

HOUSE BILL NO. HB0108

Collection agencies.

Sponsored by: Joint Minerals, Business and Economic
Development Interim Committee

A BILL

for

1 AN ACT relating to collection agencies; providing for
2 consumer and creditor protection in collection
3 transactions; providing for reimbursement to consumers and
4 creditors as required; transferring the collection agency
5 program from the collection agency board to the Wyoming
6 department of audit, banking division as specified;
7 modifying requirements of the program; providing for fees,
8 penalties and generally revising provisions regulating
9 collection agencies and debt collections; modifying the
10 function of the collection agency board; transferring
11 funds; repealing existing provisions; and providing for an
12 effective date.

13

14 *Be It Enacted by the Legislature of the State of Wyoming:*

15

1 **Section 1.** W.S. 40-25-101 through 40-25-121 are
2 created to read:

3

4

CHAPTER 25

5

COLLECTION AGENCIES

6

7

40-25-101. Short title.

8

9 This act may be cited as the "Wyoming Collection Agency
10 Act."

11

12

40-25-102. Definitions.

13

14

(a) As used in this act:

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17

(i) "Applicant" means a person filing an
application for a license;

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(ii) "Branch office" means any location for an
office used by a collection agency in addition to the "home
office";

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(iii) "Board" means the collection agency board
created by W.S. 40-25-103;

1

2 (iv) "Business debt" means the obligation
3 arising from a credit transaction between business or
4 commercial enterprises for goods or services used or to be
5 used primarily in a commercial or business enterprise and
6 not for personal, family or household purposes;

7

8 (v) "Collection agency" means any person who in
9 the ordinary course of business engages in debt collection;

10

11 (vi) "Commissioner" means the Wyoming banking
12 commissioner;

13

14 (vii) "Communication" means conveying
15 information regarding a debt in written or oral form,
16 directly or indirectly, to any person through any medium;

17

18 (viii) "Consumer" means any natural person
19 obligated or allegedly obligated to pay any debt;

20

21 (ix) "Control" means owning twenty-five percent
22 (25%) or more of the voting shares of the licensee or
23 having the power to direct the licensee's management or
24 policies;

1

2 (x) "Credit card servicing company" means a
3 company that prior to default, performs the contractual
4 duties in the administration of credit card debt such as
5 collecting payments;

6

7 (xi) "Creditor" means any person who offers or
8 extends credit creating a debt or to whom a debt is owed.
9 "Creditor" shall not include any person to the extent that
10 the person receives an assignment or transfer of a debt in
11 default solely for the purpose of facilitating collection
12 of the debt for another;

13

14 (xii) "Debt" means any obligation or alleged
15 obligation of a consumer to pay money arising out of a
16 transaction in which the money, property, insurance or
17 services which are the subject of the transaction are
18 primarily for personal, family or household purposes,
19 whether or not the obligation has been reduced to judgment;

20

21 (xiii) "Debt collection" means:

22

23 (A) Engaging in a business whose principal
24 purpose is the collection of debts of others;

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2

(B) Collecting or attempting to collect,
directly or indirectly, debts owed or due or asserted to be
owed or due another;

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6

(C) Taking an assignment of or purchasing
debts in default for collection purposes;

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9

(D) Directly or indirectly soliciting for
collection debts owed or due or asserted to be owed or due
another; or

12

13

(E) Using any name other than his own name
when in the process of collecting his own debts.

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16

(xiv) "Debt collector" means any person who uses
any instrumentality of interstate commerce in any business
the principal purpose of which is the collection of any
debts, or who regularly collects or attempts to collect,
directly or indirectly, debts owed or asserted to be owed
or due another;

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(xv) "Division" means the division of banking
within the Wyoming department of audit;

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(xvi) "Fair Debt Collection Practices Act" means the act set forth in 15 U.S.C. § 1692 et seq., as amended;

(xvii) "Home office" means the principal place of business of the collection agency;

(xviii) "Individual" means a natural person;

(xix) "Licensee" means a person licensed under this act;

(xx) "Mortgage servicing company" means a company, that prior to default, performs the contractual duties in the administration of mortgage loans such as collecting payments;

(xxi) "Person" means an individual, sole proprietorship, partnership, corporation, limited liability company or other entity, public or private;

(xxii) "Resident manager" means an individual who is a bona fide resident of Wyoming and who is employed by or under contract with a collection agency to gather and

1 distribute information pertinent to the debt collection
2 business between the commissioner, the collection agency
3 and consumers;

4

5 (xxiii) "Security device" means a surety bond or
6 a cash deposit;

7

8 (xxiv) "This act" means W.S. 40-25-101 through
9 40-25-121.

10

11 **40-25-103. Collection agency board; appointment;**
12 **membership; duties; meetings; compensation, per diem and**
13 **travel expenses.**

14

15 (a) The collection agency board is created. For the
16 purpose of carrying out the provisions of this act, the
17 governor shall appoint a three (3) person collection agency
18 board. The director of the department of audit shall serve
19 as an ex officio member of the board. The appointed board
20 shall consist of:

21

22 (i) One (1) member of the board who is an
23 attorney-at-law actively engaged in collection work and
24 licensed to practice law in Wyoming;

1

2 (ii) One (1) member of the board who is an
3 officer, partner, owner or resident manager of a licensed
4 collection agency;

5

6 (iii) One (1) member of the board who is a
7 member of the public at large and is neither an attorney-
8 at-law nor affiliated with a collection agency, but who is
9 or has been a user of credit or collection services.

10

11 (b) Members of the board shall be appointed for a
12 term of four (4) years. Members of the board shall serve
13 until their successors are duly appointed and qualified.

14

15 (c) No person shall be appointed as a member of the
16 board who has not been a bona fide resident of the state of
17 Wyoming for at least five (5) years immediately prior to
18 his appointment. The attorney-at-law and the officer,
19 partner, owner or resident manager of a collection agency
20 shall have engaged in the collection business within the
21 state of Wyoming for a period of five (5) years immediately
22 prior to appointment. The member of the public at large
23 shall have at least five (5) years experience as a user of
24 credit or collection services.

1

2 (d) Upon the death, resignation or removal of any
3 member of the board, the governor shall appoint a member to
4 serve the remaining unexpired term. Any member of the board
5 may be removed by the governor as provided in W.S. 9-1-202.

6

7 (e) Members of the board shall elect one (1) of their
8 members chairman to serve for a term of two (2) years.

9

10 (f) The board shall meet when called by the
11 commissioner or when requested by a majority of the members
12 of the board. Members of the board shall receive the same
13 salary, mileage and per diem for attending and traveling to
14 and from board meetings in the same manner and amount as
15 members of the Wyoming legislature. Members shall submit
16 request for reimbursement for salary, mileage and per diem
17 to the division.

18

19 (g) The board shall:

20

21 (i) Consult with and provide advice and counsel
22 to the commissioner on issues relating to collection
23 agencies;

24

1 (ii) Recommend to the commissioner any changes
2 in laws or regulations governing collection agencies as may
3 be necessary to meet changes in the debt collection
4 industry;

5

6 (iii) Assist the commissioner in gathering and
7 providing information to the legislature regarding the
8 activities of collection agencies conducting business in
9 Wyoming.

10

11 **40-25-104. Powers and duties of commissioner.**

12

13 (a) In addition to any other powers and duties
14 imposed upon the commissioner by law, the commissioner
15 shall:

16

17 (i) Perform any and all acts necessary to
18 promulgate, administer and enforce the provisions of this
19 act and any rules, regulations, orders, limitations,
20 standards, requirements or licenses issued under this act,
21 and to exercise all incidental powers as necessary to carry
22 out the purposes of this act;

23

1 (ii) Order any licensee to cease any activity or
2 practice which the commissioner deems to be deceptive,
3 dishonest or a violation of state or federal laws or
4 regulations;

5

6 (iii) Conduct investigations, issue subpoenas,
7 and hold hearings as necessary to determine whether a
8 person has violated any provision of this act;

9

10 (iv) Conduct examinations of the books and
11 records of licensees and conduct investigations as
12 necessary and proper for the enforcement of the provisions
13 of this act and the rules promulgated under the authority
14 of this act;

15

16 (v) Issue orders that are necessary to execute,
17 enforce and effectuate the purposes of this act;

18

19 (vi) Require that all application, renewal,
20 licensing, examination and all other fees included under
21 this act, except the amount paid for data processing by a
22 nationwide licensing system and database, shall be
23 deposited by the commissioner with the state treasurer into
24 the financial institutions administration account;

1

2 (vii) Require a background investigation
3 including fingerprint checks for state and national
4 criminal history record checks as necessary. The
5 commissioner may utilize background checks completed by the
6 division of criminal investigation, other government
7 agencies in Wyoming or in other states, the federal bureau
8 of investigation or a nationwide licensing system;

9

10 (viii) Determine the content of application
11 forms and the means by which an applicant applies for,
12 renews or makes changes to a license under this act. The
13 commissioner may require applicants to utilize a nationwide
14 licensing system and database for the processing of
15 applications and fees;

16

17 (ix) Act on complaints, or take action designed
18 to obtain voluntary compliance with this act;

19

20 (x) Require the collection agency to reimburse
21 the consumer for any amounts paid in excess of lawful
22 amounts expressly authorized by the agreement creating the
23 debt or permitted by law;

24

1 (xi) Require the collection agency to reimburse
2 the creditor for any amounts not paid as expressly
3 authorized by the agreement between the collection agency
4 and the creditor.

5

6 **40-25-105. License or notification requirements.**

7

8 (a) With the exception of those persons exempt from
9 the provisions of this act pursuant to W.S. 40-25-106 or
10 exempt from licensing pursuant to subsection (b) of this
11 section, no person shall engage in debt collection without
12 first obtaining a collection agency license in accordance
13 with this act if he is located:

14

15 (i) Within Wyoming;

16

17 (ii) Outside Wyoming and collects or attempts to
18 collect more than ten (10) times in a calendar year from
19 consumers who are Wyoming residents; or

20

21 (iii) Outside Wyoming and solicits or attempts
22 to solicit debts for collection from a creditor with a
23 place of business located within Wyoming.

24

1 (b) A person is not subject to the license
2 requirement in subsection (a) of this section if:

3

4 (i) The collection activity is limited to
5 collecting debts not incurred in this state from consumers
6 located in this state;

7

8 (ii) The collection activities are conducted by
9 means of interstate communications, including telephone,
10 mail or facsimile transmission; and

11

12 (iii) The person:

13

14 (A) Is located in another state that
15 regulates and licenses collection agencies; and

16

17 (B) That state does not require Wyoming
18 collection agencies to obtain a license to collect debts in
19 that state if Wyoming collection agencies' collection
20 activities are limited in the same manner.

21

22 (c) Any person engaged in debt collection shall
23 provide the commissioner with written notification, as set
24 by rule of the commissioner, within ten (10) business days

1 after commencing collection activities in each year that
2 collections are made or attempted if the person:

3

4 (i) Is located outside Wyoming and collects or
5 attempts to collect ten (10) or less times in a calendar
6 year from consumers who are Wyoming residents; or

7

8 (ii) Is exempt from licensing pursuant to
9 subsection (b) of this section.

10

11 (d) Any person required to provide written
12 notification to the commissioner pursuant to subsection (c)
13 of this section shall provide an annual report of the
14 number of collections made or attempted during the previous
15 calendar year, as set by rule of the commissioner. The
16 report shall be provided to the commissioner no later than
17 January 15 of each year.

18

19 **40-25-106. Exemptions.**

20

21 (a) The provisions of this act do not apply to:

22

1 (i) Any officer or employee of a creditor while,
2 in the name of the creditor, collecting debts for and in
3 the name of the creditor;

4

5 (ii) Any person while acting as a debt collector
6 for another person, both of whom are related by common
7 ownership or affiliated by corporate control, if:

8

9 (A) The person acting as a debt collector
10 does so only for persons to whom it is so related or
11 affiliated;

12

13 (B) The debt is collected in the same
14 company name; and

15

16 (C) The principal business of the person is
17 not the collection of debts.

18

19 (iii) Any officer or employee of the United
20 States, any state or any political subdivision to the
21 extent that collecting or attempting to collect any debt is
22 in the performance of his official duties;

23

1 (iv) Any person while serving or attempting to
2 serve legal process on any other person in connection with
3 the judicial enforcement of any debt;

4

5 (v) Any person collecting or attempting to
6 collect any debt owed or due or asserted to be owed or due
7 another to the extent the activity:

8

9 (A) Is incidental to a bona fide fiduciary
10 obligation or a bona fide escrow arrangement;

11

12 (B) Concerns a debt which was originated by
13 the person;

14

15 (C) Concerns a debt that was not in default
16 at the time it was obtained by the person; or

17

18 (D) Concerns a debt obtained by the person
19 as a secured party in a commercial credit transaction
20 involving the creditor.

21

22 (vi) Any person whose business is a credit card
23 servicing company;

24

1 (vii) Any person whose business is a mortgage
2 servicing company;

3

4 (viii) Any person engaged solely in the
5 collection of one (1) or more business debts;

6

7 (ix) Any licensed attorney acting in an attorney
8 client relationship with a creditor who conducts debt
9 collection activities in the name of the creditor.

10

11 **40-25-107. Application for license to do business as**
12 **a collection agency.**

13

14 (a) The commissioner shall receive and act on all
15 applications for licenses to do business as a collection
16 agency. Applications shall be filed in the manner
17 prescribed by the commissioner, shall contain the
18 information as prescribed by the commissioner, shall be
19 updated as prescribed by the commissioner to keep the
20 information current, and shall be accompanied by an
21 application fee not to exceed one thousand dollars
22 (\$1,000.00) for the home office location and an amount not
23 to exceed one hundred dollars (\$100.00) for each additional
24 branch location, as set by the commissioner pursuant to

1 W.S. 40-25-110(a). When an application for licensure is
2 denied or withdrawn, the commissioner shall retain all fees
3 paid by the applicant.

4

5 (b) An application for license may be granted if the
6 commissioner finds:

7

8 (i) The financial responsibility and experience,
9 character and fitness of the license applicant, of the
10 owners or persons in charge of the applicant and
11 individuals designated in charge of the applicant's places
12 of business, are such as to warrant belief that the
13 business will be operated honestly and fairly within the
14 purposes of this act;

15

16 (ii) The applicant has not been convicted of a
17 felony, pled guilty or nolo contendere to a felony in a
18 domestic, foreign or military court during the seven (7)
19 year period preceding the date of the application for
20 licensing, or at any time preceding the date of application
21 if the felony involved an act of fraud, dishonesty, breach
22 of trust or money laundering;

23

1 (iii) The applicant has not been convicted of,
2 pled guilty or nolo contendere to a misdemeanor in a
3 domestic, foreign or military court involving an act of
4 fraud, dishonesty, breach of trust or money laundering;

5

6 (iv) The applicant has not been the subject of
7 any administrative action or enforcement proceeding by any
8 state or federal government agency involving the revocation
9 of any license or authority substantially equivalent to a
10 license under this act;

11

12 (v) The applicant has not filed an application
13 for a license which is false or misleading with respect to
14 any material fact;

15

16 (vi) The applicant has provided information on
17 the application as required by the commissioner pursuant to
18 subsection (a) of this section;

19

20 (vii) The applicant has employed or contracted
21 with a resident manager. Every resident manager shall pass
22 an examination as prescribed by the commissioner to
23 determine the fitness of the resident manager to conduct
24 business on behalf of a collection agency.

1

2 (c) The commissioner may collect an examination fee
3 not to exceed one hundred dollars (\$100.00) as set by rule
4 of the commissioner pursuant to W.S. 40-25-110(a) for each
5 examination given pursuant to paragraph (b)(vii) of this
6 section.

7

8 (d) The commissioner is empowered to conduct
9 investigations as deemed necessary to determine the
10 existence of the requirements in subsection (b) of this
11 section.

12

13 (e) Within ten (10) business days of receiving the
14 application, the commissioner shall notify the applicant by
15 certified mail, return receipt requested, if the
16 application is complete or to request additional
17 information.

18

19 (f) Within thirty (30) days of determining that an
20 application is complete, the commissioner shall approve or
21 deny the application and shall notify the applicant of the
22 approval or denial by certified mail, return receipt
23 requested. The applicant shall have thirty (30) days from

1 the receipt of denial of the application to request a
2 hearing on the denial.

3

4 (g) If a hearing is held and the commissioner is the
5 prevailing party, the applicant shall reimburse the
6 commissioner for his reasonable and necessary expenses
7 incurred as a result of the hearing.

8

9 (h) Every licensee shall license and maintain a home
10 office as a principal location for the transaction of debt
11 collection business. A separate license shall be required
12 for each place of business from which debt collection
13 business is directly or indirectly conducted with Wyoming
14 consumers. The commissioner may issue additional branch
15 licenses to the same applicant upon compliance with all the
16 provisions of this act governing the issuance of a single
17 license. Each license shall remain in full force and effect
18 unless the licensee does not satisfy the renewal
19 requirements of W.S. 40-25-109, or the license is
20 relinquished, suspended or revoked. All branch licenses
21 shall be terminated upon the relinquishment or revocation
22 of a home office license.

23

1 (j) Licenses shall be prominently displayed at the
2 place of business identified on the license.

3

4 (k) No licensee shall change the location of any
5 place of business, consolidate two (2) or more locations,
6 open a new location or close any location, without giving
7 the commissioner prior written notice and paying a license
8 modification fee not to exceed one hundred dollars
9 (\$100.00) as set by rule of the commissioner pursuant to
10 W.S. 40-25-110(a).

11

12 (m) A licensee shall not engage in the business of
13 debt collection at any place of business for which he does
14 not hold a license.

15

16 (n) The commissioner may suspend action upon a
17 license application pending resolution of any criminal
18 charges, before any court of competent jurisdiction,
19 against an applicant that would disqualify that applicant
20 if convicted.

21

22 **40-25-108. Change in control of a licensee.**

23

1 (a) A licensee shall give the commissioner written
2 notice of a proposed change of control of a licensee within
3 fifteen (15) business days after learning of the proposed
4 change of control.

5

6 (b) The commissioner may require the licensee to
7 provide additional information concerning the proposed
8 persons in control of the licensee. The additional
9 information shall be limited to the same information
10 required of the licensee or persons in control of the
11 licensee as part of its original license or renewal
12 application.

13

14 (c) Upon a change in the control of the licensee the
15 licensee shall reapply and submit the required fees, not to
16 exceed one thousand dollars (\$1,000.00) for a home office
17 location and an amount not to exceed one hundred dollars
18 (\$100.00) for each additional branch location as determined
19 by the commissioner pursuant to W.S. 40-25-110(a). The
20 license is not transferable or assignable to the new person
21 in control of the licensee.

22

23 (d) Before filing a request for approval to acquire
24 control, a person may request in writing a determination

1 from the commissioner as to whether the person would be
2 considered a person in control of a licensee upon
3 consummation of a proposed transaction. If the commissioner
4 determines that the person would not be a person in control
5 of a licensee, the commissioner shall enter an order
6 stating the proposed person and transaction is not subject
7 to the requirements of subsections (a) through (c) of this
8 section.

9

10 **40-25-109. License renewal and annual report.**

11

12 (a) Each license issued under this act shall expire
13 on December 31. The license shall be renewed annually not
14 less than thirty (30) days before the stated expiration
15 date. The renewal fee for each license shall not exceed
16 one thousand dollars (\$1,000.00) for the home office
17 location and an amount not to exceed one hundred dollars
18 (\$100.00) for each additional branch location, as set by
19 the commissioner pursuant to W.S. 40-25-110(a).

20

21 (b) The licensee shall have a thirty-one (31) day
22 grace period to reinstate each expired license. In
23 addition to paying the renewal fee pursuant to subsection
24 (a) of this section, the commissioner may establish a late

1 fee not to exceed one hundred dollars (\$100.00) for each
2 license reinstatement, as set by the commissioner pursuant
3 to W.S. 40-25-110(a). If the license has not been
4 reinstated before February 1 of the new license period, it
5 shall not be eligible for reinstatement until the applicant
6 has met all the requirements of W.S. 40-25-107.

7

8 (c) The renewal fee shall be accompanied by a report,
9 in a form prescribed by the commissioner.

10

11 **40-25-110. Fees.**

12

13 (a) Except as otherwise specifically provided by
14 statute, the commissioner is authorized to establish
15 application, examination, license, renewal fees or late
16 fees for collection agencies regulated under this act and
17 shall establish those fees in accordance with the
18 following:

19

20 (i) Fees shall be established by rule or
21 regulation promulgated in accordance with the Wyoming
22 Administrative Procedure Act;

23

1 (ii) Fees shall be established in an amount to
2 ensure that, to the extent practicable, the total revenue
3 generated from the fees collected approximates, but does
4 not exceed, the direct and indirect costs of administering
5 the regulatory provisions required for collection agencies
6 under this act;

7

8 (iii) The commissioner shall maintain records
9 sufficient to support the fees charged.

10

11 (b) All application, examination, licensing and
12 renewal fees collected by the commissioner shall be
13 deposited with the state treasurer, who shall credit the
14 money to the financial institutions administration account.
15 All monies paid into the account pursuant to this act are
16 continuously appropriated to the use of the division for
17 the payment of all necessary expenses incurred in the
18 administration of this act.

19

20 **40-25-111. Security devices.**

21

22 (a) All licensees shall maintain a security device
23 payable to the state of Wyoming in accordance with this
24 section. The security device to be maintained shall be in

1 the amount of twenty-five thousand dollars (\$25,000.00).
2 This amount shall be increased by an additional sum of five
3 thousand dollars (\$5,000.00) for each licensed office.

4

5 (b) A surety bond shall be a continuing obligation of
6 the issuing surety. The surety's liability under the bond
7 for any claims made under the bond either individually or
8 in the aggregate shall in no event exceed the face amount
9 of the bond issued. The bond shall be issued by a surety
10 authorized to do business in the state of Wyoming. The
11 bond, including any and all riders and endorsements
12 executed subsequent to the effective date of the bond,
13 shall be placed on file with the banking commissioner.

14

15 (c) Any cash deposit in lieu of a surety bond shall
16 be placed on deposit with the state treasurer.

17

18 (d) In the event that a licensee has violated any of
19 the provisions of this act or of a rule or order lawfully
20 made pursuant to this act, or federal law or regulation
21 pertaining to collections, and has damaged any person by
22 the violation, then the security device shall be forfeited
23 and paid to the state of Wyoming for the benefit of any
24 person so damaged, in an amount sufficient to satisfy the

1 violation or the security device in its entirety if the
2 violation exceeds the amount of the security device.

3

4 (e) The security device shall be conditioned that the
5 principal, as a licensee under this act, shall pay and turn
6 over to or for the use of any claimant from whom any debt
7 is taken or received for collection, the proceeds of the
8 collection less the charges for collection in accordance
9 with the terms of the agreement made between the principal
10 and the claimant.

11

12 (f) Surety bonds shall remain effective continuously
13 until released in writing by the banking commissioner. If
14 a bond has not been previously released by the banking
15 commissioner, the bond shall expire two (2) years after the
16 date of the surrender, revocation or expiration of the
17 license.

18

19 (g) A cash deposit allowing a licensee to earn
20 interest on the deposit shall be held with the state
21 treasurer until released in writing by the banking
22 commissioner. If a cash deposit has not been previously
23 released by the banking commissioner, the deposit shall be

1 released back to the depositor two (2) years after the date
2 of the surrender, revocation or expiration of the license.

3

4 (h) A licensee may file a new bond with the banking
5 commissioner at any time. A surety company may file with
6 the banking commissioner notice of its withdrawal as surety
7 of any licensee. Upon the filing of a new bond or a notice
8 of withdrawal, the liability of the former surety for all
9 future acts of the licensee shall terminate except as
10 provided in subsection (f) of this section.

11

12 (j) Upon filing notice with the banking commissioner
13 by any surety company of its withdrawal as the surety of
14 any licensee, or upon the revocation by the insurance
15 commissioner of the authority of any surety company to
16 transact business in Wyoming, the banking commissioner
17 shall immediately give notice to the licensee of the
18 withdrawal or revocation. Within thirty (30) days from the
19 date of notification the licensee shall file a new security
20 device with the banking commissioner. If a licensee fails
21 to file a new security device satisfactory to the banking
22 commissioner within the time allowed, the right of the
23 licensee to conduct a collection agency shall terminate.

24

1 **40-25-112. Examinations and investigations.**

2

3 (a) The commissioner may conduct examinations of any
4 licensee under this act at intervals he deems necessary to
5 determine compliance with this act and other applicable
6 laws, rules and regulations.

7

8 (b) The commissioner may at any time investigate the
9 business books and records of any licensee or person
10 engaged in debt collection activities for the purpose of
11 determining compliance with this act or securing
12 information required under this act. For these purposes,
13 the commissioner shall have free and reasonable access to
14 the offices, places of business, books and records of the
15 licensee.

16

17 (c) If a licensee's or person's records are located
18 outside Wyoming, the licensee or person shall have the
19 option to make them available to the commissioner at a
20 convenient location within Wyoming, or pay the reasonable
21 and necessary expenses for the commissioner or his
22 representative to examine them at the place where they are
23 maintained. The commissioner may designate representatives,

1 including comparable officials of the state in which the
2 records are located, to inspect them on his behalf.

3

4 (d) Each licensee or person subject to examination or
5 investigation under this act shall pay to the commissioner
6 an amount assessed by the commissioner to cover the direct
7 and indirect cost of examinations or investigations
8 conducted pursuant to this section not to exceed one
9 hundred dollars (\$100.00) per hour.

10

11 **40-25-113. Records; confidentiality of records;**
12 **cooperative agreements.**

13

14 (a) Every licensee shall maintain records in
15 conformity with generally accepted accounting principles in
16 a manner that will enable the commissioner to determine
17 whether the licensee is complying with the provisions of
18 this act. The recordkeeping system of a licensee shall be
19 sufficient if he makes the required information available.
20 The records need not be kept in the place of business where
21 debt collection activities are conducted, if the
22 commissioner is given free access to the records wherever
23 located.

24

1 (b) Every licensee shall keep a record of each
2 collection account, including but not limited to all
3 collections and all disbursements made by the licensee, for
4 a period of two (2) years from the date of last entry in
5 each collection account.

6

7 (c) The records of a licensee may be maintained
8 electronically provided they can be reproduced in writing
9 upon request of the commissioner.

10

11 (d) No licensee shall intentionally make any false
12 entry in any collection agency record or intentionally
13 mutilate, destroy or otherwise dispose of any collection
14 record within the time limit provided in subsection (b) of
15 this section.

16

17 (e) Except as provided in subsection (f) of this
18 section, all information or reports obtained by the
19 commissioner from an applicant or licensee are
20 confidential.

21

22 (f) Except as provided in P.L. 110-289, section 1512,
23 the requirements under any federal law or state law
24 regarding the privacy or confidentiality of any information

1 or material provided to any national registry, and any
2 privilege arising under federal or state law, including the
3 rules of any federal or state court, with respect to the
4 information or material, shall continue to apply to the
5 information or material after the information or material
6 has been disclosed to any national registry. The
7 information and any other confidential material obtained by
8 the commissioner may be shared with all state and federal
9 regulatory officials with collection agency industry
10 oversight authority without the loss of privilege or the
11 loss of confidentiality protections provided by federal law
12 or any state law.

13

14 (g) Information or material that is subject to a
15 privilege or confidentiality under subsection (f) of this
16 section shall not be subject to:

17

18 (i) Disclosure under any federal or state law
19 governing the disclosure to the public of information held
20 by an officer or agency of the federal government or the
21 respective state; or

22

23 (ii) Subpoena, discovery or admission into
24 evidence, in any private civil action or administrative

1 process, unless with respect to any privilege held by the
2 registry with respect to the information or material, the
3 person to whom the information or material pertains waives
4 that privilege, in whole or in part.

5

6 (h) Any Wyoming law relating to the disclosure of
7 confidential supervisory information or any information or
8 material described in subsection (f) of this section that
9 is inconsistent with subsection (f) of this section shall
10 be superceded by the requirements of this section.

11

12 (j) This section shall not apply with respect to the
13 information or material relating to the employment history
14 of, and publicly adjudicated disciplinary and enforcement
15 actions against, any collection agency that is included in
16 the registry for access by the public.

17

18 (k) The commissioner may disclose confidential
19 information to collection supervising agencies in other
20 states or to federal regulatory authorities or to
21 appropriate prosecuting attorneys.

22

23 (m) The commissioner may enter into cooperative,
24 coordinating or information sharing agreements with any

1 other collection supervisory agency or any organization
2 affiliated with or representing one (1) or more collection
3 supervisory agencies with respect to the periodic
4 examination or other supervision of any office in Wyoming
5 of an out-of-state licensee, and the commissioner may
6 accept the parties' reports of examination and reports of
7 investigation in lieu of conducting his own examinations or
8 investigations.

9

10 (n) The commissioner may enter into contracts with
11 any collection supervisory agency having concurrent
12 jurisdiction over a Wyoming licensee pursuant to this act
13 to engage the services of the agency's examiners at a
14 reasonable rate of compensation. Any such contract shall
15 not be subject to the provisions of W.S. 9-2-1016(b).

16

17 (o) This section does not prohibit the commissioner
18 from disclosing to the public a list of persons licensed
19 under this act.

20

21 **40-25-114. Trust accounts.**

22

23 (a) Each licensee shall maintain a trust account for
24 the benefit of its clients which shall contain at all times

1 sufficient funds to pay all sums due or owed to clients.
2 The trust account shall be maintained in a financial
3 institution which is insured by the federal deposit
4 insurance corporation or the national credit union
5 administration, until disbursed to the creditor. The trust
6 account shall be clearly designated as a trust account,
7 shall be noninterest bearing and shall be used only to pay
8 the sums due or owed to clients and not as an operating
9 account.

10

11 (b) A deposit of all funds received to a trust
12 account followed by a transfer of the agency share of the
13 collection to an operating account is not a violation of
14 this act.

15

16 **40-25-115. Prohibited practices.**

17

18 (a) No licensee or person required to have a license
19 shall:

20

21 (i) Use any collection letter, demand or notice
22 that simulates a legal process or purports to be from any
23 local, city, county, state or government authority or
24 attorney;

1

2 (ii) Refuse or fail to comply with this act;

3

4 (iii) Refuse or fail to comply with a rule
5 adopted pursuant to this act or any lawful order of the
6 commissioner;

7

8 (iv) Aid or abet any person operating or
9 attempting to operate in violation of this act, except that
10 nothing in this act shall prevent any licensed collection
11 agency from accepting, as forwarded, claims for collection
12 from any collection agency or attorney whose place of
13 business is outside Wyoming;

14

15 (v) Render or advertise that it will render
16 legal services, unless the licensee is a lawyer, except
17 that a licensee may solicit claims for collection and take
18 assignments and pursue the collection thereof subject to
19 the provisions of law concerning the unauthorized practice
20 of law;

21

22 (vi) Falsify any information or make any
23 misleading statements in any application authorized under
24 this act; or

1

2 (vii) Violate any provisions of the federal Fair
3 Debt Collection Practices Act.

4

5 **40-25-116. License suspension or revocation.**

6

7 (a) The commissioner may suspend, not to exceed six
8 (6) months, or revoke a license if the commissioner finds:

9

10 (i) Any fact or condition exists that, if it had
11 existed at the time when the licensee applied for its
12 license, would have been grounds for denying the
13 application;

14

15 (ii) The licensee violated any provision of this
16 act or any rule or order validly promulgated by the
17 commissioner;

18

19 (iii) The licensee is conducting its business in
20 an unsafe or unsound manner;

21

22 (iv) The licensee refuses to permit the
23 commissioner to make any examination authorized by this
24 act;

1

2 (v) The licensee willfully fails to make any
3 report required by this act;

4

5 (vi) The competence, experience, character or
6 general fitness of the licensee indicates that it is not in
7 the public interest to permit the licensee to continue to
8 conduct business;

9

10 (vii) The bond of the licensee has been revoked,
11 cancelled, expired or otherwise is not effective;

12

13 (viii) The licensee or any partner, officer,
14 director or manager of the licensee has been convicted of
15 any felony or convicted of a misdemeanor involving any
16 aspect of the debt collection business, breach of trust, or
17 fraudulent or dishonest dealing;

18

19 (ix) The licensee or any partner, officer,
20 director or manager of the licensee has had a license
21 substantially equivalent to a license under this act, and
22 issued by another state, denied, revoked or suspended under
23 the laws of that state;

24

1 (x) The licensee has filed an application for a
2 license which as of the date the license was issued, or as
3 of the date of an order denying, suspending or revoking a
4 license, was incomplete in any material respect or
5 contained any statement that was, in light of the
6 circumstances under which it was made, false or misleading
7 with respect to any material fact.

8

9 (b) Notwithstanding any provision of the Wyoming
10 Administrative Procedure Act, if the commissioner finds
11 that probable cause for revocation of a license exists and
12 that enforcement of this act and the public interest
13 require immediate suspension of the license pending
14 investigation, he may, after a hearing upon five (5) days
15 written notice, enter an order suspending the license for
16 not more than thirty (30) days.

17

18 (c) The commissioner may, in his discretion,
19 reinstate a license, terminate a suspension or grant a new
20 license to a person whose license has been revoked or
21 suspended if no fact or condition then exists which clearly
22 would justify the commissioner in refusing to grant a
23 license.

24

1 **40-25-117. Orders to cease and desist.**

2

3 (a) If the commissioner determines that a violation
4 of this act or of a rule adopted or an order issued under
5 this act, by a licensee, is likely to cause immediate and
6 irreparable harm to the licensee, its customers or the
7 public as a result of the violation or cause insolvency of
8 the licensee, the commissioner may issue an order requiring
9 the licensee to cease and desist from the violation. The
10 order becomes effective upon service upon the licensee.

11

12 (b) If the commissioner determines that a person is
13 conducting debt collection activities governed under this
14 act without a valid license, the commissioner may issue an
15 order requiring the unlicensed person to cease and desist
16 from debt collection. The order becomes effective upon
17 service upon the unlicensed person.

18

19 (c) Before issuing a final cease and desist order
20 under subsections (a) and (b) of this section, the
21 commissioner shall serve notice of intent to issue the
22 order upon the person being ordered to cease and desist.
23 The notice shall be in writing and shall direct the person
24 to discontinue the violations of law and cease and desist

1 debt collection. The notice shall be served by certified
2 mail return receipt requested to the last known address of
3 the person or shall be served as provided by the Wyoming
4 Rules of Civil Procedure. Notice of the order shall
5 include:

6

7 (i) A statement of the grounds for issuing the
8 proposed order, including a citation to the statute or rule
9 involved;

10

11 (ii) A statement of the facts in support of the
12 allegations;

13

14 (iii) A statement informing the person of the
15 right to a hearing on the order.

16

17 (d) In an emergency, the commissioner may petition
18 the district court for the issuance of a temporary
19 restraining order.

20

21 (e) An order to cease and desist becomes effective
22 upon service upon the person.

23

1 (f) An order to cease and desist remains effective
2 and enforceable pending the completion of an administrative
3 proceeding pursuant to the Wyoming Administrative Procedure
4 Act.

5
6 (g) A person served with an order to cease and desist
7 for violating this act may petition the district court for
8 a judicial order setting aside, limiting or suspending the
9 enforcement, operation or effectiveness of the order
10 pending the completion of an administrative proceeding
11 pursuant to the Wyoming Administrative Procedure Act.

12
13 (h) The commissioner shall commence a contested case
14 proceeding within twenty (20) days after issuing an order
15 to cease and desist.

16
17 **40-25-118. Consent orders.**

18
19 The commissioner may enter into a consent order at any time
20 with a person to resolve a matter arising under this act.
21 A consent order shall be signed by the person to whom it is
22 issued or by the person's authorized representative and
23 shall indicate agreement with the terms contained in the
24 order. A consent order may provide that it does not

1 constitute an admission by a person that this act or a rule
2 adopted or an order issued under this act has been
3 violated.

4

5 **40-25-119. Civil penalties.**

6

7 The commissioner may impose a civil penalty upon a person
8 who violates this act or a rule adopted or an order issued
9 under this act in an amount not to exceed five hundred
10 dollars (\$500.00) per day for each day the violation is
11 outstanding, plus the state's costs and expenses for the
12 investigation and prosecution of the matter, including
13 reasonable attorney's fees. Any civil penalties collected
14 pursuant to this section shall be paid to the state
15 treasurer and credited as provided in W.S. 8-1-109.

16

17 **40-25-120. Criminal penalties.**

18

19 (a) A person who intentionally makes a false
20 statement, misrepresentation or false certification in a
21 record filed or required to be maintained under this act or
22 who intentionally makes a false entry or omits a material
23 entry in the record is guilty of a felony, punishable by

1 not less than three (3) years imprisonment or a fine of not
2 less than ten thousand dollars (\$10,000.00), or both.

3

4 (b) A person who knowingly engages in any activity
5 for which a license is required under this act, without
6 being licensed under this act is guilty of a misdemeanor
7 punishable by a fine of not less than twenty-five thousand
8 dollars (\$25,000.00).

9

10 **40-25-121. Hearings.**

11

12 Except as otherwise provided in W.S. 40-25-104(a)(x) and
13 (xi), 40-25-108(c) and 40-25-109, the commissioner shall
14 not suspend or revoke a license, issue an order to cease
15 and desist or assess a civil penalty without notice and an
16 opportunity to be heard.

17

18 **Section 2.** W.S. 33-11-101 through 33-11-116 are
19 repealed.

20

21 **Section 3.**

22

23 (a) It is the intention and direction of the
24 legislature that:

1

2

(i) Except as provided in W.S. 40-25-103:

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23

(A) All duties of the collection agency board with respect to collection agencies shall be transferred to the banking division of the department of audit;

(B) Effective July 1, 2011, all duties of the collection agency board with respect to collection agencies not assumed by the banking division and not specified in W.S. 40-25-103 are terminated.

(ii) All contracts, agreements or obligations entered into or assumed by the collection agency board with respect to collection agencies, if the execution or assumption was within the lawful powers of the collection agency board, shall be transferred to the banking division;

(iii) All rules adopted by the collection agency board with respect to collection agencies shall remain in effect until amended or repealed by the banking division;

1 (iv) Current members of the collection agency
2 board as of the effective date of this act shall continue
3 to serve on the collection agency board through their
4 respective current term unless removed by the governor as
5 provided in W.S. 9-1-202.

6

7 **Section 4.** There is transferred from the collection
8 agency board to the banking division of the department of
9 audit any appropriated or unexpended funds not otherwise
10 obligated and any other property, if any, exclusively
11 dedicated to the collection agency board.

12

13 **Section 5.** This act is effective July 1, 2011.

14

15

(END)