
SENATE BILL 5034

State of Washington**66th Legislature****2019 Regular Session**

By Senators Dhingra, Frockt, Pedersen, and Kuderer; by request of Attorney General

Prefiled 12/21/18.

1 AN ACT Relating to the service of legal actions to collect a debt
2 by a collection agency; amending RCW 19.16.250; and creating a new
3 section.

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

5 NEW SECTION. **Sec. 1.** (1) The legislature finds and declares
6 that:

7 (a) Due process requires that all defendants in court proceedings
8 be provided with adequate notice and a reasonable opportunity to be
9 heard;

10 (b) Washington superior court civil rule 3 generally allows a
11 plaintiff to serve a defendant with an unfiled summons and complaint.
12 This superior court practice, known as "pocket service," is not
13 allowed in Washington's courts of limited jurisdiction, including the
14 district courts. Pocket service need not interfere with a defendant's
15 due process rights if the defendant is represented by counsel or
16 otherwise familiar with local legal procedural rules;

17 (c) In the debt collection context, however, many defendants are
18 unfamiliar with the legal process, and most are unrepresented. When
19 served with an unfiled, unnumbered summons and complaint, these
20 defendants do not always realize that they must respond to the
21 unfiled case, or know how to do so, to avoid a default judgment;

1 (d) In the debt collection context, many unrepresented defendants
2 reasonably conclude that the unnumbered summons and complaint are not
3 valid, particularly when they call the court and are told that no
4 case has been filed. They then intentionally fail to answer and
5 unwittingly give up their only opportunity to contest the debt;

6 (e) For these reasons, among others, a majority of defendants in
7 debt collection cases filed in Washington superior courts fail to
8 respond to the summons and complaint and, as a result, have default
9 judgments entered against them.

10 (2) Therefore, the legislature intends to require that debt
11 collection complaints be filed prior to service of the summons and
12 complaint on defendants to ensure that defendants understand that it
13 is an existing court case, are informed of the case number, and
14 receive adequate notice and a reasonable opportunity to respond and
15 be heard to avoid default judgment.

16 **Sec. 2.** RCW 19.16.250 and 2016 c 86 s 4 are each amended to read
17 as follows:

18 No licensee or employee of a licensee shall:

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

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

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

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

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

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

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

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

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

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

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

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

35 (ii) Interest or service charge, collection costs, or late
36 payment charges, if any, added to the original obligation by the
37 original creditor, customer or assignor before it was received by the
38 licensee for collection, if such information is known by the licensee
39 or employee: PROVIDED, That upon written request of the debtor, the

1 licensee shall make a reasonable effort to obtain information on such
2 items and provide this information to the debtor;

3 (iii) Interest or service charge, if any, added by the licensee
4 or customer or assignor after the obligation was received by the
5 licensee for collection;

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

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

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

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

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

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

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

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

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

1 (a) A licensee or employee of a licensee may inform a credit
2 reporting bureau of the existence of a claim. If the licensee or
3 employee of a licensee reports a claim to a credit reporting bureau,
4 the licensee shall, upon receipt of written notice from the debtor
5 that any part of the claim is disputed, notify the credit reporting
6 bureau of the dispute by written or electronic means and create a
7 record of the fact of the notification and when the notification was
8 provided;

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

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

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

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

25 (d) A licensee may for the purpose of locating the debtor or
26 locating assets of the debtor communicate the existence of a claim to
27 any person who might reasonably be expected to have knowledge of the
28 whereabouts of a debtor or the location of assets of the debtor if
29 the claim is reduced to judgment, or if not reduced to judgment,
30 when:

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

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

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

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

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

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

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

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

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

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

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

1 telephone is presumed to be received in the local time zone to which
2 the area code of the number called is assigned for landline numbers,
3 unless the licensee reasonably believes the telephone is located in a
4 different time zone. If the area code is not assigned to landlines in
5 any specific geographic area, such as with toll-free telephone
6 numbers, a call to a telephone is presumed to be received in the
7 local time zone of the debtor's last known place of residence, unless
8 the licensee reasonably believes the telephone is located in a
9 different time zone.

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

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

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

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

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

34 (b) The licensee is not in violation of (a) of this subsection if
35 the licensee at least monthly updates its records with information
36 provided by a commercial provider of cellular telephone lists that
37 the licensee in good faith believes provides reasonably current and
38 comprehensive data identifying cellular telephone numbers, calls a
39 number not appearing in the most recent list provided by the

1 commercial provider, and does not otherwise know or reasonably should
2 know that the number belongs to a cellular telephone.

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

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

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

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

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

38 (22) Procure from a debtor or collect or attempt to collect on
39 any written note, contract, stipulation, promise or acknowledgment
40 under which a debtor may be required to pay any sum other than

1 principal, allowable interest, except as noted in subsection (21) of
2 this section, and, in the case of suit, attorney's fees and taxable
3 court costs.

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

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

1 deposit account, or other preprinted written instrument underlying
2 the debt is a stolen or fraudulently created check or instrument.

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

33 (25) Bring an action or initiate an arbitration proceeding on a
34 claim for any amounts related to a transfer of sale of a vehicle
35 when:

36 (a) The licensee has been informed or reasonably should know that
37 the department of licensing transfer of sale form was filed in
38 accordance with RCW 46.12.650 (1) through (3);

39 (b) The licensee has been informed or reasonably should know that
40 the transfer of the vehicle either (i) was not made pursuant to a

1 legal transfer or (ii) was not voluntarily accepted by the person
2 designated as the purchaser/transferee; and

3 (c) Prior to the commencement of the action or arbitration, the
4 licensee has received from the putative transferee a copy of a police
5 report referencing that the transfer of sale of the vehicle either
6 (i) was not made pursuant to a legal transfer or (ii) was not
7 voluntarily accepted by the person designated as the purchaser/
8 transferee.

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

13 (27) Serve a debtor with a summons and complaint unless the
14 summons and complaint have been filed with the court and bear the
15 case number assigned by the court.

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