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SUPREME COURT
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STATE OF WASHINGTON
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NO. 96853-5

SUPREME COURT OF THE STATE OF WASHINGTON

FIRESIDE BANK f/k/a FIRESIDE THRIFT CO. (CALVARY
INVESTMENTS, LLC – Appellant of Record),

Appellant,

v.

JOHN W. ASKINS and LISA D. ASKINS,

Respondents.

**BRIEF OF AMICUS CURIAE
ATTORNEY GENERAL OF WASHINGTON**

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I. INTRODUCTION

This appeal raises an important access to justice issue that affects low-income Washington consumers facing debt collection lawsuits: where the legislature has provided a penalty for debt collectors engaging in certain prohibited debt collection practices under the Washington Collection Agency Act (CAA), RCW 19.16.250 and RCW 19.16.450, how should debtor-defendants vindicate their rights and obtain relief under the CAA? Does the law require debtor-defendants to file an action separate from the underlying collection suit to obtain the relief provided under RCW 19.16.450, if doing so would force them to navigate a likely-unfamiliar court system and pay filing fees they can ill afford?

Although the Court of Appeals' decision primarily relied upon the limitations of a CR 60 motion in rejecting the Askins' CAA claims, the court also erroneously concluded that seeking relief under RCW 19.16.450 requires debtor-defendants to file a separate action under the Consumer Protection Act (CPA). The Attorney General urges this Court to reject that incorrect determination. Contrary to the Court of Appeals' finding, the Attorney General notes that legislative history supports an understanding that the legislature did not intend to require debtor-defendants to file separate actions under the CPA in order to obtain relief under

RCW 19.16.450. Indeed, this Court validated this understanding by its decision in *Streng v. Clarke*, 89 Wn.2d 23, 569 P.2d 60 (1977).

Whatever legal mechanism this Court decides upon, the Attorney General urges this Court to ensure that the process will represent the simplest path forward for debtor-defendants to obtain relief under the CAA, one that creates the fewest legal hurdles for a population that suffers from a “justice gap,” which the October 2015 Washington State Civil Needs Study Update defined as “the difference between the number of problems experienced by low-income Washingtonians for which they need legal help and the actual level of legal help that they receive to address such problems.”¹

II. INTEREST OF AMICUS CURIAE

Amicus Curiae is the Attorney General for the State of Washington. The Attorney General’s constitutional and statutory powers include the submission of amicus curiae briefs on matters that affect the public interest. *See Young Americans for Freedom v. Gorton*, 91 Wn.2d 204, 212, 588 P.2d 195 (1978). The ramifications of this appeal will likely affect how future

¹ Civil Legal Needs Study Update Committee, *2015 Washington State Civil Legal Needs Study Update* (Oct. 2015), p. 3 n.1, available at https://ocla.wa.gov/wp-content/uploads/2015/10/CivilLegalNeedsStudy_October2015_V21_Final10_14_15.pdf (last visited Sept. 5, 2019).

defendant-debtors are able to seek relief under RCW 19.16.450, so the State of Washington has a public interest in the decision of this Court.

The Attorney General has other particular interests in this appeal related to his consumer protection enforcement authority. First, deterring abusive debt collection practices is a top priority for the Attorney General. The penalty provided by RCW 19.16.450 provides a necessary deterrent to ensure that debt collectors comply with the CAA, and thus the Attorney General has an interest in ensuring robust application of the penalty. Next, because the Attorney General is charged with enforcing the CAA and the CPA,² he has a particular interest in the development of case law regarding both statutes. Finally, legitimate actions by private litigants supplement the Attorney General's efforts to protect consumers' rights. The Attorney General has a significant interest in ensuring that state laws that are designed to protect consumers from abusive practices are properly construed so as not to create extra hurdles for pro se litigants to clear in order to obtain relief – particularly where the legislature never intended the hurdles. To hold otherwise would result in harmed individuals being unable

² The Attorney General is specifically authorized under CAA, Chapter 19.16 RCW, to bring actions on behalf of the State of Washington against any person to restrain and prevent any violation of that chapter. RCW 19.16.460. Additionally, “[t]he . . . commission by a licensee or an employee of a licensee of an act or practice prohibited by RCW 19.16.250 are declared to be unfair acts or practices or unfair methods of competition in the conduct of trade or commerce for the purpose of the application of the Consumer Protection Act found in chapter 19.86 RCW.” RCW 19.16.440.

to obtain adequate legal redress for CAA violations while also failing to deter debt collectors from continuing abusive collection practices, all to the public's detriment.

The Attorney General respectfully submits this Amicus Curiae Brief to urge the Court to find that debtor-defendants may invoke RCW 19.16.450 in the direct action when faced with a debt collection suit, not merely as an affirmative defense but also to obtain affirmative relief as a result of the debt collector's violation of the CAA.³

III. ISSUE PRESENTED BY AMICUS

May a debtor-defendant counterclaim for relief under RCW 19.16.450 based on a debt collector's violations of the CAA in the same collection action taken against him or her by the debt collector?

IV. ARGUMENT

A. The Legislature Understood that Effective Enforcement of the CAA Depends on a Robust Application of RCW 19.16.450.

The CAA lists a number of prohibited debt collection practices by licensed debt collectors and their employees, including attempting to collect a greater amount than allowed by law, which the Askins accuse Calvary Investments of doing in the present appeal. *See* RCW 19.16.250;

³ The Attorney General limits his brief to the issues presented and does not take a position on the merits of this action.

RCW 19.16.250(21). The legislature set a harsh penalty for licensees that violate RCW 19.16.250:

neither the licensee, the customer of the licensee, nor any other person who may thereafter legally seek to collect on such claim shall ever be allowed to recover any interest, service charge, attorneys' fees, collections costs, delinquency charge, or any other fees or charges otherwise legally chargeable to the debtor on such claim: PROVIDED, That any person asserting the claim may nevertheless recover from the debtor the amount of the original claim or obligation.

RCW 19.16.450. By the plain language of RCW 19.16.450, if a licensee commits a violation of RCW 19.16.250 in the collection of a claim, the penalty assessed is that the claim is stripped to principal, which carries through the lifetime of the debt. In enacting this provision, the legislature intended a heavy deterrent against abusive debt collection practices.

This perspective is consistent with the legislative history, which also made clear that the legislature envisioned greater opportunities for debtors to invoke the remedy of RCW 19.16.450 beyond simply filing a separate CPA claim. In the April 30, 1971 Report by the Senate Committee on Judiciary regarding the bill that would later be enacted as the CAA, the Committee noted that “[a]n individual injured by a prohibited practice may seek redress under the Consumer Protection Act, RCW 19.86, *or* may assert

the commission of a prohibited act in a *later action* on the claim, and if he proves the commission of a prohibited act he would not be liable for any charge or fee beyond the original amount of the claim.” House Comm. File 1971 SB 796, 42nd Leg. 1st Spec. Sess. at 3 (Wash. April 1971) (emphasis added). Similarly, the May 1, 1971 Report by the Senate Committee on Judiciary notes that “an individual injured by a prohibited practice could seek redress under the consumer protection act, RCW 19.86, *or* may assert such a defense to *any subsequent action to collect a claim against him*, and if he proves the commission of such a prohibited act he would not be liable for any charge or fee beyond the original amount of the claim.” Senate Comm. on Judiciary, S.S.B. 796, 42nd Leg. 1st Spec. Sess. at 1 (Wash. May 1971) (emphasis added).

Thus, to the extent the Court of Appeals, Division III, determined that the legislature intended private party enforcement of the CAA to be strictly limited to actions brought under the CPA, that ruling is incorrect.⁴ Both senate reports make clear that filing a CPA claim is *not* the only way a debtor can seek redress under RCW 19.16.450; moreover, the legislature

⁴ *Paris v. Steinberg & Steinberg*, 828 F.Supp.2d 1212, 1217 (W.D. Wash. 2011), is often cited as authority for the proposition that the CAA does not allow private claims for liability separate from the CPA; however, in that case the federal district court was faced with an alleged violation of RCW 19.16.110 – *not* RCW 19.16.250 – thus relief under RCW 19.16.450 was unavailable. The *Paris* opinion made no reference to and thus made no determinations regarding obtaining a remedy under RCW 19.16.450.

understood that where debtors could prove in the collection proceedings that the debt collectors had engaged in collection practices prohibited under RCW 19.16.250, RCW 19.16.450 operated as both a shield and a sword.

B. This Court Previously Approved the Awarding of Affirmative Relief to Debtors in Collection Actions Pursuant to RCW 19.16.450

In *Streng v. Clarke*, 89 Wn.2d 23, 569 P.2d 60 (1977), a collection agency sued in Spokane County District Court to collect a debt, and the defendant debtor counterclaimed for treble damages under the CPA for abusive collection practices under the CAA. The district court found that the collection agency had violated RCW 19.16.250 of the CAA. As a result, in the Washington Supreme Court’s words, “acting pursuant to RCW 19.16.450 the [district] court *properly* refused to award [the collection agency] any sum for court costs, collection costs, attorney’s fees, or other costs, or interest.” *Id.* at 25 (emphasis added). The issue before the *Streng* court was that the district court “declined to entertain [the debtor’s] counterclaim . . . claiming lack of jurisdiction over claims under the [CPA].” *Id.*

The district court’s declination to assert jurisdiction over the CPA counterclaim is instructive here, because although the *Streng* court ultimately held that the district court could exercise jurisdiction over the CPA counterclaim, the Court also affirmed the district court’s initial ruling

that the debtor could seek affirmative relief under RCW 19.16.450 in the underlying collection proceeding without the debtor being required to file a separate CPA action to obtain such relief. This is further evidence that the Court of Appeals, Division III, was incorrect in finding that the CAA could only be enforced through the CPA.

C. If the Debtor Could Only Obtain Affirmative Relief through a CPA Counterclaim, RCW 19.16.450 Could Not Operate as a Penalty for All RCW 19.16.250 Violations.

In order for private plaintiffs to bring a successful CPA action, they need to prove all required elements, including (1) an unfair or deceptive act or practice (2) occurring in trade or commerce, (3) public interest impact, (4) injury to plaintiff in business or property, and (5) causation. *See Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wn.2d 778, 780, 719 P.2d 531 (1986). RCW 19.16.440 allows debtors to bring CPA actions for violations of RCW 19.16.250, without needing to separately prove unfair or deceptive acts or practices occurring in trade or commerce, but they would still need to prove injury and causation.⁵

Some of the prohibited practices listed in RCW 19.16.250, however, would not necessarily cause injury to debtors in every case – e.g., threatening to post the debtor’s name on a “bad debt list,”

⁵ This Court has already determined that “the business of debt collection affects the public interest” for purposes of meeting this element of a CPA action. *Panag v. Farmers Ins. Co. of Washington*, 166 Wn.2d 27, 54, 204 P.3d 885 (2009).

RCW 19.16.250(3); simulating a connection to a governmental agency while collecting a debt, RCW 19.16.250(4); using a name when demanding payment other than the name set forth on the collection license, RCW 19.16.250(7); failing to itemize interest added to the account after it was received by the collection agency for collection, RCW 19.16.250(8)(c); blocking the debt collector's telephone number from displaying on the debtor's caller ID, RCW 19.16.250(19); or conveying to the debtor that the debt collector is bonded by the State of Washington, RCW 19.16.250(20).

Without proving injury and causation, however, debtors could not otherwise prevail on their private CPA claims, even if they could otherwise demonstrate that the debt collectors violated RCW 19.16.250 and engaged in prohibited collection practices. Because the Attorney General need not prove injury and causation in CPA enforcement actions, it would fall to the Attorney General's Office, with its finite resources, to vindicate all of these consumers' rights; otherwise, a subset of prohibited practices in RCW 19.16.250 would likely go unchecked and greatly reduce the deterrent effect of the CAA. The legislature could not have intended this result.

D. Equal Access to Justice Demands a Simple Vehicle for Debtor-Defendants to Vindicate Their Rights in Court.

Debt collection is a problem of greatest importance to the poor, a population whose access to justice in the courts is too often blocked by

prohibitive costs and lack of legal counsel. As identified in the October 2015 Washington State Civil Needs Study Update (the Study), as commissioned by a special committee of the Washington Supreme Court, “[p]roblems involving consumer, debt collection, access to credit and financial services rank No. 2 in the list of most common problems reported by Washington’s low-income households. Of those who identify at least one civil legal problem, 37.6% face at least one problem in the consumer/finance area.” *2015 Washington State Civil Legal Needs Study Update* at p. 7. The Study noted that “[l]ow-income individuals and families face . . . significant life-changing issues without legal help and with little understanding of how to navigate the justice system on their own.” *Id.* at p. 4.⁶ Justice Wiggins, writing as the Chair of the Civil Needs Study Committee, stated: “This Report challenges us to do better: . . . It challenges us to be aware of the costs and consequences of administering a system of justice that denies large segments of the population the ability to assert and effectively defend core legal rights.” *Id.* at p. 2.

⁶ The Center for Responsible Lending reviewed 21,354 collection cases filed in Washington superior courts between 2012 and 2016 and found that over 80% resulted in default judgments, meaning the debtor did not respond to the complaint filed against him or her. See Tom Feltner, Julia Barnard, and Lisa Stifler, “Debt Collection Practices in Washington 2012-2016,” Center for Responsible Lending (March 2019), available at www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-washington-debt-by-default-15mar2019.pdf (last visited Sept. 6, 2019). Assuming service was proper, the high incidence of the lack of response indicates the defendants-debtors had no legal help or understanding of how to vindicate their rights.

This appeal presents just such an access to justice issue. It would be challenging enough for a debtor to become aware that the debt collector engaged in unlawful collection practices in the first place, but even armed with such evidence, without money for an attorney or filing fees, the debtor is unlikely to file a separate CPA claim to seek relief under RCW 19.16.450.⁷ How likely is it that a pro se litigant would have the wherewithal to file a motion to quash an outstanding garnishment writ, as Calvary suggests in its Answer to Petition for Review, p. 17, or even a CR 60 motion? In the absence of legal guidance, the unlawful practices would go unchallenged and systemically deny justice to a vulnerable population.

In deciding *Streng*, this Court understood that equal access to justice required that the bar for seeking relief must be low enough for all litigants seeking relief to clear. In allowing the court to hear the debtor's claims within the same collection action proceeding against her, rather than requiring her to file a separate action, the *Streng* court noted that "the mere cost of a filing fee in superior court might well frustrate consumers with

⁷ The Study notes that "[o]f those who experienced a civil legal problem, at least 76% do not get the help they need to solve their problems. Sixty-five percent of those who have a civil legal issue do not pursue help at all." *2015 Washington State Civil Legal Needs Study Update*, p. 15. Nearly a third of those who sought help but could not get it said they could not afford to pay for it. *Id.* at p. 16. 60 percent of those surveyed do not feel "people like them" have the ability to use the courts to protect themselves or to enforce their legal rights. *Id.* at p. 17.

small claims from attempting to secure a meaningful airing of proper consumer problems. . . . [I]f petitioner was required to pursue her remedy as a separate case in the superior court, rather than as a counterclaim in the same justice court action, she would be assessed an additional filing fee of \$32. We cannot believe the legislature intended such a result.” *Streng*, 89 Wn.2d at 30.

Likewise, equal access to justice for low-income individuals here demands that defendant-debtors be allowed to invoke the remedy of RCW 19.16.450 in the underlying collection proceeding in the simplest, least burdensome and least costly way that would allow a pro se litigant both to defend against the collection and to obtain affirmative relief from the court from unlawful collection practices. Only then will RCW 19.16.450 maintain its full deterrent effect, as the legislature intended.

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V. CONCLUSION

The Attorney General respectfully urges the Court to find that debtor-defendants may invoke RCW 19.16.450 in the direct action when faced with a debt collection suit, not merely as an affirmative defense but also to obtain affirmative relief as a result of the debt collector's violation of the CAA.

RESPECTFULLY SUBMITTED this 6th day of September, 2019.

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Attachment A

**HOUSE
COMMITTEE
FILE
1971 SB 796**

PLEASE ENCLOSE IN ENVELOPE

TO: SPEAKER'S OFFICE

FROM: COMMITTEE ON BUSINESS AND PROFESSIONS
Bob Curtis

SUBJECT: HB
SB 796

1. WHAT DOES THE BILL DO: See attached

2. THE REASONS FOR THE BILL: To eliminate the considerable abuse in this area. Presently, some agencies use deceptive practices such as quasi-legal forms or simulated telegrams; also threats of garnishment and other intimidati tactics are utilized.

3. THE REASONS AGAINST THE BILL: Collection agencies assisted in the drafting of this bill and approve of its contents. There were no witnesses present at the hearing to testify against the bill.

4. ORGANIZATIONS FAVORING OR OPPOSING THE BILL:

Wash Collectors Assn - favors
Attn Gen's Office - favors
Bar Assn of King Co (Young Lawyers) - favors

5. COST IMPACT OF THE BILL: See fiscal note attached to SHB# 949

The Collection Agency Act, primarily provides for the licensing, bonding, and regulation of collection agencies. At the present time, the only state law directly affecting collection agencies is a \$3000 bond requirement of RCW 19.16. Under the proposed Collection Agency Act a person in order to engage in the collection agency business, sell a collection system consisting of a series of form notices, or use a fictitious name to collect his own claim, would have to apply for and obtain a license (Sec 2). There is a grandfather clause which would allow those who are in the business as of the effective date of the Act to obtain a license by paying the required fees and providing a surety bond (Sec 3(2)). The operation of a collection agency without a license could be punishable by a maximum \$500 fine and/or one year imprisonment (Sec 34) and a collection agency which operates without a license could not sue in Washington to collect a third party claim (Sect 17).

The applicant for a license and each licensee seeking renewal would have to be eighteen years old or if a non-individual, authorized to do business in Washington, and in the last two years could not have completed a sentence for conviction of certain felonies, made false statement in application or had certain civil judgment entered against him (Sec 3).

Each licensee would be required to pay an initial \$100 investigation fee and an annual licensee fee of \$100 (Sec 5). Branch office certificates would cost \$50 (Sec 6). A licensee would also have to obtain a surety bond of \$5000 which would run to the benefit of customers injured by the failure of the licensee to perform its agreements with a customer, or deposit with the director the cash equivalent or other negotiable security acceptable to the director of DMV in lieu of the bond (Sec 10 & 11).

The Collection Agency Act would also require both the licensee and his customer to account to each other for moneys collected within thirty days after the close of the calendar month (Sect 12 and 13). Each licensee would have to keep records of collections for at least six years after the last collection and would be required to keep a separate trust fund for moneys collected on behalf of its customers (Sec 15).

The proposed act contains an extensive prohibited practices section (Sec 16) which relates to the activities of collection agencies and their employees. The section is based on the laws of other states, Federal Trade Commission decisions and rulings, and the experience of the Consumer Protection Division of the Attorney General's Office in this state. Among the prohibited practices are: the use of deadbeat lists, failure to disclose the identity of the original creditor and itemize amounts being collected, communication of existence of a

For uniformity in digesting bills it is requested that Committees utilize yellow letter-sized paper in the above form setting forth at the top the bill number abbreviation such as "SB 206", and the sponsors by name (or Committee if a substitute bill).

Short Title of Bill Enacting a "Collection Agency Act"

Committee: BUSINESS AND PROFESSIONS

Digester: Richard Rolfs

Date: April 30, 1971

Distribution:

Each Caucus (4-One each)

Speaker's Office (1)

President of Senate (1)

APPROVED: Bob Curtis

Committee Chairman

ebt to third parties except in specific situations, threatening impairment of credit rating, use of tactics of payment, use of deceptive and misleading forms, use of upcharge notes and attempts to collect more than is legally owing on a claim. Violation of the prohibited practices section can lead to the suspension or revocation of a license (Sec 28). The Attorney General or Prosecuting Attorney may enjoin these practices (Sec 37). An individual injured by a prohibited practice may seek redress under the Consumer Protection Act, RCW 19.86 (Sec 35), or may assert the commission of a prohibited act in a later action on the claim, and if he proves the commission of a prohibited act he would not be liable for any charge or fee beyond the original amount of the claim (Sec 36).

While the general administration of the Collection Agency Act would be by the Director of the DMV, a Board comprised of five members (two licensees, the Director, and two non-licensees) would be created to consider applications for license and the renewal, suspension, or revocation of licenses (Sec 19-28). This board would have the power to make its own rules and regulations in respect to its duties. The director would be given the power to investigate violations of the act by licensees, (Sec 31) and would be responsible for bringing disciplinary matters to the attention of the board (Sec 27).

The Collection Agency Act would be exclusive and no county, city or other political subdivision could enact laws regulating collection agencies, although a business and occupation tax could still be levied on collection agencies (Sec 4). This would affect the present Seattle ordinance on collection agencies.



Washington Collectors Association

Organized December 20, 1920



AFFILIATED WITH
THE AMERICAN COLLECTORS ASSOCIATION

*Rep. Bagan...
In light of...
agrees.*

January 15, 1973

TO WHOM IT MAY CONCERN:

Here is the proposed changed Collection Agency Act as of this writing.

There are no changes on the pages that are light.

The changes are made on the sheets that are green. However, only the sections that have an arrow in front of them have material changes.

There may be some isolated wording changes that do not change content on the green colored sheets that are not marked by arrows.

This information is passed on to you by the Legislative Chairman and was passed by the Washington Collectors Association Board at a special meeting at the Sea-Tac Motor Inn on January 12, 1973.

The President of the Washington Collectors Association requested that the changes shown be made and that no individual member of the Association would take it upon himself to make any changes. However, there may be agreed changes between the Department of Motor Vehicles, the consumer advocates and the attorney for the Washington Collectors Association so that the act will clear the Legislature as an agreed act.

Sincerely,

Alvin C. Pratt
ALVIN C. PRATT, Chairman
Legislative Committee

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COLLECTION AGENCY RULES

(Ed. Note) Following each rule and shown in parenthesis is the Department Administrative Order number as filed with the Code Reviser and the effective date of the rule.

WAC 308-29-010 DEFINITIONS. For the purpose of administering Chapter 19.16 RCW, the following terms shall be considered in the following manner:

(1) "Branch office" shall mean any location physically separated from the principal place of business of a licensee from which the licensee or his employees conduct any activity meeting the criteria of a collection agency under the definition of that term in RCW 19.16.100. *add*

(2) "Repossession services" conducted by any person, firm, partnership, trust, joint venture, association or corporation, shall not be considered within the definition of collection agency in RCW 19.16.100, unless such person, firm, partnership, trust, joint venture, association or corporation is repossessing or is attempting to repossess property for a third party and is authorized by such third party to accept cash or any other thing of value from the debtor in lieu of actual repossession. (PL-123, effective 6-16-72) *add*

WAC 308-29-020 FINANCIAL STATEMENT. Each applicant for a collection agency license shall be required to submit a current financial statement of assets and liabilities. Such statement will be submitted in the manner and form as may be prescribed by the director. Whenever a licensee applies for annual license renewal, such licensee will be required to submit a certification as to the financial solvency of the Collection Agency. (PL-123, effective 6-16-72) *add*

WAC 308-29-030 LICENSE RECORDS. (1) Each licensee shall notify the director in writing within ten (10) days after any change in ownership of a proprietorship or any change in owners, officers, directors, or managing employees of a non-individual licensee. Such notification shall consist of reporting the individual's name, position, home address and effective date of change. *add*

(2) Each licensee shall advise the department in writing of any additional information regarding the change or changes in sub-section (1) that the department may seek within ten (10) days after the receipt of such a request from the department. (PL-141, effective 01-17-73)

THE
COLLECTION
AGENCY
ACT

Chapter 253

Laws of 1971

First Extraordinary Session

(CHAPTER 19.16 R.C.W.)

Effective January 1, 1972

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19.16.010 through 19.16.050. [1929 c 90 §§ 1-5; RRS §§ 5847-4 5847-8.]
Repealed by 1971 1st ex. s. c 253 § 43.

19.16.100 DEFINITIONS. Unless a different meaning is plainly required by the context, the following words and phrases as hereinafter used in this act 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 in his own name;

(c) Any person who in attempting to collect or in collecting his own claim uses a fictitious name or any name other than his 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 act, 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; or

(c) Any person whose collection activities are carried on in his 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, 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.

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

(5) "Director" means the director of the department of motor vehicles.

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

(7) "Licensee" means any person licensed under this act.

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

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

19.16.110 LICENSE REQUIRED. No person shall act, assume to act, or advertise as a collection agency as defined in this act, except as authorized by this act, without first having applied for and obtained a license from the director.

Nothing contained in this section shall be construed to require a regular employee of a collection agency duly licensed under this act to procure a collection agency license.

19.16.120 LICENSE, DENIAL, NON-RENEWAL, REVOCATION, SUSPENSION GROUNDS:

In addition to other requirements of this act, no license, or renewal thereof may be granted to any applicant, or licensee, and any license may be suspended, or revoked:

- (1) Unless the application or renewal forms required by this act are complete, and fees required under RCW 19.16.140 and RCW 19.16.150 have been paid, and the surety bond or cash deposit or other negotiable security acceptable to the director required by RCW 19.16.190 has been filed or renewed.
- (2) Unless an INDIVIDUAL applicant, or licensee, is at least eighteen years of age, a citizen of the United States, and a resident of this State.
- (3) Unless an applicant, or licensee, which is NOT AN INDIVIDUAL is authorized to do business in this State.
- (4) If any individual applicant, owner, officer, director, or managing employee of a non-individual applicant, or licensee:
 - (a) Shall have knowingly made a false statement of material fact in any application for a collection agency license or renewal thereof, or in any data attached thereto and two years have not elapsed since the date of such statement.
 - (b) Shall have had a license to engage in the business of a collection agency, Denied, Suspended, Not Renewed, or Revoked by this State, any other State, or Foreign Country, for any reason other than the non-payment of licensing fees or failure to meet bonding requirements and two years have not elapsed since suit denial, suspension, non-renewal or revocation.
 - (c) Has been convicted in any court of any felony involving forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, or conspiracy to defraud and two years have not elapsed since the completion of the sentence for such conviction.
 - (d) Has had any judgment entered against him in any civil action involving forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, or conspiracy to defraud and two years have not elapsed since the date of the entry of the final judgment in said action.
 - (e) Has had his license to practice law suspended or revoked and two years have not elapsed since the date of such suspension or revocation, UNLESS he has been relicensed to practice law in this State.
 - add* → (f) Has petitioned for bankruptcy, and two years have not elapsed since the filing of said petition.
 - (g) Has had any judgment entered against him, or it, under the provisions of RCW 19.86.080, or RCW 19.86.090 involving the violation or violations of RCW 19.86.020 and two years have not elapsed since the entry of such judgment. PROVIDED, that said judgment shall not be grounds for denial, suspension, non-renewal, or revocation of a license unless the judgment arises out of and is based on acts of the said applicant, owner, officer, director, managing employee or licensee, while acting for or as a collection agency.
 - add* → (h) Shall be insolvent in the sense that his or its liabilities exceed his or its assets or in the sense that he or it cannot meet his or its obligations as they mature.
 - add* → (i) Has knowingly failed to comply with, or violated any provision of this act or any rule or regulation issued pursuant to this act, and two years have not elapsed since the occurrence of said noncompliance or violation.

19.16.130 LICENSE APPLICATION FORM CONTENTS. Every application for a license shall be in writing, under oath, and in the form prescribed by the director.

Every application shall contain such relevant information as the director may require.

The applicant shall furnish the director with such evidence as the director may reasonably require to establish that the requirements and qualifications for a licensee have been fulfilled by the applicant.

Every application for a license shall state, among other things that may be required, the name of the applicant with the name under which the applicant will do business and the location by street and number, city and state of each office of the business for which the license is sought.

No license shall be issued in any fictitious name which may be confused with or which is similar to any federal, state, county, or municipal governmental function or agency or in any name which may tend to describe any business function or enterprise not actually engaged in by the applicant or in any name which would otherwise tend to be deceptive or misleading. The foregoing shall not necessarily preclude the use of a name which may be followed by a geographically descriptive title which would distinguish it from a similar name licensed but operating in a different geographical area.

The application shall include a financial statement of the applicant, showing the assets and liabilities of the applicant and truly reflecting that the applicant's net worth is not less than the sum of seven thousand five hundred dollars (\$7,500), in cash or its equivalent, of which, however, not less than five thousand dollars (\$5,000) shall be deposited in a bank, available for the use of licensee's business. The financial statement shall be sworn to by the applicant, if the applicant is an individual, or by a partner, officer, or manager in its behalf, if the applicant is a partnership, corporation of unincorporated association. The information contained in the financial statement shall be confidential and not a public record; but is admissible in evidence at any hearing held, or in any action instituted in a court of competent jurisdiction, pursuant to the provisions of this act.

19.16.140 LICENSE--APPLICATION--FEES. Each applicant when submitting his application shall pay a licensing fee of one hundred dollars and an investigation fee of one hundred dollars. If a license is not issued in response to the application, the one hundred dollar license fee shall be returned to the applicant.

An annual license fee of one hundred dollars shall be paid to the director on or before January first of each year. If the annual license fee is not paid on or before January first, the licensee shall be assessed a penalty for late payment in the amount of fifty dollars. If the fee and penalty are not paid by January thirty-first, it will be necessary for the licensee to submit a new application for a license: PROVIDED, That no license shall be issued upon such new application unless and until all fees and penalties previously accrued under this section have been paid.

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

19.16.150 BRANCH OFFICE CERTIFICATE REQUIRED. If a licensee maintains a branch office, he or it shall not operate a collection agency business in such branch office until he or it has secured a branch office certificate therefor from the director. A licensee, so long as his or its license is in full force and effect and in good standing, shall be entitled to branch office certificates for any branch office operated by such licensee upon payment of the fee therefor provided in this act.

Each licensee when applying for a branch office certificate shall pay a fee of fifty dollars. An annual fee of fifty dollars for a branch office certificate shall be paid to the director on or before January first of each year. If the annual fee is not paid on or before January first, a penalty for late payment in the amount of ten dollars shall be assessed. If the fee and the penalty are not paid by January thirty-first, it will be necessary for the licensee to apply for a new branch office certificate: PROVIDED, That no such new branch office certificate shall be issued unless and until all fees and penalties previously accrued under this section have been paid.

19.16.160 LICENSE AND BRANCH OFFICE CERTIFICATE--FORM--CONTENTS--DISPLAY.

Each license and branch office certificate, when issued, shall be in the form and size prescribed by the director and shall state in addition to any other matter required by the director:

- (1) The name of the licensee;
- (2) The name under which the licensee will do business;
- (3) The address at which the collection agency business is to be conducted;

and

- (4) The number and expiration date of the license or branch office certificate.

A licensee shall display his or its license in a conspicuous place in his or its principal place of business and, if he or it conducts a branch office, the branch office certificate shall be conspicuously displayed in the branch office.

19.16.170 PROCEDURE UPON CHANGE OF NAME OR BUSINESS LOCATION. Whenever a licensee shall contemplate a change of his or its trade name or a change in the location of his or its principal place of business or branch office, he or it shall give written notice of such proposed change to the director. The director shall approve the proposed change and issue a new license or a branch office certificate, as the case may be, reflecting the change.

19.16.180 ASSIGNABILITY OF LICENSE OR BRANCH OFFICE CERTIFICATE. (1)

Except as provided in subsection (2) of this section, a license or branch office certificate granted under this act is not assignable or transferable.

(2) Upon the death of an individual licensee, the director shall have the right to transfer the license and any branch office certificate of the decedent to the personal representative of his estate for the period of the unexpired term of the license and such additional time, not to exceed one year from the date of death of the licensee, as said personal representative may need in order to settle the deceased's estate or sell the collection agency.

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

(2) An applicant for a license under this act may furnish, file, and deposit with the director, in lieu of the surety bond provided for herein, a cash deposit or other negotiable security acceptable to the director. The security deposited with the director in lieu of the surety bond shall be returned to the licensee at the expiration of one year after the collection agency's license has expired or been revoked if no legal action has been instituted against the licensee or on said security deposit at the expiration of said one year.

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

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

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

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

19.16.200 ACTION ON BOND. In addition to all other legal remedies, an action may be brought in any court of competent jurisdiction upon the bond or cash deposit or security in lieu thereof, required by RCW 19.16.190, by any person to whom the licensee fails to account and pay as set forth in such bond or by any client or customer of the licensee who has been damaged by failure of the licensee to comply with all agreements entered into with such client or customer: PROVIDED, That the aggregate liability of the surety to all such clients or customers shall in no event exceed the sum of such bond.

An action upon such bond or security shall be commenced by serving and filing of the complaint within one year from the date of the cancellation of the bond or, in the case of a cash deposit or other security deposited in lieu of the surety bond, within one year of the date of expiration or revocation of license: PROVIDED, That no action shall be maintained upon such bond or such cash deposit or other security for any claim which has been barred by any nonclaim statute or statute of limitations of this state. Two copies of the complaint shall be served by registered or certified mail upon the director at the time the suit is started. Such service shall constitute service on the surety. The director shall transmit one of said copies of the complaint served on him to the surety within forty-eight hours after it shall have been received.

The director shall maintain a record, available for public inspection, of all suits commenced under this act upon surety bonds, or the cash or other security deposited in lieu thereof.

In the event of a judgment being entered against the deposit or security referred to in RCW 19.16.190 (2), the director shall, upon receipt of a certified of a final judgment, pay said judgment from the amount of the deposit or security.

19.16.210 ACCOUNTING AND PAYMENTS BY LICENSEE TO CUSTOMER. A licensee shall within thirty days after the close of each calendar month account in writing to his or its customers for all collections made during that calendar month and pay to his or its customers the net proceeds due and payable of all collections made during that calendar month except that a licensee need not account to the customer for:

(1) Court costs recovered which were previously advanced by licensee or his or its attorney.

(2) Attorney's fees and interest or other charges incidental to the principal amount of the obligation legally and properly belonging to the licensee, if such charges are retained by the licensee after the principal amount of the obligation has been accounted for and remitted to the customer. When the net proceeds are less than ten dollars at the end of any calendar month, payments may be deferred for a period not to exceed three months.

19.16.220 ACCOUNTING AND PAYMENTS BY CUSTOMER TO LICENSEE. Every customer of a licensee shall, within thirty days after the close of each calendar month, account and pay to his or its collection agency all sums owing to the collection agency for payments received by the customer during that calendar month on claims in the hands of the collection agency.

If a customer fails to pay a licensee any sums due under this section, the licensee shall, in addition to other remedies provided by law, have the right to offset any moneys due the licensee under this section against any moneys due customer under RCW. 19.16.210.

19.16.230 OFFICE IN STATE - RECORDS TO BE KEPT.

1. Every licensee must establish and maintain a regular active business office in the State of Washington for the purpose of conducting his or its collection agency business. Said office must be open to the public during stated business hours, and must be managed by a resident of the State of Washington.

2. Every licensee shall keep a record of all sums collected by him or it and all disbursements made by him or it. All such records shall be kept at the business office referred to above.

3. Licenses shall maintain and preserve accounting records of collections and payments to customers for a period of six years from the date of the last entry thereon.

19.16.240 LICENSEE--TRUST FUND ACCOUNT. Each licensee shall at all times maintain a separate bank account in this state in which all moneys collected by the licensee shall be deposited except that negotiable instruments received may be forwarded directly to a customer. Moneys received must be deposited within ten days after posting to the book of accounts. In no event shall moneys received be disposed of in any manner other than to deposit such moneys in said account or as provided in this section.

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

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

19.16.250 PROHIBITED PRACTICES. 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 act 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 "deadbeat lists" or threaten to do so.

(4) Have in his 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 that 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 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 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 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 make a reasonable effort to obtain the

(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 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) Attorney's fees, if any, that the licensee is attempting to collect on his or its behalf or on the behalf of a customer or assignor;

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

(9) 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: PROVIDED, That 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, forward a copy of such written notice to the credit reporting bureau;

(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 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; and

(i) The licensee or employee has notified or attempted to notify the debtor in writing at his 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.

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

(11) 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 it again receives notification in writing that an attorney is representing the debtor.

(12) 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;

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

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

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

(14) 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.

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

(16) 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.

(17) 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.

(18) Collect or attempt to collect in addition to the principal amount of a claim any sum other than allowable interest, collection costs expressly authorized by statute, and, in the case of suit, attorney's fees and taxable court costs.

(19) 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, and, in the case of suit, attorney's fees and taxable court costs.

19.16.260 LICENSING PREREQUISITE TO SUIT. No 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 or it is duly licensed under this act and has satisfied the bonding requirements hereof: PROVIDED, That in any case where judgment is to be entered by default, it shall not be necessary for the collection agency to prove such matters.

A copy of the current 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 as required by this act.

19.16.270 PRESUMPTION OF VALIDITY OF ASSIGNMENT. In any action brought by licensee to collect the claim of his or its customer, the assignment of the claim to licensee by his or its customer shall be conclusively presumed valid, if the assignment is filed in court with the complaint, unless objection is made thereto by the debtor in a written answer or in writing five days or more prior to trial.

19.16.280 BOARD CREATED--COMPOSITION OF BOARD--QUALIFICATION OF MEMBERS. There is hereby created a board to be known and designated as the "Washington state collection agency board." The board shall consist of five members, one of whom shall be the director and the other four shall be appointed by the governor. The director may delegate his duties as a board member to a designee from his department. The director or his designee shall be the executive officer of the board and its chairman.

At least two but no more than two members of the board shall be licensees hereunder. Each of the licensee members of the board shall be actively engaged in the collection agency business at the time of his appointment and must continue to be so engaged and continue to be licensed under this act during the term of his appointment or he will be deemed to have resigned his position: PROVIDED, That no individual may be a licensee member of the board unless he has been actively engaged as either an owner or executive employee or a combination of both of a collection agency business in this state for a period of not less than five years immediately prior to his appointment.

No board member shall be employed by or have any interest in, directly or indirectly, as owner, partner, officer, director, agent, stockholder, or attorney, any collection agency in which any other board member is employed by or has such an interest.

No member of the board other than the director or his designee shall hold any other elective or appointive state or federal office.

19.16.290 BOARD--INITIAL MEMBERS. The initial members of the board shall be named by the governor within thirty days after January 1, 1972. At the first meeting of the board, the members appointed by the governor shall determine by lot the period of time from January 1, 1972 that each of them shall serve, one for one year; one for two years; one for three years; and one for four years. In the event of a vacancy on the board, the governor shall appoint a successor for the unexpired term.

Each member appointed by the governor shall qualify by taking the usual oath of a state officer, which shall be filed with the secretary of state, and each member shall hold office for the term of his appointment and until his successor is appointed and qualified.

Any member of the board other than the director or his designee may be removed by the governor for neglect of duty, misconduct, malfeasance or misfeasance in office after being given a written statement of the charges against him and sufficient opportunity to be heard thereon.

19.16.300 BOARD MEETINGS--QUORUM--EFFECT OF VACANCY. The board shall meet as soon as practicable after the governor has appointed the initial members of the board. The board shall meet at least once a year and at such other times as may be necessary for the transaction of its business.

The time and place of the initial meeting of the board and the annual meetings shall be at a time and place fixed by the director. Other meetings of the board shall be held upon written request of the director at a time and place designated by him, or upon the written request of any two members of the board at a time and place designated by them.

A majority of the board shall constitute a quorum.

A vacancy in the board membership shall not impair the right of the remaining members of the board to exercise any power or to perform any duty of the board, so long as the power is exercised or the duty performed by a quorum of the board.

19.16.310 BOARD--COMPENSATION--REIMBURSEMENT OF EXPENSES. Each member of the board appointed by the governor shall receive as compensation twenty-five dollars for each day, or portion thereof, in which he is actually engaged in the official business and duties of the board and in addition thereto shall be reimbursed for necessary expenses incurred while on official business of the board and in attending meetings thereof, in accordance with the provisions of RCW 43.03.050 and 43.03.060.

19.16.320 BOARD--TERRITORIAL SCOPE OF OPERATIONS. The board may meet, function and exercise its powers and perform its duties at any place within the state.

19.16.330 BOARD--IMMUNITY FROM SUIT. Members of the board shall be immune from suit in any civil action based upon an official act performed in good faith as members of such board.

19.16.340 BOARD--RECORDS. All records of the board shall be kept in the office of the director. Copies of all records and papers of the board, certified to be true copies by the director, shall be received in evidence in all cases with like effect as the originals. All actions by the board which require publication, or any writing shall be over the signature of the director or his designee.

RCW 19.16.350 BOARD--POWERS--DUTIES:

→
Repealed.

19.16.360 LICENSE DENIAL-SUSPENSION-NON RENEWAL-REVOCATION-REQUEST FOR HEARING:

→ (1) Whenever the director shall have reasonable cause to believe that grounds exist for DENIAL, SUSPENSION, NON-RENEWAL or REVOCATION of a license issued or to be issued under this act, he shall notify the applicant or licensee in writing by certified or registered mail, with return receipt requested, stating the grounds upon which it is proposed that the license be DENIED, SUSPENDED, NOT RENEWED, or REVOKED.

(2) Within thirty days from the receipt of notice of the alleged grounds for denial, suspension, revocation, or lack of renewal, the applicant or licensee may serve upon the director a written request for hearing before the board. Service of a request for a hearing shall be by certified mail and shall be addressed to the director at his office in Thurston County. Upon receiving a request for a hearing, the director shall fix a date for which the matter may be heard by the board, which date shall be not less than thirty days from the receipt of the request for such hearing. If no request for hearing is made within the time specified, the license shall be deemed denied, suspended, revoked, or not renewed.

(3) Whenever a licensee who has made timely and sufficient application for the renewal of a license, receives notice from the director that it is proposed that his or its license is not to be renewed, and said licensee requests a hearing under subsection (2) of this section, the licensee's current license shall not expire until the last day for seeking review of the board's decision expires or if judicial review of the board's decision is sought until final judgment has been entered by the superior court, or in the event of an appeal of appeals, until final judgment has been entered by the last appellate court in which review has been sought.

Revised entire section

19.16.370 BOARD-DUTIES-RESPONSIBILITIES. The board, in addition to any other powers and duties granted under this act:

1. May adopt, amend and rescind such rules and regulations for its own organization and procedure and such other rules and regulations as it may deem necessary in order to perform its duties hereunder.
2. When an applicant or licensee has requested a hearing as set forth in this act the board shall meet and after notice and hearing before the board may deny any application for a license hereunder, and may fail to renew, suspend, or revoke any license issued hereunder, if the applicant, or licensee, has failed to comply with or violated any provision of this or any rule or regulation issued pursuant to this act. It shall be the duty of the board within thirty days after the last day of hearing to notify the appellant of its decision.
3. Inquire into the needs of the collection agency business, the needs of the director and the matter of the policy of the director in administering this act, and make such recommendations with respect thereto as, after consideration, may be deemed important and necessary for the welfare of the State, the welfare of the public, and the welfare and progress of the collection agency business.
4. Confer and advise with the director as to how the director is administering this act may best serve the State, the public, and the collection agency business.
5. Consider and make appropriate recommendations on its own initiative as to changes in, or additions to, or deletions of rules and regulations which the director has adopted as, after consideration, may be deemed important and necessary.
6. Consider and make appropriate recommendations in all matters submitted to it by the director.
7. Confer and advise with the director in preparations of any rules and regulations to be adopted, amended, or repealed.
8. Assist the director in the collection of such necessary information and data as the director may deem necessary to the proper administration of this act.

19.16.380 ADMINISTRATIVE PROCEDURE ACT. Except as specifically provided in this act, the rules adopted and the hearings conducted shall be in accordance with the provisions of chapter 34.04 RCW (Administrative Procedure Act).

19.16.390 PERSONAL SERVICE OF PROCESS OUTSIDE STATE. Personal service of any process in an action under this act may be made upon any person outside the state if such person has engaged in conduct in violation of this act which has had the impact in this state which this act reprehends. Such persons shall be deemed to have thereby submitted themselves to the jurisdiction of the courts of this state within the meaning of RCW 4.28.180 and 4.28.185.

19.16.400 INVESTIGATIONS OR PROCEEDINGS--POWERS OF DIRECTOR OR DESIGNEES--PENALTY.

1. The director on his own motion, or when any person or the attorney general has filed with the director a written statement alleging acts of misconduct, violations of or noncompliance with this act or any rules or regulations established thereunder by any person, may initiate and conduct investigations as may be reasonably necessary to establish the existence of such alleged acts of misconduct, violations, or noncompliance. For the purpose of any investigation or proceeding under this act, the director or any officer designated by him may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, paper, correspondence, memoranda, agreements, or other documents or records which the director deems relevant or material to the inquiry.

2. If any individual fails to obey a subpoena or obeys a subpoena but refuses to give evidence, any court of competent jurisdiction, upon application by the director, may issue to that person an order requiring him to appear before the court, to show cause why he should not be compelled to obey the subpoena and give evidence material to the matter under investigation. The failure to obey an order of the court may be punishable by contempt.

19.16.410 RULES, ORDERS, DECISIONS, ETC. The director may promulgate rules, make specific decisions, orders and rulings, including therein demands and findings and take other necessary action for the implementation and enforcement of his duties under this act.

19.16.420 COPY OF THIS ACT, RULES AND REGULATIONS AVAILABLE TO LICENSEE. On or about the first day of February in each year, the director shall cause to be made available at reasonable expense to a licensee a copy of this act, a copy of the current rules and regulations of the director, and board, and such other materials as the director or board prescribe.

19.16.430 VIOLATIONS--OPERATING COLLECTION AGENCY WITHOUT A LICENSE--PENALTIES.

1. Any person who knowingly operates as a collection agency without a license or knowingly aids and abets such violation is punishable by a fine not exceeding five hundred dollars or by imprisonment not exceeding one year or both.

2. Any person who knowingly operates as a collection agency without a license shall not charge or receive any fee or compensation on any moneys received or collected while operating without a license or on any moneys received or collected while operating with a license but received or collected as a result of his or its acts as a collection agency while not licensed hereunder. All such moneys collected or received shall be forthwith returned to the owners of the accounts on which the moneys were paid.

19.19.440-VIOLATIONS OF RCW 19.16.110 AND RCW 19.16.250 ARE UNFAIR AND DECEPTIVE TRADE PRACTICES UNDER RCW CHAPTER 19.86.

The operation of a collection agency without a license as prohibited by RCW 19.16.110 and the commission by a licensee or an employee of a licensee of an act or practice prohibited by RCW 19.16.250 are declared to be unfair acts or practices or unfair methods of competition in the conduct of trade or commerce for the purpose of the application of the Consumer Protection Act found in RCW Chapter 19.86.

19.16.450 VIOLATION OF RCW 19.16.250--ADDITIONAL PENALTY. If an act or practice in violation of RCW 19.16.250 is committed by a licensee or an employee of a licensee in the collection of a claim, neither the licensee, the customer of the licensee, nor any other person who may thereafter legally seek to collect on such claim shall ever be allowed to recover any interest, service charge, attorneys' fees, collection costs, delinquency charge, or any other fees or charges otherwise legally chargeable to the debtor on such claim: PROVIDED, That any person asserting the claim may nevertheless recover from the debtor the amount of the original claim or obligation.

19.16.460 VIOLATIONS MAY BE ENJOINED. Notwithstanding any other actions which may be brought under the laws of this state, the attorney general or the prosecuting attorney of any county within the state may bring an action in the name of the state against any person to restrain and prevent any violation of this act.

19.16.470 VIOLATIONS--ASSURANCE OF DISCONTINUANCE--EFFECT. The attorney general may accept an assurance of discontinuance of any act or practice deemed in violation of this act from any person engaging in or who has engaged in such act or practice. Any such assurance shall be in writing and be filed with and subject to the approval of the superior court of the county in which the alleged violator resides or has his principal place of business, or in the alternative, in Thurston county.

Such assurance of discontinuance shall not be considered an admission of a violation for any purpose; however, proof of failure to perform the terms of any such assurance shall constitute prima facie proof of a violation of this act for the purpose of securing an injunction as provided for in RCW 19.16.460: PROVIDED, That after commencement of any action by a prosecuting attorney, as provided therein, the attorney general may not accept an assurance of discontinuance without the consent of said prosecuting attorney.

19.16.480 VIOLATION OF INJUNCTION--CIVIL PENALTY. Any person who violates any injunction issued pursuant to this act shall forfeit and pay a civil penalty of not more than twenty-five thousand dollars. For the purpose of this section

19.16.900 PROVISIONS CUMULATIVE--VIOLATION OF RCW 19.16.160 DEEMED CIVIL. The provisions of this act shall be cumulative and nonexclusive and shall not affect any other remedy available at law: PROVIDED, That the violation of RCW 19.16.250 shall be construed as exclusively civil and not penal in nature.

19.16.910 SEVERABILITY. If any section or provision of this act shall be adjudged to be invalid or unconstitutional such adjudication shall not affect the validity of the act as a whole, or any section, provisions, or part thereof not adjudged invalid or unconstitutional.

19.16.920 PROVISIONS EXCLUSIVE--AUTHORITY OF POLITICAL SUBDIVISIONS NOT AFFECTED. (1) The provisions of this act relating to the licensing and regulation of collection agencies shall be exclusive and no county, city, or other political subdivision of this state shall enact any laws or rules and regulations licensing or regulating collection agencies.

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

19.16.930 EFFECTIVE DATE. This act shall become effective January 1, 1972.

19.16.940 SHORT TITLE. This act shall be known and may be cited as the "Collection Agency Act".

19.16.950 SECTION HEADINGS. Section headings used in this act shall not constitute any part of the law. -13-

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April 28, 1971

Representative Robert Curtis
Legislative Building
Olympia, Washington

Re: Senate Bill 796: Collection Agency Act

Dear Bob:

This will confirm my telephone conversation with you on Monday relative to Senate Bill 796, the Collection Agency Regulatory Act.

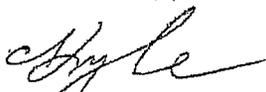
Ammendments were added to this bill in committee while in the Senate. These would have included Credit Reporting Agencies under our regulatory act which was designed for collectors. They are already regulated by virtue of federal statute which, as a matter of fact, went into effect this past Sunday. I personally am quite perturbed with the attorney general's office. It is my feeling, along with others, that the Credit Bureau people were included in the Senate Bill through the A.G.'s direction. They have been continually telling us that they are interested in regulating the collection agencies, but seem to be doing very little towards passage of the act.

I really feel, Bob, that I prefer to avoid passage of Senate Bill 796 during this session. It certainly is a bill we can live with, but with another year's time we can come up with a more workable bill and one which would be beneficial to all concerned.

I know Marvin Smith has been bugging you and I've tried to keep him buttoned up. He's really hard to control. I would appreciate very much, Bob, if you don't discuss my feelings at this time with him.

Thanks again for everything.

Sincerely,



Kyle Younker

KY/mes

*Changes on
Page 8 + 4 B*

RCW 19.16.120

Item (4)(b) has been changed to four years instead of 2 years
Per Barry Hasson's request

RCW 19.16 - Items on page 8 have been changed as follows:

New Section - Sec. 8

Item (4) Upon request of the Director, confer and advise in matters relating to the administering of this act.

Item (5) Delete

Item (6) May consider and make appropriate recommendations to the director in all matters submitted to the Board.

Item (7) Coordinate with the director in preparations of any rules and regulations to be adopted, amended or repealed.

The above preliminary changes have tentatively been made per the Department of Motor Vehicles request and the Association has no objection to these changes

dwelling unless the public agency is satisfied that replacement housing is available. The director of planning and community affairs agency after consulting the departments of highways and general administration is required to adopt certain rules and regulations consistent with this act and Public Law 91-646. Executive head of public body with authority over project shall review applications from any person aggrieved by a determination as to eligibility. Payments received shall not be considered income for purposes of any tax, for determining eligibility of any person for assistance under social security or any other federal law provided, supplemental rent payments may be set off from duplicating a shelter allowance under public assistance. Authorizes inter-governmental agreements with the United States and among local political bodies to comply with federal law in order to obtain real property from the U.S. for the purpose of providing replacement housing. Defines policies as to appraisals, initiating negotiations, construction of public improvements to guide every public body acquiring real property in connection with any project. Requires condemning body to reimburse owner for fair and reasonable expenses necessarily incurred for various fees and costs incurred in conveying the property to the condemning body, and authorizes court to grant recovery of certain costs, penalties, taxes and expenses. Effective July 1, 1971.

ENGROSSED SUBSTITUTE SENATE BILL NO. 796 Judiciary Committee
(Chapter 253, Laws of 1971,
1st Ex. Session)

Collection agency act. Provides for the licensing and regulation of collection agencies and for a definition of the rights and remedies available to individuals with regard to credit reports. No person shall act as a collection agency unless he has a license, the fee for which is \$100 annually for the principal place of business and \$50 for each branch office. The license requirement is not applicable to: (a) an employee of a licensee; (b) an employee as to his own employer's claims; and (c) banks, savings and loan associations, public officers acting in their official capacity, lawyers, real estate brokers, small loan companies and insurance companies, as long as they are not operating a collection agency business. Each license applicant must obtain a \$5000 surety bond or file equivalent security. Each licensee and each customer of a licensee must make monthly accountings of all sums owed the other. Licensees must keep records of all collections and disbursements and must deposit all collections in a separate trust account. Specific prohibited practices are defined for licensees and their employees. Creates a state collection agency board to consist of five members: the director of the department of motor vehicles or his designee, four appointed by the governor, two licensees and two non-licensees; and authorizes the board to adopt

rules and regulations and to deny, revoke or suspend licenses. Operating a collection agency without a license is punishable by a fine of \$1000, or by imprisonment or both. Commission of a prohibited practice is an unfair practice under the Consumer Protection Act. In addition violations are enjoined by the attorney general or a prosecuting attorney. The credit reporting provisions of the act authorize an individual to look at his credit report and to learn the source of any item of information. Procedures are also established for the individual to have false or misleading information removed or changed. Effective January 1, 1972.

SUBSTITUTE SENATE BILL NO. 849
(Chapter 294, Laws of 1971,
1st Ex. Session)

Committee on Ways and Means

Yield tax on timber. Phases out the ad valorem tax on timber over a three-year period (1972 assessment at 75%, 1973 @ 45%, then 0%); phases in an excise (yield) tax on timber over the same period (from October 1, 1972 to September 30, 1973 @ 1.2% of stumpage value of harvested timber, with an additional surtax, extendable to 1980, of 0.5% between October 1, 1972 and December 31, 1974, and from September 30, 1973 onward at the rate fixed by the legislature); in the early years of the excise tax, continues the same basic budgeting system and revenue flow from timber and forest land for all taxing districts, for special as well as regular levies; after a period for collection of necessary information, phases into a distribution system for excise tax revenues based upon the five-year average value of timber harvested in each taxing district and the millage rate for such district; provides a system for the valuation and assessment of forest land on the basis of its use for growing and harvesting timber; establishes a forest tax committee of eleven members (2 senators, 2 representatives, 2 county assessors, revenue department director, land commissioner, public instruction superintendent, 2 timber landowners) to make studies and regular reports to the legislature. Effective May 21, 1971.

Governor's veto deletes requirement that forest tax committee give prior approval to revenue department decisions as to area designation and tables for application of unit stumpage value, as to rules for quality grading of forest lands and as to determining value, on the ground that the department should bear full responsibility.

Attachment B

ENACTING A "COLLECTION AGENCY ACT"

This act provides for the licensing, bonding, and regulation of collection agencies. Under existing law collection agencies are required only to obtain a \$3,000.00 bond under the provisions of RCW 19.16. Under the proposed act a person who is going to operate a "collection agency" (a detailed definition of which is provided in section 1 of the act) must apply for and obtain a license. A person engaging in the collection agency business as of the effective date of this act is only required to file an application, pay the fee and file a surety bond.

The operation of a collection agency without a license would be punishable by a maximum \$500 fine and/or one year imprisonment. Further, any such unlicensed agency could not sue in Washington to collect any claim.

Each licensee would be required to pay an initial \$100 investigation fee and an annual license fee of \$100. A licensee under the act must within 30 days after the close of each calendar month account in writing to his or her customers for all collections made during that calendar month and pay to his customers the net proceeds due and payable; providing, however, this does not include an accounting for court costs and attorneys fees nor is such an accounting required when the net proceeds are less than \$10 at the end of any calendar month.

Section 16 of the act delineates certain practices which are prohibited by licensees. These include but are not limited to: threatening, impairment of credit rating, use of deceptive and misleading forms, and any attempt to collect more than is legally owing on a claim. Violation of this provision could lead to suspension of the licensee's license. Further, the Attorney General or Prosecuting Attorney may enjoin such practices. In addition to these remedies an individual injured by a prohibited practice could seek redress under the consumer protection act, RCW 19.86, or may assert such a violation as a defense to any subsequent action to collect a claim against him, and if he proves the commission of such a prohibited act he would not be liable for any charge or fee beyond the original amount of the claim.

The general administration of the act would be by the Director of the Department of Motor Vehicles. A board comprised of five members (two licensees, the director, and two nonlicensees) would be created to consider applications for a license, the renewal of licenses, suspension of licenses or revocation of licenses. The Director of the Department of Motor Vehicles would be given the power to investigate violations of the act by licensees and would be responsible for bringing disciplinary matters to the attention of the board.

This act would be exclusive and no county, city or other political subdivision could enact laws regulating collection agencies, although any business and occupation tax could still be levied on collection agencies.

THE COMMITTEE ON BUSINESS AND PROFESSIONS RECOMMENDS DO PASS (12)

JB:lh
5/1/71

This an A.G. consumer protection request - A GS office says in good shape. I questioned p. 17 line 4, but that was intended.

Recommend approval *RL*

To do for apt file
OK DJR

SUMMARY OF COLLECTION AGENCY ACT
(PROPOSED COMMITTEE SUBSTITUTE FOR
H.B. 949 AND S.B. 796)

The proposed committee substitute for H.B. 949 (S.B. 796), the Collection Agency Act, primarily provides for the licensing, bonding, and regulation of collection agencies. At the present time, the only State law directly affecting collection agencies is a \$3,000 bond requirement of RCW 19.16.

Under the proposed Collection Agency Act a person in order to engage in the collection agency business, sell a collection system consisting of a series of form notices, or use a fictitious name to collect his own claim, would have to apply for and obtain a license (Sec 2). There is a grandfather clause which would allow those who are in the business as of the effective date of the Act to obtain a license by paying the required fees and providing a Surety Bond (Sec 3(2)). The operation of a collection agency without a license would be punishable by a maximum \$500 fine and/or one year imprisonment (Sec 34) and a collection agency which operates without a license could not sue in Washington to collect a third party claim (Sec 17).

The applicant for a license and each licensee seeking renewal would have to be eighteen years old or if a non-individual, authorized to do business in Washington, and in the last two years could not have completed a sentence

Page Two
Summary of Collection Agency Act

for conviction of certain felonies, made false statement in application or had certain civil judgment entered against him (Sec 3).

Each licensee would be required to pay an initial \$100 investigation fee and an annual licensee fee of \$100 (Sec 5). Branch office certificates would cost \$50 (Sec 6). A licensee would also have to obtain a Surety Bond of \$5000 which would run to the benefit of customers injured by the failure of the licensee to perform its agreements with a customer, or deposit with the director the cash equivalent or other negotiable security acceptable to the director of Department of Motor Vehicles in lieu of the bond (Sec 10 and 11).

The Collection Agency Act would also require both the licensee and his customers to account to each other for moneys collected within thirty days after the close of the calendar month (Sec 12 and 13). Each licensee would have to keep records of collections for at least six years after the last collection and would be required to keep a separate trust fund for moneys collected on behalf of its customers (Sec 15).

The proposed Act contains an extensive prohibited practices section (Sec 16) which relates to the activities

Page Three
Summary of Collection Agency Act

of collection agencies and their employees. The section is based on the laws of other states, Federal Trade Commission decisions and rulings, and the experience of the Consumer Protection Division of the Attorney General's Office in this state. Among the prohibited practices are: The use of deadbeat lists, failure to disclose the identity of the original creditor and itemize amounts being collected, communication of existence of a debt to third parties except in specific situations, threatening impairment of credit rating, harrassment of alleged debtors, use of deceptive and misleading forms, use of upcharge notes and attempts to collect more than is legally owing on a claim. Violation of the prohibited practices section can lead to the suspension or revocation of a license (Sec 28). The Attorney General or Prosecuting Attorney may enjoin these practices (Sec 37). An individual injured by a prohibited practice may seek redress under the Consumer Protection Act, RCW 19.86 (Sec 35), or may assert the commission of a prohibited act in a later action on the claim, and if he proves the commission of a prohibited act he would not be liable for any charge or fee beyond the original amount of the claim (Sec 36).

While the general administration of the Collection Agency Act would be by the director of the Department of Motor Vehicles, a Board comprised of five members (two licensees, The Director of the Department of Motor Vehicles, or his designee, and two non-licensees) would be created to consider applications for license and the renewal, suspension, or revocation of licenses (Sec 19-28). This Board would have the power to make its own rules and regulations in respect to its duties. The director would be given the power to investigate violations of the Act by licensees, (Sec 31) and would be responsible for bringing disciplinary matters to the attention of the Board (Sec 27).

The Collection Agency Act would be exclusive and no county, city or other political subdivision could enact laws regulating collection agencies, although a business and occupation tax could still be levied on collection agencies (Sec 42). This would affect the present Seattle ordinance on collection agencies.

Washington is one of only a few Western states that does not regulate collection agencies. California, Oregon, Hawaii, Alaska, New Mexico, Nevada, and Arizona have enacted Collection Agencies Licensing Acts as have the majority of the rest of the states.

Page Five
Summary of Collectin Agency Act

The Washington Collectors Association which does represent a very significant segment of the collection agency industry has joined us in drafting a bill which will not only provide needed protection for residents of Washington, but will not unduly restrict the legitimate collectors in providing their valuable and necessary service in our credit oriented society.

CONSUMER PROTECTION DIVISION AGO

September 06, 2019 - 2:44 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 96853-5
Appellate Court Case Title: Fireside Bank, fka Fireside Thrift, Co. v. John W. Askins and Lisa D. Askins
Superior Court Case Number: 07-2-00204-7

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