charged-off debt for collection (debt buyers) are collection agencies for purposes of the CAA, even if the collection of those claims is performed by a third party or an attorney through litigation. Debt buyers must be licensed as collection agencies and comply with the other requirements of the CAA.

The list of prohibited practices in the CAA is amended to prohibit the "unauthorized" practice of law, rather than the practice of law in general.

Substitute Bill Compared to Original Bill:

The definition of debt buyers is expanded to include persons or entities purchasing any delinquent debt for collection, rather than specifically consumer debt. The effective date of the provisions related to debt buyers is delayed to October 1, 2013.

The CAA prohibited practices list is amended to prohibit the "unauthorized" practice of law, rather than the practice of law in general.

A number of provisions are removed from the underlying proposal, including:

- requirements specific to debt buyers that added prohibited practices, imposed filing and procedural requirements, limited judgment interest, and imposed additional penalties for violations of the CAA;
 - a prohibition against collection agencies seeking a warrant for the arrest of a debtor;
 - a requirement that collection agencies provide debtors with receipts bearing specific information; and
 - amendments to current law that removed language specific to out-of-state collection agencies.
-

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for sections 1 and 3 relating to debt buyers, which take effect October 1, 2013.

Staff Summary of Public Testimony:

(In support-from testimony on HB 1069, which is identical to HB 1822 except for the title, on 1/16/2013) Debt buying is a new practice in the debt collection industry that is not technically covered by the CAA. Stakeholders in this area are working toward a compromise that will safeguard fairness for consumers while keeping the collection industry alive and efficient in Washington.

The bill is carefully drafted to not affect debt collection agencies, just debt buyers. Many of the worst abuses in the debt collection industry are by debt buyers. Debt buyers purchase mass portfolios of charged off debt for pennies on the dollar, with little evidentiary basis, and get massive default judgments because the consumers have no notice of the lawsuit. Consumers have had to go to great lengths to rectify judgments based on fraudulent or paid-off claims that were sold to debt buyers who did not know they were buying illegitimate claims. There should be requirements to verify and authenticate the debt so that courts can know that the judgment they are issuing is legitimate.

Debt collection practices can be harmful to life progress and self-esteem. Consumers are harassed over the same debt for extended periods of time. The elderly are especially vulnerable to unethical collection practices, and brain research has revealed that older people have difficulty identifying untrustworthy situations and are less concerned by future losses than younger people.

(Opposed-from testimony on HB 1069, which is identical to HB 1822 except for the title, on 1/16/2013) There is agreement that debt buyers are collection agencies and are subject to the CAA, but this bill goes too far. It is unfair to treat debt buyers differently just because they have purchased the debt they are collecting. It is untrue that a large proportion of complaints are against debt buyers. A study revealed that there are fewer complaints against debt buyers than collection agencies. The federal law protects consumers. If there is fraud, the debtor

can go to Federal Trade Commission website and file a claim, and then the company will stop collections.

A lot of debt buyer companies keep proof of the background of the debt and abide by the statute of limitations and notice requirements. The courts require evidence before entering a default judgment. The rules of evidence should not be legislated.

The provisions of the bill are too restrictive. The requirement to provide a mailed receipt will ultimately hurt clients, because the extra expense will force collection agencies to limit small payment options. The interest rate under the bill would be capped at 1 percent, when normally it would be 12 percent. The new penalties are very high, particularly when coupled with those in the FDCPA and the Washington Consumer Protection Act.

Persons Testifying: (In support-from testimony on HB 1069, which is identical to HB 1822 except for the title, on 1/16/2013) Representative Stanford, prime sponsor; Sara Ellen Hutchinson, Law Office of Sara Ellen Hutchinson PLLC; Melissa Commodore; Sally DeLeon; Jim Richards; Ingrid McDonald, AARP; Marcy Bowers, Statewide Poverty Action Network; and Bruce Neas, Columbia Legal.

(Opposed-from testimony on HB 1069, which is identical to HB 1822 except for the title, on 1/16/2013) Greg Luhn and Kevin Underwood, Washington Collector's Association; Ray Henning and Brian Fair, DBA International Washington; and Patrick Layman, Suttell and Hammer.

Persons Signed In To Testify But Not Testifying: None.

HOUSE BILL 1822

State of Washington

63rd Legislature

2013 Regular Session

By Representative Stanford

Read first time 02/11/13. Referred to Committee on Judiciary.

1 AN ACT Relating to debt collection practices; amending RCW
2 19.16.100, 19.16.250, 19.16.260, 19.16.270, 19.16.450, 4.16.040,
3 4.16.270, 4.56.110, and 4.84.330; adding new sections to chapter 19.16
4 RCW; and prescribing penalties.

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

6 **Sec. 1.** RCW 19.16.100 and 2003 c 203 s 1 are each amended to read
7 as follows:

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

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

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

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

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

1 even though the forms direct the debtor to make payment to the creditor
2 and even though the forms may be or are actually used by the creditor
3 himself or herself in his or her own name;

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

8 (d) A debt buyer. "Debt buyer" means a person or entity that is
9 engaged in the business of purchasing delinquent or charged-off
10 consumer loans or consumer credit accounts, or other delinquent
11 consumer debt for collection purposes, whether it collects the debt
12 itself or hires a third party for collection or an attorney for
13 litigation in order to collect such debt.

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

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

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

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

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

37 (e) ~~((An "out-of-state collection agency" as defined in this~~
38 ~~chapter; or~~

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

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

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

17 ~~((6))~~) (5) "Statement of account" means a report setting forth
18 only amounts billed, invoices, credits allowed, or aged balance due.

19 ~~((7))~~) (6) "Director" means the director of licensing.

20 ~~((8))~~) (7) "Client" or "customer" means any person authorizing or
21 employing a collection agency to collect a claim.

22 ~~((9))~~) (8) "Licensee" means any person licensed under this
23 chapter.

24 ~~((10))~~) (9) "Board" means the Washington state collection agency
25 board.

26 ~~((11))~~) (10) "Debtor" means any person owing or alleged to owe a
27 claim.

28 ~~((12))~~) (11) "Commercial claim" means any obligation for payment
29 of money or thing of value arising out of any agreement or contract,
30 express or implied, where the transaction which is the subject of the
31 agreement or contract is not primarily for personal, family, or
32 household purposes.

33 (12) "Consumer debt" means any obligation or alleged obligation of
34 a consumer to pay money arising out of a transaction in which the
35 money, property, insurance, or services which are the subject of the
36 transaction are primarily for personal, family, or household purposes,
37 whether or not such obligation has been reduced to judgment.

1 (13) "Original creditor" means the last entity to extend credit to
2 the consumer for the purchase of goods or services, for the lease of
3 goods, or as a loan of money. The original creditor must be identified
4 by the name that it used in its dealings with the consumer.

5 **NEW SECTION.** **Sec. 2.** A new section is added to chapter 19.16 RCW
6 to read as follows:

7 Whenever a payment is received by a licensee, including a debt
8 buyer, toward payment of a consumer debt, an original receipt or an
9 exact copy thereof must be furnished to the person from whom payment is
10 received within ten days of payment. Whenever demand is made by the
11 debtor, copies of all receipts demanded shall be furnished to the
12 debtor within ten days of receipt of demand. Copies of all receipts
13 issued pursuant to this section shall be kept by the licensee for four
14 years. All receipts issued must:

15 (1) State the name, street address, and licensee number of the
16 licensee;

17 (2) State the name of the creditor or creditors for whom collected;

18 (3) State the account number assigned by the creditor or creditors
19 for whom collected;

20 (4) If the creditor is not the original creditor, state the account
21 number assigned by the original creditor;

22 (5) State the amount of the original balance;

23 (6) State the amount and date paid;

24 (7) State the last name of the person accepting payment; and

25 (8) State clearly whether the payment is accepted as either payment
26 in full or as a full and final compromise of the debt. If any part of
27 the debt will be owing after the payment is made, the receipt must
28 state clearly and conspicuously the balance due after payment is
29 credited.

30 **Sec. 3.** RCW 19.16.250 and 2011 1st sp.s. c 29 s 2 are each amended
31 to read as follows:

32 No licensee or employee of a licensee shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (i) The original account number or redacted original account number
2 assigned to the debt, if known to the licensee or employee: PROVIDED,
3 That upon written request of the debtor, the licensee must make a
4 reasonable effort to obtain this information or cease efforts to
5 collect on the debt until this information is provided; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 until he or she or it again receives notification in writing that an
2 attorney is representing the debtor.

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

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

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

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

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

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

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

36 (17) Send any telegram or make any telephone calls to a debtor or
37 concerning a debt or for the purpose of demanding payment of a claim or

1 seeking information about a debtor, for which the charges are payable
2 by the addressee or by the person to whom the call is made: PROVIDED,
3 That:

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

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

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

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

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

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

6 (21) Collect or attempt to collect in addition to the principal
7 amount of a claim any sum other than allowable interest, collection
8 costs or handling fees expressly authorized by statute, and, in the
9 case of suit, attorney's fees and taxable court costs. A licensee may
10 collect or attempt to collect collection costs and fees, including
11 contingent collection fees, as authorized by a written agreement or
12 contract, between the licensee's client and the debtor, in the
13 collection of a commercial claim. The amount charged to the debtor for
14 collection services shall not exceed thirty-five percent of the
15 commercial claim.

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

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

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

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

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

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

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

16 (26) When the licensee is a debt buyer or acting on behalf of a
17 debt buyer, bring suit or initiate an arbitration proceeding against
18 the debtor or otherwise attempt to collect on a debt when the licensee
19 knows, or reasonably should know, that such collection is barred by the
20 applicable statute of limitations.

21 (27) When the licensee is a debt buyer or acting on behalf of a
22 debt buyer, bring suit or initiate an arbitration proceeding against
23 the debtor, or otherwise attempt to collect on the debt without (a)
24 proof that the debt buyer is the owner of the specific debt instrument
25 or account at issue and (b) verification of the amount of the debt
26 allegedly owed by the debtor. For purposes of this section,
27 verification must include documentation of the name of the original
28 creditor, the name and address of the debtor as appearing on the
29 original creditor's records, the original consumer account number, a
30 copy of the contract or other document evidencing the consumer debt,
31 and an itemized accounting of the amount claimed to be owed, including
32 all fees and charges.

33 (28) When the licensee is a debt buyer or acting on behalf of a
34 debt buyer, bring suit or initiate an arbitration proceeding against
35 the debtor to collect on a debt without first giving the debtor written
36 notice of the intent to file a legal action at least thirty days in
37 advance of filing. The written notice must include the name, address,
38 and telephone number of the debt buyer, the name of the original

1 creditor and the debtor's original account number, a copy of the
2 contract or other document evidencing the consumer debt, and an
3 itemized accounting of all amounts claimed to be owed.

4 (29) Seek a warrant for the arrest of a debtor for any action or
5 failure to act that arises or relates to a civil lawsuit, unless the
6 debtor has committed a violation of the criminal laws.

7 (30) Fail to comply with RCW 19.16.260, sections 5, 6, and 7 of
8 this act.

9 **Sec. 4.** RCW 19.16.260 and 2011 c 336 s 521 are each amended to
10 read as follows:

11 No collection agency (~~(or out of state collection agency)~~) may
12 bring or maintain an action in any court of this state involving the
13 collection of its own claim or a claim of any third party without
14 alleging and proving that he, she, or it is duly licensed under this
15 chapter and has satisfied the bonding requirements hereof, if
16 applicable (~~(: PROVIDED, That in any case where judgment is to be~~
17 ~~entered by default, it shall not be necessary for the collection agency~~
18 ~~or out of state collection agency to prove such matters)~~).

19 A copy of the current collection agency license (~~(or out of state~~
20 ~~collection agency license)~~) certified by the director to be a true and
21 correct copy of the original, shall be prima facie evidence of the
22 licensing and bonding of such collection agency (~~(or out of state~~
23 ~~collection agency)~~) as required by this chapter.

24 **NEW SECTION. Sec. 5.** A new section is added to chapter 19.16 RCW
25 to read as follows:

26 (1) In addition to the requirements of RCW 19.16.260, in any cause
27 of action initiated by a debt buyer, all of the following materials
28 must be attached to the complaint or claim:

29 (a) A copy of the contract or other writing evidencing the original
30 debt, which must contain a signature of the defendant. If a claim is
31 based on credit card debt and no such signed writing evidencing the
32 original debt ever existed then copies of documents generated when the
33 credit card was actually used must be attached;

34 (b) A copy of the assignment or other writing establishing that the
35 plaintiff is the owner of the debt. If the debt has been assigned more
36 than once, then each assignment or other writing evidencing the

1 transfer of ownership must be attached to establish an unbroken chain
2 of ownership. Each assignment or other writing evidencing transfer of
3 ownership must contain the original account number of the debt
4 purchased and must clearly show the debtor's name associated with that
5 account number; and

6 (c) An itemization of the amount sought, including:

7 (i) The amount owed for goods or services, for the lease of goods,
8 or the amount of credit extended;

9 (ii) Interest, fees, and charges imposed by the original creditor;

10 (iii) Interest, fees, and charges imposed by any debt buyer or
11 other assignee of the debt, if applicable;

12 (iv) Attorneys' fees;

13 (v) Any other fees, costs, or charges sought or imposed;

14 (vi) The amount and date of the last payment before default or
15 charge-off, whichever is earlier;

16 (vii) Each payment credited to the debt after default or
17 charge-off; and

18 (viii) The amount the debt buyer paid for the account.

19 (2) In any case involving consumer debt, if the defendant debtor
20 appears for trial on the scheduled trial date, and the plaintiff debt
21 buyer either fails to appear or is not prepared to proceed to trial,
22 and the court does not find good cause for continuance, judgment must
23 be entered for the debtor dismissing the action with prejudice.
24 Notwithstanding any other law, the court may award the defendant
25 debtor's costs and attorneys' fees, including lost wages and other
26 related expenses.

27 NEW SECTION. **Sec. 6.** A new section is added to chapter 19.16 RCW
28 to read as follows:

29 (1) Prior to entry of a judgment or order against a debtor in a
30 complaint initiated by a debt buyer, the plaintiff shall file:

31 (a) An authenticated copy of the contract or other writing
32 evidencing the original debt, which must contain a signature of the
33 defendant. If a claim is based on credit card debt and no such signed
34 writing evidencing the original debt ever existed, then authenticated
35 copies of documents generated when the credit card was actually used
36 must be attached;

1 (b) Evidence sufficient to establish the amount and nature of the
2 debt by business records that satisfy the requirements of RCW 5.45.020.
3 The evidence must include:

4 (i) The original creditor's name;

5 (ii) The original creditor's account number for the debtor;

6 (iii) The amount of the original debt;

7 (iv) An itemization of charges and fees claimed to be owed;

8 (v) The original charge-off balance, or, if the balance has not
9 been charged-off, an explanation of how the balance was calculated;

10 (vi) An itemization of post charge-off additions, where applicable;

11 (vii) The date of last payment;

12 (viii) The amount of interest claimed and the basis for the
13 interest charged;

14 (ix) The amount the debt buyer paid for the debtor's account; and

15 (x) A statement of the applicable statute of limitations period and
16 the filing date of the case;

17 (c) An affidavit containing a statement that the plaintiff debt
18 buyer is the sole current owner of the debt, which includes or is
19 accompanied by:

20 (i) A chronological listing of the names of all prior owners of the
21 debt and the date of each transfer of ownership of the debt, beginning
22 with the name of the original creditor; and

23 (ii) A contract of sale and exhibits that transferred ownership of
24 the debt to the plaintiff debt buyer;

25 (d) Evidence sufficient to establish an unbroken chain of ownership
26 interests by business records that satisfy the requirements of RCW
27 5.45.020. The evidence must include:

28 (i) An affidavit by the original creditor of the facts constituting
29 the debt, the default in payment, the sale or assignment of the debt,
30 authenticated contract of sale and exhibits, and the amount due at the
31 time of sale or assignment;

32 (ii) For each subsequent assignment or sale of the debt to another
33 entity, including an entity related by common ownership or affiliated
34 by corporate control, an affidavit authenticating the attached contract
35 of sale and exhibits of the debt by the debt seller, completed by the
36 seller or assignor; and

37 (iii) Proof that each assignment or other writing evidencing

1 transfer of ownership contains the original account number of the debt
2 purchased and must clearly show the debtor's name associated with that
3 account number; and

4 (e) An affidavit that states that the time period during which the
5 debt buyer may bring suit or initiate an arbitration proceeding to
6 collect the debt under the applicable statute of limitations, or any
7 extension of the time period available under the statute of
8 limitations, has not ended.

9 (2) In any action on a consumer debt, if a debt buyer seeks a
10 judgment or order against the debtor and has not complied with the
11 requirements of this section, the court may not enter a judgment for
12 the debt buyer and shall dismiss the action with prejudice.

13 (3) If the plaintiff is the prevailing party in any action to
14 collect a consumer debt, the plaintiff shall be entitled to interest on
15 the judgment at a maximum rate of interest equal to the weekly average
16 one-year constant maturity treasury yield, as published by the board of
17 governors of the federal reserve system, for the calendar week
18 preceding the date of the judgment. No other rate of interest on the
19 judgment may be permitted, including the rate provided for in the
20 contract.

21 NEW SECTION. **Sec. 7.** A new section is added to chapter 19.16 RCW
22 to read as follows:

23 (1) Any action by a debt buyer for the collection of a consumer
24 debt must be commenced within three years of the accrual of the cause
25 of action, which is the earlier of the date of charge-off, placement
26 for collection, or one hundred eighty days after the last regular
27 payment. This period applies whether the claim sounds in contract,
28 account stated, open account, or other cause, and notwithstanding the
29 provisions of any other statute of limitations unless that statute
30 provides for a shorter limitations period. This subsection applies to
31 all claims brought after the effective date of this section.

32 (2) Notwithstanding the provisions of any other law, if a consumer
33 debt has been charged-off, placed for collection, or there has not been
34 any payment on the debt for over one hundred eighty days, any
35 subsequent payment toward the debt does not extend the three-year
36 limitations period, nor does it bar the consumer from asserting any
37 defenses to the collection of a consumer debt.

1 (3) When the period within which an action may be commenced under
2 this section has expired, the right to collect the consumer debt is
3 extinguished as well as the remedy. No person may attempt to collect
4 a consumer debt after the three-year period described in subsection (1)
5 of this section has expired.

6 **Sec. 8.** RCW 19.16.270 and 2011 c 336 s 522 are each amended to
7 read as follows:

8 In any action brought by licensee, except for those actions brought
9 by debt buyers, to collect the claim of his, her, or its customer, the
10 assignment of the claim to licensee by his, her, or its customer shall
11 be conclusively presumed valid, if the assignment is filed in court
12 with the complaint, unless objection is made thereto by the debtor in
13 a written answer or in writing five days or more prior to trial.

14 **Sec. 9.** RCW 19.16.450 and 1971 ex.s. c 253 s 36 are each amended
15 to read as follows:

16 (1) If an act or practice in violation of RCW 19.16.250 is
17 committed by a licensee or an employee of a licensee in the collection
18 of a claim, neither the licensee, the customer of the licensee, nor any
19 other person who may thereafter legally seek to collect on such claim
20 shall ever be allowed to recover any interest, service charge,
21 attorneys' fees, collection costs, delinquency charge, or any other
22 fees or charges otherwise legally chargeable to the debtor on such
23 claim: PROVIDED, That any ((person)) licensee or an employee of a
24 licensee who is not a debt buyer or acting on behalf of a debt buyer
25 asserting the claim may nevertheless recover from the debtor the amount
26 of the original claim or obligation.

27 (2) Except as otherwise provided by this section, any debt buyer
28 who fails to comply with any provision of this chapter with respect to
29 any person is liable to such person as follows:

30 (a) Any actual damage sustained by such person;

31 (b) The amount established pursuant to either (b)(i) or (ii) of
32 this subsection:

33 (i) The case of any action by an individual, such civil penalties
34 as the court may allow, but not less than five hundred dollars per
35 violation and not more than five thousand dollars per violation.

1 (ii) In the case of a class action, the amount for each named
2 plaintiff as could be recovered under (b)(i) of this subsection, and an
3 amount as the court may determine for each other class member, not
4 exceeding the amount per person that could be recovered under (b)(i) of
5 this subsection.

6 (iii) In the case of any successful action to enforce the foregoing
7 liability, the costs of the action, together with a reasonable
8 attorneys' fees as determined by the court.

9 (3) In determining the amount of liability in any action against a
10 debt buyer under subsection (2)(b) of this section, the court shall
11 consider, among other relevant factors, the following:

12 (a) In any individual action, the frequency and persistence of
13 noncompliance by the debt buyer and the nature of the noncompliance;
14 and

15 (b) In any class action, the frequency and persistence of
16 noncompliance by the debt buyer, the nature of the noncompliance, the
17 resources of the debt buyer, and the number of persons adversely
18 affected.

19 **Sec. 10.** RCW 4.16.040 and 2012 c 185 s 3 are each amended to read
20 as follows:

21 The following actions shall be commenced within six years:

22 (1) An action upon a contract in writing, or liability express or
23 implied arising out of a written agreement, except as provided for in
24 RCW 64.04.007(2) and section 7 of this act.

25 (2) An action upon an account receivable. For purposes of this
26 section, an account receivable is any obligation for payment incurred
27 in the ordinary course of the claimant's business or profession,
28 whether arising from one or more transactions and whether or not earned
29 by performance.

30 (3) An action for the rents and profits or for the use and
31 occupation of real estate.

32 **Sec. 11.** RCW 4.16.270 and Code 1881 s 45 are each amended to read
33 as follows:

34 When any payment of principal or interest has been or shall be made
35 upon any existing contract, whether it be a bill of exchange,
36 promissory note, bond or other evidence of indebtedness, if such

1 payment be made after the same shall have become due, the limitation
2 shall commence from the time the last payment was made, except as
3 provided in section 7 of this act.

4 **Sec. 12.** RCW 4.56.110 and 2010 c 149 s 1 are each amended to read
5 as follows:

6 Interest on judgments shall accrue as follows:

7 (1) Except as provided for in section 6 of this act, judgments
8 founded on written contracts, providing for the payment of interest
9 until paid at a specified rate, shall bear interest at the rate
10 specified in the contracts: PROVIDED, That said interest rate is set
11 forth in the judgment.

12 (2) All judgments for unpaid child support that have accrued under
13 a superior court order or an order entered under the administrative
14 procedure act shall bear interest at the rate of twelve percent.

15 (3)(a) Judgments founded on the tortious conduct of a "public
16 agency" as defined in RCW 42.30.020 shall bear interest from the date
17 of entry at two percentage points above the equivalent coupon issue
18 yield, as published by the board of governors of the federal reserve
19 system, of the average bill rate for twenty-six week treasury bills as
20 determined at the first bill market auction conducted during the
21 calendar month immediately preceding the date of entry. In any case
22 where a court is directed on review to enter judgment on a verdict or
23 in any case where a judgment entered on a verdict is wholly or partly
24 affirmed on review, interest on the judgment or on that portion of the
25 judgment affirmed shall date back to and shall accrue from the date the
26 verdict was rendered.

27 (b) Except as provided in (a) of this subsection, judgments founded
28 on the tortious conduct of individuals or other entities, whether
29 acting in their personal or representative capacities, shall bear
30 interest from the date of entry at two percentage points above the
31 prime rate, as published by the board of governors of the federal
32 reserve system on the first business day of the calendar month
33 immediately preceding the date of entry. In any case where a court is
34 directed on review to enter judgment on a verdict or in any case where
35 a judgment entered on a verdict is wholly or partly affirmed on review,
36 interest on the judgment or on that portion of the judgment affirmed

1 shall date back to and shall accrue from the date the verdict was
2 rendered.

3 (4) Except as provided under subsections (1), (2), and (3) of this
4 section, judgments shall bear interest from the date of entry at the
5 maximum rate permitted under RCW 19.52.020 on the date of entry
6 thereof. In any case where a court is directed on review to enter
7 judgment on a verdict or in any case where a judgment entered on a
8 verdict is wholly or partly affirmed on review, interest on the
9 judgment or on that portion of the judgment affirmed shall date back to
10 and shall accrue from the date the verdict was rendered. The method
11 for determining an interest rate prescribed by this subsection is also
12 the method for determining the "rate applicable to civil judgments" for
13 purposes of RCW 10.82.090.

14 **Sec. 13.** RCW 4.84.330 and 2011 c 336 s 131 are each amended to
15 read as follows:

16 (1) In any action on a contract or lease entered into after
17 September 21, 1977, where such contract or lease specifically provides
18 that attorneys' fees and costs, which are incurred to enforce the
19 provisions of such contract or lease, shall be awarded to one of the
20 parties, the prevailing party, whether he or she is the party specified
21 in the contract or lease or not, shall be entitled to reasonable
22 attorneys' fees in addition to costs and necessary disbursements.

23 (2) Attorneys' fees provided for by this section shall not be
24 subject to waiver by the parties to any contract or lease which is
25 entered into after September 21, 1977. Any provision in any such
26 contract or lease which provides for a waiver of attorneys' fees is
27 void.

28 (3) If the attorneys' fees are for services rendered to an assignee
29 or a debt buyer, as defined in RCW 19.16.100, all of the following
30 materials setting forth a party's obligation to pay attorneys' fees
31 must be provided to the court before a court may enforce those
32 provisions:

33 (a) A copy of the contract or other writing evidencing the original
34 debt, which must contain a signature of the defendant. If a claim is
35 based on credit card debt and no such signed writing evidencing the
36 original debt ever existed, then copies of documents generated when the
37 credit card was actually used must be attached.

1 (b) A copy of the assignment or other writing establishing that the
2 plaintiff is the owner of the debt. If the debt has been assigned more
3 than once, then each assignment or other writing evidencing transfer of
4 ownership must be attached to establish an unbroken chain of ownership.
5 Each assignment or other writing evidencing transfer of ownership must
6 contain the original account number of the debt purchased and must
7 clearly show the debtor's name associated with that account number.

8 (4) As used in this section "prevailing party" means the party in
9 whose favor final judgment is rendered.

--- END ---

HOUSE BILL REPORT

SHB 1822

As Passed Legislature

Title: An act relating to debt collection practices.

Brief Description: Concerning debt collection practices.

Sponsors: House Committee on Judiciary (originally sponsored by Representative Stanford).

Brief History:

Committee Activity:

Judiciary: 2/21/13 [DPS];

Appropriations Subcommittee on General Government: 2/25/13 [DPS(JUDI)].

Floor Activity:

Passed House: 3/9/13, 97-0.

Passed Senate: 4/17/13, 48-0.

Passed Legislature.

Brief Summary of Substitute Bill

- Requires persons or entities engaged in the business of purchasing delinquent debt for collection purposes to be licensed as collection agencies under the Collection Agency Act (CAA) and to comply with all other requirements of the CAA.
- Amends the list of prohibited practices in the CAA to prohibit the "unauthorized" practice of law, rather than the practice of law in general.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Pedersen, Chair; Hansen, Vice Chair; Rodne, Ranking Minority Member; O'Ban, Assistant Ranking Minority Member; Goodman, Hope, Jinkins, Kirby, Klippert, Nealey, Orwall, Roberts and Shea.

Staff: Omeara Harrington (786-7136).

HOUSE COMMITTEE ON APPROPRIATIONS SUBCOMMITTEE ON GENERAL GOVERNMENT

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: The substitute bill by Committee on Judiciary be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Hudgins, Chair; Parker, Ranking Minority Member; Buys, Chandler, Dunshee, Hunt, Pedersen, Springer and Taylor.

Staff: Danielle Cruver (786-7157).

Background:

Scope of Federal and State Governing Laws.

Collection agencies are regulated by both state and federal law. Collection agencies are licensed by the Department of Licensing under the state Collection Agency Act (CAA), and are also subject to the federal Fair Debt Collection Practices Act (FDCPA) when collecting consumer debt. The CAA and FDCPA define collection agencies (called "debt collectors" under the FDCPA) as persons or entities directly or indirectly engaged in soliciting claims for collection, or collecting or attempting to collect claims owed or due or asserted to be owed or due another person. Also included are those collecting on their own behalf under another name, which would indicate to the debtor that a third person is attempting to collect the claim.

The CAA does not specifically address people or entities purchasing delinquent claims and taking action to collect on those claims. This practice is commonly referred to as "debt buying."

Prohibited Practices.

Both the CAA and the FDCPA permit and prohibit certain practices, and in general have similar provisions as to what is and is not allowed. Where there is an inconsistency with state law, the FDCPA supersedes state law; however, a state law is not inconsistent with the FDCPA if it affords greater consumer protection than the FDCPA.

Examples of prohibited practices under both acts include publishing or threatening to publish "bad debt lists," purporting to be associated with law enforcement, failing to follow certain requirements in communications with debtors, and engaging in harassing or threatening tactics, among other things. The practice of law is listed as a prohibited practice for collection agencies under the CAA.

Summary of Substitute Bill:

Persons or entities engaged in the business of purchasing delinquent or charged-off debt for collection (debt buyers) are collection agencies for purposes of the CAA, even if the collection of those claims is performed by a third party or an attorney through litigation. Debt buyers must be licensed as collection agencies and comply with the other requirements of the CAA.

The list of prohibited practices in the CAA is amended to prohibit the "unauthorized" practice of law, rather than the practice of law in general.

Appropriation: None.

Fiscal Note: Available.

Effective Date: This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for sections 1 and 3 relating to debt buyers, which take effect October 1, 2013.

Staff Summary of Public Testimony (Judiciary):

(In support-from testimony on HB 1069, which is identical to HB 1822 except for the title, on 1/16/2013) Debt buying is a new practice in the debt collection industry that is not technically covered by the CAA. Stakeholders in this area are working toward a compromise that will safeguard fairness for consumers while keeping the collection industry alive and efficient in Washington.

The bill is carefully drafted to not affect debt collection agencies, just debt buyers. Many of the worst abuses in the debt collection industry are by debt buyers. Debt buyers purchase mass portfolios of charged off debt for pennies on the dollar, with little evidentiary basis, and get massive default judgments because the consumers have no notice of the lawsuit. Consumers have had to go to great lengths to rectify judgments based on fraudulent or paid-off claims that were sold to debt buyers who did not know they were buying illegitimate claims. There should be requirements to verify and authenticate the debt so that courts can know that the judgment they are issuing is legitimate.

Debt collection practices can be harmful to life progress and self-esteem. Consumers are harassed over the same debt for extended periods of time. The elderly are especially vulnerable to unethical collection practices, and brain research has revealed that older people have difficulty identifying untrustworthy situations and are less concerned by future losses than younger people.

(Opposed-from testimony on HB 1069, which is identical to HB 1822 except for the title, on 1/16/2013) There is agreement that debt buyers are collection agencies and are subject to the CAA, but this bill goes too far. It is unfair to treat debt buyers differently just because they have purchased the debt they are collecting. It is untrue that a large proportion of complaints are against debt buyers. A study revealed that there are fewer complaints against debt buyers than collection agencies. The federal law protects consumers. If there is fraud, the debtor can go to Federal Trade Commission website and file a claim, and then the company will stop collections.

A lot of debt buyer companies keep proof of the background of the debt and abide by the statute of limitations and notice requirements. The courts require evidence before entering a default judgment. The rules of evidence should not be legislated.

The provisions of the bill are too restrictive. The requirement to provide a mailed receipt will ultimately hurt clients, because the extra expense will force collection agencies to limit small payment options. The interest rate under the bill would be capped at 1 percent, when normally it would be 12 percent. The new penalties are very high, particularly when coupled with those in the FDCPA and the Washington Consumer Protection Act.

Staff Summary of Public Testimony (Appropriations Subcommittee on General Government):

(In support) This bill will update debt collection practices, and it is a targeted and narrow bill.

(Opposed) None.

Persons Testifying (Judiciary): (In support-from testimony on HB 1069, which is identical to HB 1822 except for the title, on 1/16/2013) Representative Stanford, prime sponsor; Sara Ellen Hutchinson, Law Office of Sara Ellen Hutchinson PLLC; Melissa Commodore; Sally DeLeon; Jim Richards; Ingrid McDonald, AARP; Marcy Bowers, Statewide Poverty Action Network; and Bruce Neas, Columbia Legal.

(Opposed-from testimony on HB 1069, which is identical to HB 1822 except for the title, on 1/16/2013) Greg Luhn and Kevin Underwood, Washington Collector's Association; Ray Henning and Brian Fair, DBA International Washington; and Patrick Layman, Suttell and Hammer.

Persons Testifying (Appropriations Subcommittee on General Government): Representative Stanford, prime sponsor.

Persons Signed In To Testify But Not Testifying (Judiciary): None.

Persons Signed In To Testify But Not Testifying (Appropriations Subcommittee on General Government): None.

OFFICE RECEPTIONIST, CLERK

To: Benjamin J. McDonnell
Cc: 'John Munding'
Subject: RE: Gray et al v. Suttell, et al, Case No. 88414-5, Midland-Encore Responsive Brief

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Subject: Gray et al v. Suttell, et al, Case No. 88414-5, Midland-Encore Responsive Brief

Washington State Supreme Court, Clerk of Court:

Please find attached for filing in the following matter Brief of Respondents/Defendants Midland Funding, LLC, Midland Credit Management, Inc., and Encore Capital Group, Inc. ("Respondents' Brief"):

Kelli Gray, et al., v. Suttell & Associates, et al., Case No. 88414-5.

The Certificate of Service is submitted for filing contemporaneously with the attached Respondents' Brief.

The Appendix to the Respondents' Brief exceeds 25 pages. Accordingly, the Appendix is not attached for filing to this email. The Appendix, however, shall follow for filing by Federal Express delivery.

Please call or email should there be any questions.

Respectfully,
Ben

Benjamin J. McDonnell
CRUMB & MUNDING, P.S.
111 S. Post, PH 2290
Spokane, WA 99201
(509) 624-6464
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Subject: Gray et al v. Suttell, et al, Case No. 88414-5, Midland-Encore Responsive Brief

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Respectfully,
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Carlson, Susan

From: John Munding [munding@crumb-munding.com]
Sent: Tuesday, July 16, 2013 10:49 AM
To: Carlson, Susan
Cc: 'Benjamin J. McDonnell'
Subject: RE: 95-page appendix received today by FEDEX

Ms. Carlson:

My apologies, there should have been a cover letter with the appendix. The appendix is intended to be attached to the Brief of the Respondents / Defendants Midland Funding, LLC, Midland Credit Management, Inc., and Encore Capital Group, Inc. which was filed yesterday by email in Washington State Supreme Court Case No. 88414-5.

If you have any questions or concerns, please notify me. Thank you for bringing this to my attention, and again I apologize for the omission of the cover letter with the appendix.

John D. Munding
Crumb & Munding, P.S.
509-624-6464

From: Carlson, Susan [mailto:Susan.Carlson@courts.wa.gov]
Sent: Tuesday, July 16, 2013 10:36 AM
To: 'munding@crumb-munding.com'
Subject: 95-page appendix received today by FEDEX

Mr. Munding: On this date we received by FEDEX a 95-page appendix from your office. There is no indication in the envelope or on the appendix as to the case number. Please provide the Supreme Court number and the document to which you intend this appendix to be attached.

Susan L. Carlson
Supreme Court Deputy Clerk