

contracts.

NEW SECTION. Sec. 29. The provisions of this act shall be cumulative and nonexclusive and shall not affect any other remedy available at law.

NEW SECTION. Sec. 30. This act shall become effective May 1, 1972: PROVIDED, That the director is authorized and empowered to undertake and perform duties and conduct activities necessary for the implementation of this act prior to that date.

NEW SECTION. Sec. 31. 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.

NEW SECTION. Sec. 32. This act shall be known and designated as the "Franchise Investment Protection Act".

Passed the Senate May 6, 1971.

Passed the House May 5, 1971.

Approved by the Governor May 20, 1971.

Filed in Office of Secretary of State May 21, 1971.

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CHAPTER 253

[Engrossed Substitute Senate Bill No. 796]

COLLECTION AGENCY ACT

AN ACT Relating to the regulation of collection agencies; creating new sections; repealing section 1, chapter 90, Laws of 1929 and RCW 19.16.010; repealing section 2, chapter 90, Laws of 1929 and RCW 19.16.020; repealing section 3, chapter 90, Laws of 1929 and RCW 19.16.030; repealing section 4, chapter 90, Laws of 1929 and RCW 19.16.040; repealing section 5, chapter 90, Laws of 1929 and RCW 19.16.050; providing an effective date; and prescribing penalties.

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

NEW SECTION. Section 1. 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.

NEW SECTION. Sec. 2. 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.

NEW SECTION. Sec. 3. APPLICANTS FOR LICENSES--REQUIREMENTS AND QUALIFICATIONS--GRANDFATHER CLAUSE. No license or any renewal thereof may be granted to any applicant unless:

(1) An individual applicant is at least eighteen years of age, a citizen of the United States, and a resident of this state.

(2) An applicant which is not an individual is authorized to do business in this state.

(3) The application is complete, the fees required by section 5 of this act have been paid, and the surety bond or cash deposit or other negotiable security acceptable to the director required by section 10 has been filed with the director.

(4) Neither an individual applicant nor any owner, officer, director, or managing employee of a nonindividual applicant:

(a) Has knowingly made a false statement of a material fact in his or its current application or in any data attached thereto or in any application (or data attached thereto) made under this act within two years of the date of the current application;

(b) Has had a license to engage in the business of a collection agency as defined in this act revoked by this state or any other state or foreign country within two years of the date of the current application for any reason other than the nonpayment of licensing fees or failure to meet bonding requirements;

(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 the application is made within two years of 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 the application is made within two years of the date of the entry of the final judgment in said action;

(e) Has had his license to practice law suspended or revoked and the application is made within two years of the date of such suspension or revocation, unless he has been relicensed to practice law in this state:

(f) Has had any judgment entered against him or it under the provisions of RCW 19.86.080 or 19.86.090 involving a violation or violations of the provisions of RCW 19.86.020 and the application is made within two years of the date of the entry of the final judgment in any said action: PROVIDED, That said judgment shall not be a ground for the denial of a license to any applicant unless the judgment arises out of and is based on acts of the applicant while acting as a collection agency.

Any person who is engaged in the collection agency business as of the effective date of this act shall, upon filing the application, paying the fees, and filing the surety bond or cash deposit or other negotiable security in lieu of bond required by this act, be issued a license hereunder.

NEW SECTION. Sec. 4. 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 is the same as or so similar to that of any existing licensee as would tend to deceive the public 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.

NEW SECTION. Sec. 5. 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.

NEW SECTION. Sec. 6. 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.

NEW SECTION. Sec. 7. 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.

NEW SECTION. Sec. 8. 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.

NEW SECTION. Sec. 9. 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.

NEW SECTION. Sec. 10. 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 sections 12 and 13 of this act. 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.

NEW SECTION. Sec. 11. 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 section 10 of this act, 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 section 10 (2) of this act, the director shall, upon receipt of a certified copy of a final judgment, pay said judgment from the amount of the deposit or security.

NEW SECTION. Sec. 12. 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.

NEW SECTION. Sec. 13. 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 section 12 of this act.

NEW SECTION. Sec. 14. LICENSEE--RECORDS TO BE KEPT. (1) 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 and maintained in this state.

(2) Licensees 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.

NEW SECTION. Sec. 15. 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.

NEW SECTION. Sec. 16. 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 the 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 name of such person and provide this name to the debtor;

(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) Attorneys' 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

of 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 government 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.

NEW SECTION. Sec. 17. 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.

NEW SECTION. Sec. 18. 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.

NEW SECTION. Sec. 19. 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.

NEW SECTION. Sec. 20. BOARD--INITIAL MEMBERS. The initial members of the board shall be named by the governor within thirty days after the effective date of this act. At the first meeting of the board, the members appointed by the governor shall determine by lot the period of time from the effective date of this act 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.

NEW SECTION. Sec. 21. 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.

NEW SECTION. Sec. 22. 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.

NEW SECTION. Sec. 23. BOARD--TERRITORIAL SCOPE OF OPERATIONS. The board may meet, function and exercise its powers and perform its duties at any place within the state.

NEW SECTION. Sec. 24. 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.

NEW SECTION. Sec. 25. 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.

NEW SECTION. Sec. 26. BOARD--POWERS--DUTIES. The board, in addition to any other powers and duties granted by 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) Shall have the power, after due notice and hearing, to

order the denial, nonrenewal, suspension or revocation of a license issued or applied for hereunder.

NEW SECTION. Sec. 27. LICENSES--DENIAL, SUSPENSION, REVOCATION--REQUEST FOR HEARING. (1) Whenever the director shall have reasonable cause to believe that grounds exist for denial of a license under section 3 of this act or for suspension or revocation of a license under section 28 of this act or that a licensee has failed to qualify for renewal of a license, 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, revoked, or not renewed.

(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 or appeals, until final judgment has been entered by the last appellate court in which review has been sought.

NEW SECTION. Sec. 28. LICENSE--DENIAL, SUSPENSION, REVOCATION--GROUNDS. When an applicant or licensee has requested a hearing under section 27 of this act, the board shall meet and after notice and hearing before the board:

(1) May deny any application for a license hereunder or may fail to renew the license of a licensee if the applicant or licensee seeking renewal has not satisfied the requirements of section 3 of this act.

(2) May deny the issuance of a license, fail to renew a license issued hereunder, or revoke a license if it finds that any employee of the applicant or licensee, or any partner, director, officer, shareholder or trustee of the applicant or licensee, has

previously had an application for a license hereunder denied, not renewed or revoked for any reason other than for the nonpayment of licensing fees or failure to provide a surety bond.

(3) May suspend or revoke any license issued hereunder if the board finds that an individual applicant or licensee, or an owner, officer, director, or managing employee of a nonindividual applicant or licensee:

(a) Has failed to file or renew the surety bond or make deposit in lieu thereof required by this act;

(b) Was previously the holder of a license issued under this act, which was revoked for cause and never reissued by the board, or which license was suspended for cause and the terms of the suspension have not been fulfilled;

(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 or it 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 entry of such judgment;

(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;

(f) Has knowingly made a false statement of a material fact in his or its application for a current license under this act or in any application made under this act within two years of the date of his or its current license;

(g) Has had any judgment entered against him or it under the provisions of RCW 19.86.080 or 19.86.090 or 19.86.020 and two years have not elapsed since the entry of such judgment: PROVIDED, That said judgment shall not be a ground of denial, suspension or revocation of a license unless such judgment arises out of and is based on acts of the licensee while acting as or employed by a collection agency;

(4) May suspend or revoke any license issued hereunder if the board finds that an individual applicant or licensee, or an owner, officer, director, or a nonindividual applicant or licensee or any employee of an applicant or licensee has knowingly failed to comply with or violated any provisions of this act or failed to comply with or violated any rule or regulation issued pursuant to this act.

(5) The board also, 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 is insolvent in the sense that his or its liabilities exceed his assets or in the sense that he or it cannot meet his or its obligations as they mature.

(6) It shall be the duty of the board within thirty days after the last day of the hearing to notify the applicant of its decision.

NEW SECTION. Sec. 29. 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).

NEW SECTION. Sec. 30. 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.

NEW SECTION. Sec. 31. INVESTIGATIONS OR PROCEEDINGS--POWERS OF DIRECTOR OR DESIGNFES--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 or violations of this act or any rule or regulation established thereunder by a licensee or employee of a licensee, may initiate and conduct investigations as may be reasonably necessary to establish the existence of such alleged acts of misconduct or such violations. 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, papers, 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.

NEW SECTION. Sec. 32. 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.

NEW SECTION. Sec. 33. 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.

NEW SECTION. Sec. 34. VIOLATIONS--OPERATING COLLECTION AGENCY WITHOUT A LICENSE--PENALTY. 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. Any officer or agent of a firm, corporation, or association who shall personally participate in or aid or abet such violation shall be subject to the same penalties as set forth in this section.

NEW SECTION. Sec. 35. VIOLATIONS OF RCW 19.16.170 ARE UNFAIR AND DECEPTIVE TRADE PRACTICES UNDER CHAPTER 19.86 RCW. The commission by a licensee or an employee of a licensee of an act or practice prohibited by section 16 of this act is hereby declared to be an unfair act or practice or unfair method 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.

NEW SECTION. Sec. 36. VIOLATION OF RCW 19.16.170--ADDITIONAL PENALTY. If an act or practice in violation of section 16 of this act 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.

NEW SECTION. Sec. 37. 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.

NEW SECTION. Sec. 38. 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 section 37 of this act: 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.

NEW SECTION. Sec. 39. 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 the superior court issuing any injunction shall retain jurisdiction, and the cause shall be continued, and in such cases the attorney general acting in the name of the state may petition for the recovery of civil penalties.

NEW SECTION. Sec. 40. 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 section 16 of this act shall be construed as exclusively civil and not penal in nature.

NEW SECTION. Sec. 41. 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.

NEW SECTION. Sec. 42. 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.

NEW SECTION. Sec. 43. REPEALERS. The following acts or parts of acts are each hereby repealed:

- (1) Section 1, chapter 90, Laws of 1929 and RCW 19.16.010;
- (2) Section 2, chapter 90, Laws of 1929 and RCW 19.16.020;
- (3) Section 3, chapter 90, Laws of 1929 and RCW 19.16.030;
- (4) Section 4, chapter 90, Laws of 1929 and RCW 19.16.040; and
- (5) Section 5, chapter 90, Laws of 1929 and RCW 19.16.050.

NEW SECTION. Sec. 44. EFFECTIVE DATE. This act shall become effective January 1, 1972.

NEW SECTION. Sec. 45. SHORT TITLE. This act shall be known and may be cited as the "Collection Agency Act".

NEW SECTION. Sec. 46. SECTION HEADINGS. Section headings used in this act shall not constitute any part of the law.

Passed the Senate April 26, 1971.

Passed the House May 10, 1971.

Approved by the Governor May 20, 1971.

Filed in Office of Secretary of State May 21, 1971.

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CHAPTER 254  
[Engrossed Senate Bill No. 567]  
PUGET ISLAND FERRY

AN ACT Relating to the Puget Island ferry.

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

NEW SECTION. Section 1. (1) The legislature finds that the ferry operated by Wahkiakum county between Puget Island and Westport on the Columbia river provides service which is primarily local in nature with secondary benefits to the state highway system in providing a bypass for state route 4 and providing the only crossing of the Columbia river between the Astoria-Megler bridge and the Longview bridge.

(2) The Washington state highway commission is hereby authorized to enter into a continuing agreement with Wahkiakum county pursuant to which the state highway commission shall pay to Wahkiakum county from moneys appropriated for such purpose the sum of one thousand dollars per month to be used in the operation and maintenance of the Puget Island ferry, commencing July 1, 1971.

Additionally, the Washington state highway commission is authorized to include in the continuing agreement a provision to reimburse Wahkiakum county for sixty percent of the deficit incurred during each previous fiscal year in the operation and maintenance of the ferry, commencing with the fiscal year ending June 30, 1972. The state's sixty percent share of the annual operating and maintenance deficit shall include the one thousand dollars per month authorized in this subsection.

(3) The annual deficit, if any, incurred in the operation and maintenance of the ferry shall be determined by Wahkiakum county subject to the approval of the Washington state highway commission. If sixty per cent of the deficit for the preceding fiscal year exceeds the total amount paid to the county for that year, the additional amount shall be paid to the county by the Washington state highway commission upon the receipt of a properly executed voucher: