

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

Act 1455 of the Regular Session

1 State of Arkansas  
2 87th General Assembly  
3 Regular Session, 2009  
4

As Engrossed: H3/27/09 S4/7/09

A Bill

HOUSE BILL 2228

5 By: Representative Cash  
6  
7

8 **For An Act To Be Entitled**

9 AN ACT TO ENACT THE FAIR DEBT COLLECTION  
10 PRACTICES ACT; AND FOR OTHER PURPOSES.  
11

12 **Subtitle**

13 TO ENACT THE FAIR DEBT COLLECTION  
14 PRACTICES ACT.  
15  
16

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
18

19 *SECTION 1. Arkansas Code Title 17, Chapter 24, is amended to add an*  
20 *additional subchapter to read as follows:*

21 *17-24-501. This subchapter shall be known and may be cited as the*  
22 *"Arkansas Fair Debt Collection Practices Act".*  
23

24 *17-24-502. Definitions.*

25 *As used in this subchapter:*

26 *(1) "Communication" means the conveying of information regarding*  
27 *a debt directly or indirectly to a person;*

28 *(2) "Consumer" means a natural person obligated or*  
29 *allegedly obligated to pay a debt;*

30 *(3)(A) "Creditor" means a person:*

31 *(i) Who offers or extends credit, creating a debt;*

32 *or*

33 *(ii) To whom a debt is owed.*

34 *(B) "Creditor" does not include a person to the extent*  
35 *that he or she receives an assignment or transfer of a debt in default solely*



1 to facilitate collection of the debt for another;

2 (4) "Debt" means a obligation or alleged obligation of a  
3 consumer to pay money arising out of a transaction in which the money,  
4 property, insurance, or services that are the subject of the transaction are  
5 primarily for personal, family, or household purposes, whether or not the  
6 obligation has been reduced to judgment;

7 (5)(A) "Debt collector" means a person who uses an  
8 instrumentality of interstate commerce or the mails in a business whose  
9 principal purpose is the collection of debts or who regularly collects or  
10 attempts to collect, directly or indirectly, debts owed or due or asserted to  
11 be owed or due another.

12 (B) Except as provided in subdivision (5)(D)(vi) of this  
13 section, "debt collector" includes a creditor who, in the process of  
14 collecting his or her own debts, uses a name other than his or her own that  
15 would indicate that a third person is collecting or attempting to collect the  
16 debts.

17 (C) As used in § 17-24-507(b)(6), "debt collector"  
18 includes a person who uses an instrumentality of interstate commerce or the  
19 mails in a business whose principal purpose is the enforcement of security  
20 interests.

21 (D) "Debt collector" does not include any:

22 (i) Officer or employee of a creditor while, in the  
23 name of the creditor, collecting debts for the creditor;

24 (ii) Person while acting as a debt collector for  
25 another person, both of whom are related by common ownership or affiliated by  
26 corporate control, if the person acting as a debt collector does so only for  
27 persons to whom it is so related or affiliated and if the principal business  
28 of the person is not the collection of debts;

29 (iii) Officer or employee of the United States or a  
30 state to the extent that collecting or attempting to collect a debt is in the  
31 performance of his or her official duties;

32 (iv) Person while serving or attempting to serve  
33 legal process on another person in connection with the judicial enforcement  
34 of a debt;

35 (v) Nonprofit organization that, at the request of  
36 consumers, performs bona fide consumer credit counseling and assists

1 consumers in the liquidation of their debts by receiving payments from the  
 2 consumers and distributing the amounts to creditors; or

3 (vi) Person collecting or attempting to collect a  
 4 debt owed or due or asserted to be owed or due another to the extent the  
 5 collection activity:

6 (a) Is incidental to a bona fide fiduciary  
 7 obligation or a bona fide escrow arrangement;

8 (b) Concerns a debt that was originated by the  
 9 person;

10 (c) Concerns a debt that was not in default at  
 11 the time it was obtained by the person; or

12 (d) Concerns a debt obtained by the person as  
 13 a secured party in a commercial credit transaction involving the creditor;  
 14 and

15 (6) "Location information" means:

16 (A) A consumer's place of abode and his or her telephone  
 17 number at the consumer's place of abode; or

18 (B) The consumer's place of employment.

19  
 20 17-24-503. Acquisition of location information.

21 A debt collector communicating with a person other than the consumer to  
 22 acquire location information about the consumer shall:

23 (1) Identify himself or herself, state that he or she is  
 24 confirming or correcting location information concerning the consumer, and,  
 25 only if expressly requested, identify his or her employer;

26 (2) Not state that the consumer owes a debt;

27 (3) Not communicate with the person more than one (1) time

28 unless:

29 (A) Requested to do so by the person; or

30 (B) The debt collector reasonably believes that:

31 (i) The earlier response of the person is erroneous  
 32 or incomplete; and

33 (ii) The person now has correct or complete location  
 34 information;

35 (4) Not communicate by postcard;

36 (5) Not use a language or symbol on an envelope or in the

1 contents of a communication effected by the mails or telegram that indicates  
2 that the debt collector is in the debt collection business or that the  
3 communication relates to the collection of a debt; and

4 (6) After the debt collector knows the consumer is represented  
5 by an attorney with regard to the subject debt and has knowledge of or can  
6 readily ascertain the attorney's name and address, not communicate with a  
7 person other than that attorney unless the attorney fails to respond to  
8 communication from the debt collector within a reasonable period of time.

9  
10 17-24-504. Communication in connection with debt collection.

11 (a) Without the prior consent of the consumer given directly to the  
12 debt collector or the express permission of a court of competent  
13 jurisdiction, a debt collector may not communicate with a consumer in  
14 connection with the collection of a debt:

15 (1)(A) At a unusual time or place or a time or place known or  
16 which should be known to be inconvenient to the consumer.

17 (B) In the absence of knowledge of circumstances to the  
18 contrary, a debt collector shall assume that the convenient time for  
19 communicating with a consumer is after 8:00 a.m. and before 9:00 p.m. local  
20 time at the consumer's location;

21 (2) If the debt collector knows the consumer is represented by  
22 an attorney with respect to the debt and has knowledge of or can readily  
23 ascertain the attorney's name and address, unless:

24 (A) The attorney fails to respond within a reasonable  
25 period of time to a communication from the debt collector; or

26 (B) The attorney consents to direct communication with the  
27 consumer; or

28 (3) At the consumer's place of employment if the debt collector  
29 knows or has reason to know that the consumer's employer prohibits the  
30 consumer from receiving the communication.

31 (b) Except as provided in § 17-24-503, without the prior consent of  
32 the consumer given directly to the debt collector or the express permission  
33 of a court of competent jurisdiction, or as reasonably necessary to  
34 effectuate a post-judgment judicial remedy, a debt collector may not  
35 communicate in connection with the collection of a debt with a person other  
36 than the consumer, his or her attorney, a consumer reporting agency if

1 otherwise permitted by law, the creditor, the attorney of the creditor, or  
2 the attorney of the debt collector.

3 (c) If a consumer notifies a debt collector in writing that the  
4 consumer refuses to pay a debt or that the consumer wishes the debt collector  
5 to cease further communication with the consumer, the debt collector shall  
6 not communicate further with the consumer with respect to the debt, except:

7 (1) To advise the consumer that the debt collector's further  
8 efforts are being terminated;

9 (2) To notify the consumer that the debt collector or creditor  
10 may invoke specified remedies that are ordinarily invoked by the debt  
11 collector or creditor; or

12 (3)(A) When applicable, to notify the consumer that the debt  
13 collector or creditor intends to invoke a specified remedy.

14 (B) If the notice from the consumer is made by mail,  
15 notification is complete upon receipt.

16 (d) As used in this section, "consumer" includes the consumer's  
17 spouse, parent if the consumer is a minor, guardian, executor, or  
18 administrator.

19  
20 17-24-505. Harassment or abuse.

21 (a) A debt collector may not engage in a conduct the natural  
22 consequence of which is to harass, oppress, or abuse a person in connection  
23 with the collection of a debt.

24 (b) Without limiting the general application of subsection (a) of this  
25 section, the following conduct is a violation of this section:

26 (1) The use or threat of use of violence or other criminal means  
27 to harm the physical person, reputation, or property of a person;

28 (2) The use of obscene or profane language or language the  
29 natural consequence of which is to abuse the hearer or reader;

30 (3) The publication of a list of consumers who allegedly refuse  
31 to pay debts, except to a consumer reporting agency or to persons meeting the  
32 requirements of 15 U.S.C. § 1681a(f) or 15 U.S.C. § 1681b(3) as they existed  
33 on January 1, 2009;.

34 (4) The advertisement for sale of a debt to coerce payment of  
35 the debt;

36 (5) Causing a telephone to ring or engaging a person in

1 telephone conversation repeatedly or continuously with intent to annoy,  
2 abuse, or harass a person at the called number; or

3 (6) Except as provided in § 17-24-503, the placement of  
4 telephone calls without meaningful disclosure of the caller's identity.

5  
6 17-24-506. False or misleading representations.

7 (a) A debt collector may not use a false, deceptive, or misleading  
8 representation or means in connection with the collection of a debt.

9 (b) Without limiting the general application of subsection (a) of this  
10 section, the following conduct is a violation of this section:

11 (1) The false representation or implication that the debt  
12 collector is vouched for, bonded by, or affiliated with the United States or  
13 a state, including without limitation the use of a badge, uniform, or  
14 facsimile thereof;

15 (2) The false representation of:

16 (A) The character, amount, or legal status of a debt; or

17 (B) Any services rendered or compensation that may be  
18 lawfully received by a debt collector for the collection of a debt;

19 (3) The false representation or implication that an individual  
20 is an attorney or that a communication is from an attorney;

21 (4) The representation or implication that nonpayment of a debt  
22 will result in the arrest or imprisonment of a person or the seizure,  
23 garnishment, attachment, or sale of a property or wages of a person unless  
24 the action is lawful and the debt collector or creditor intends to take the  
25 action;

26 (5) The threat to take an action that cannot legally be taken or  
27 that is not intended to be taken;

28 (6) The false representation or implication that a sale,  
29 referral, or other transfer of an interest in a debt will cause the consumer  
30 to:

31 (A) Lose a claim or defense to payment of the debt; or

32 (B) Become subject to a practice prohibited by this  
33 subchapter;

34 (7) The false representation or implication that the consumer  
35 committed a crime or other conduct in order to disgrace the consumer;

36 (8) Communicating or threatening to communicate to a person

1 credit information that is known or that should be known to be false,  
2 including without limitation the failure to communicate that a disputed debt  
3 is disputed;

4 (9) The use or distribution of a written communication that  
5 simulates or is falsely represented to be a document authorized, issued, or  
6 approved by a court, official, or agency of the United States or a state or  
7 that creates a false impression as to its source, authorization, or approval;

8 (10) The use of a false representation or deceptive means to  
9 collect or attempt to collect a debt or to obtain information concerning a  
10 consumer;

11 (11) The failure to disclose:

12 (A) In the initial written communication with the consumer  
13 and, in addition, if the initial communication with the consumer is oral in  
14 the initial oral communication, that the debt collector is attempting to  
15 collect a debt and that any information obtained will be used for that  
16 purpose; and

17 (B) In subsequent communications, that the communication  
18 is from a debt collector, except that this subdivision (b)(11) does not apply  
19 to a formal pleading made in connection with a legal action;

20 (12) The false representation or implication that accounts have  
21 been turned over to innocent purchasers for value;

22 (13) The false representation or implication that documents are  
23 legal process;

24 (14) The use of a business, company, or organization name other  
25 than the true name of the debt collector's business, company, or  
26 organization;

27 (15) The false representation or implication that documents are  
28 not legal process forms or do not require action by the consumer; or

29 (16) The false representation or implication that a debt  
30 collector operates or is employed by a consumer reporting agency as defined  
31 by 15 U.S.C. § 1681a(f) as it existed on January 1, 2009.

32  
33 17-24-507. Unfair practices.

34 (a) A debt collector may not use unfair or unconscionable means to  
35 collect or attempt to collect a debt.

36 (b) Without limiting the general application of subsection (a) of this

1 section, the following actions of a debt collector violate this section:

2 (1) The collection of an amount including interest, a fee, a  
3 charge, or an expense incidental to the principal obligation unless the  
4 amount is expressly authorized by the agreement creating the debt or  
5 permitted by law;

6 (2) The acceptance by a debt collector from a person of a check  
7 or other payment instrument postdated by more than five (5) days unless the  
8 person is notified in writing of the debt collector's intent to deposit the  
9 check or instrument not more than ten (10) nor less than three (3) business  
10 days before the deposit;

11 (3) The solicitation by a debt collector of a postdated check or  
12 other postdated payment instrument for the purpose of threatening or  
13 instituting criminal prosecution;

14 (4) Depositing or threatening to deposit a postdated check or  
15 other postdated payment instrument before the date on the check or  
16 instrument;

17 (5) Causing charges to be made to a person for communications by  
18 concealment of the true purpose of the communication, including without  
19 limitation charges for collect telephone calls and telegrams;

20 (6) Taking or threatening to take a nonjudicial action to effect  
21 dispossession or disablement of property if:

22 (A) No present right exists to possession of the property  
23 claimed as collateral through an enforceable security interest;

24 (B) No present intention exists to take possession of the  
25 property; or

26 (C) The property is exempt by law from the dispossession  
27 or disablement;

28 (7) Communicating with a consumer regarding a debt by postcard;  
29 or

30 (8) Using a language or symbol other than the debt collector's  
31 address on an envelope when communicating with a consumer by use of the mails  
32 or by telegram, except that a debt collector may use his or her business name  
33 if the name does not indicate that he or she is in the debt collection  
34 business.

35  
36 17-24-508. Validation of debts.



1       (a) At the time of the initial communication or within five (5) days  
2 after the initial communication with a consumer in connection with the  
3 collection of a debt, unless the consumer has paid the debt, a debt collector  
4 shall send the consumer a written notice containing:

5               (1) The amount of the debt;

6               (2) The name of the creditor to whom the debt is owed;

7               (3) A statement that unless the consumer within thirty (30) days  
8 after receipt of the notice disputes the validity of the debt or a portion of  
9 the debt, the debt will be assumed to be valid by the debt collector;

10              (4) A statement that if the consumer notifies the debt collector  
11 in writing within the thirty-day period that the debt or a portion of the  
12 debt is disputed, the debt collector will obtain verification of the debt or  
13 a copy of a judgment against the consumer and a copy of the verification or  
14 judgment will be mailed to the consumer by the debt collector; and

15              (5) A statement that, upon the consumer's written request within  
16 the thirty-day period, the debt collector will provide the consumer with the  
17 name and address of the original creditor if different from the current  
18 creditor.

19       (b) If the consumer notifies the debt collector in writing within the  
20 thirty-day period described in subsection (a) of this section that the debt  
21 or a portion of the debt is disputed or that the consumer requests the name  
22 and address of the original creditor, the debt collector shall cease  
23 collection of the debt or a disputed portion of the debt until the debt  
24 collector obtains verification of the debt or a copy of a judgment or the  
25 name and address of the original creditor, and a copy of the verification or  
26 judgment or name and address of the original creditor is mailed to the  
27 consumer by the debt collector.

28       (c) The failure of a consumer to dispute the validity of a debt under  
29 this section is not an admission of liability by the consumer.

30  
31       17-24-509. Multiple debts.

32       If a consumer owes multiple debts and makes a single payment to a debt  
33 collector with respect to the debts, the debt collector may not apply the  
34 payment to a debt that is disputed by the consumer and, if applicable, shall  
35 apply the payment in accordance with the consumer's directions.

36

1 17-24-510. Legal actions by debt collectors.

2 (a) A debt collector who brings a legal action on a debt against a  
3 consumer shall:

4 (1) For an action to enforce an interest in real property  
5 securing the consumer's obligation, bring the action in the county where all  
6 or part of the real property is located; or

7 (2) For an action not described in subdivision (a)(1) of this  
8 section, bring the action only in the county:

9 (A) In which the consumer signed the contract sued upon;  
10 or

11 (B) In which the consumer resides at the commencement of  
12 the action.

13 (b) This subchapter does not create a cause of action by a debt  
14 collector.

15  
16 17-24-511. Furnishing certain deceptive forms.

17 (a) It is unlawful to design, compile, and furnish a form knowing that  
18 the form would be used to create the false belief in a consumer that a person  
19 other than the creditor of the consumer is participating in the collection of  
20 or in an attempt to collect a debt the consumer allegedly owes the creditor,  
21 when in fact the person is not participating in collecting or attempting to  
22 collect the debt.

23 (b) A person who violates this section is liable to the same extent  
24 and in the same manner as a debt collector is liable under § 17-24-512 for  
25 failure to comply with this subchapter.

26  
27 17-24-512. Civil liability.

28 (a) Except as otherwise provided by this section, a debt collector who  
29 fails to comply with this subchapter with respect to a person is liable to  
30 the person in an amount equal to the sum of:

31 (1) An actual damage sustained by the person as a result of the  
32 failure;

33 (2)(A) In the case of an action by an individual, the additional  
34 damages as the court may allow not exceeding one thousand dollars (\$1,000);

35 or

36 (B) In the case of a class action;

1 (i) The amount each named plaintiff could recover  
2 under subdivision (a)(2)(A) of this section; and

3 (ii) The amount the court may allow for all other  
4 class members without regard to a minimum individual recovery not to exceed  
5 the lesser of five hundred thousand dollars (\$500,000) or one per cent (1%)  
6 of the net worth of the debt collector; and

7 (3)(A) In the case of a successful action to enforce the  
8 foregoing liability, the costs of the action, together with a reasonable  
9 attorney's fee as determined by the court.

10 (B) If the court finds that an action under this section  
11 was brought in bad faith or for the purpose of harassment, the court may  
12 award to the defendant attorney's fees reasonable in relation to the work  
13 expended and costs.

14 (b) In determining the amount of liability in an action under  
15 subsection (a) of this section, the court shall consider among other relevant  
16 factors:

17 (1) In an individual action under subsection (a)(2)(A) of this  
18 section, the frequency and persistence of noncompliance by the debt  
19 collector, the nature of the noncompliance, and the extent to which the  
20 noncompliance was intentional; or

21 (2) In a class action under subsection (a)(2)(B) of this  
22 section, the frequency and persistence of noncompliance by the debt  
23 collector, the nature of the noncompliance, the resources of the debt  
24 collector, the number of persons adversely affected, and the extent to which  
25 the debt collector's noncompliance was intentional.

26 (c) A debt collector may not be held liable in an action brought under  
27 this subchapter if the debt collector shows by a preponderance of the  
28 evidence that the violation was not intentional and resulted from a bona fide  
29 error notwithstanding the maintenance of procedures reasonably adapted to  
30 avoid the error.

31 (d) An action to enforce a liability created by this subchapter may be  
32 brought in a court of competent jurisdiction within one (1) year from the  
33 date on which the violation occurs.

34 (e) A provision of this section imposing liability shall not apply to  
35 an act done or omitted in good faith in conformity with an advisory opinion  
36 of the Federal Trade Commission addressing appropriate conduct under the

1 Federal Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq.,  
 2 notwithstanding that after the act or omission has occurred, the opinion is  
 3 amended, rescinded, or determined by judicial or other authority to be  
 4 invalid for a reason.

5  
 6 SECTION 2. Arkansas Code § 17-24-101 is amended to read as follows:

7 17-24-101. Definition.

8 As used in this chapter, unless the context otherwise requires,  
 9 "collection agency" means any person, ~~who works with or employs one (1) or~~  
 10 ~~more other persons, or any partnership, corporation, or association, limited~~  
 11 liability corporation or firm which engages in the collection of delinquent  
 12 accounts, bills, or other forms of indebtedness, owed or due or asserted to  
 13 be owed or due to another or any person, partnership, corporation, ~~or~~  
 14 association, limited liability corporation or firm using a fictitious name or  
 15 any name other than their own in the collection of their own accounts  
 16 receivable, or any person, partnership, corporation, ~~or~~ association, limited  
 17 liability corporation or firm which solicits claims for collection or any  
 18 person, partnership, corporation, association, limited liability corporation  
 19 or firm that purchases and attempts to collect delinquent accounts or bills.

20  
 21 SECTION 3. Arkansas Code § 17-24-102 is amended to read as follows:

22 17-24-102. Exemptions.

23 (a) ~~The provisions of this chapter shall not be applicable~~ This  
 24 chapter does not apply to:

- 25 (1) Regular employees of a single creditor;  
 26 (2) Banks;  
 27 (3) Trust companies;  
 28 (4) Savings and loan associations;  
 29 (5) Abstract companies doing an escrow business;  
 30 (6) Licensed real estate brokers and agents when the claims or  
 31 accounts being handled by the broker or agent are related to or in connection  
 32 with the broker's or agent's regular real estate business;  
 33 (7) Express and telegraph companies subject to public regulation  
 34 and supervision;  
 35 (8) Attorneys at law ~~handling claims and collections in their~~  
 36 ~~own names and not operating a collection agency under the management of a~~

1 ~~layman or under names other than their own~~ who use their own names or the  
 2 names of their law firms to collect or attempt to collect claims, accounts,  
 3 bills or other forms of indebtedness owed to them individually or as a firm;

4 ~~(9)(8)(A)~~ Persons, firms, corporations, or associations, limited  
 5 liability corporations or partnerships handling claims, accounts, or  
 6 collections under an order of any court.

7 (B) However, child support collection agencies not  
 8 operating pursuant to Title IV-D of the Social Security Act are not exempt  
 9 from this chapter and shall be subject to licensure; and

10 ~~(10)(9)~~ Any person, firm, corporation, or association, limited  
 11 liability corporation or partnership which, for a valuable consideration,  
 12 purchases accounts, claims, or demands of another which were not in default  
 13 or delinquent at the time of acquisition and then, in the purchaser's own  
 14 name, proceeds to assert or collect the accounts, claims, or demands.

15 (b) Nothing in § 17-24-301, § 17-24-309, § 17-24-401, or this ~~section~~  
 16 chapter with respect to licensure by the State Board of Collection Agencies,  
 17 or limitations of fees for collection services, shall include or be  
 18 applicable to attorneys at law licensed to practice in the State of Arkansas  
 19 who are engaged in rendering legal services for clients in the collection of  
 20 accounts, debts, or claims, nor shall § 17-24-301, § 17-24-309, § 17-24-401,  
 21 or this section amend or repeal in any way the exemptions set out in  
 22 subsection (a) of this section.

23 (c)(1) Nothing in this chapter shall include or be applicable to the  
 24 foreclosure of real property under the provisions of § 18-49-101 et seq. or §  
 25 18-50-101 et seq.

26 (2) Foreclosure of real property is not deemed to be debt  
 27 collection as defined in the federal Fair Debt Collections Practices Act, 15  
 28 U.S.C. § 1692a(6), as in existence on January 1, 2005.

30 SECTION 4. Arkansas Code § 17-24-103 is amended to read as follows:  
 31 17-24-103. Penalties.

32 (a) ~~Any person, partnership, corporation, or association~~ collection  
 33 agency which engages in the business activities of a collection agency  
 34 without a valid license issued pursuant to this chapter and any person,  
 35 partnership, corporation, or association who shall violate any provision of  
 36 this chapter shall be deemed guilty of a misdemeanor and upon conviction

1 shall be fined in any sum of not less than fifty dollars (\$50.00) nor more  
2 than five hundred dollars (\$500). Each day of the violation shall constitute  
3 a separate offense.

4 (b)(1) The State Board of Collection Agencies is authorized to impose  
5 monetary fines as civil penalties to be paid for failure to comply with the  
6 provisions of this chapter or the regulations promulgated pursuant thereto.

7 (2) Prior to the imposition of monetary fines, the board shall provide  
8 notice and opportunity to be heard in accordance with hearing procedures in  
9 effect for the revocation, suspension, or refusal of licensure.

10  
11 SECTION 5. Arkansas Code § 17-24-104 is amended to read as follows:  
12 17-24-104. Sanctions.

13 (a) ~~Any~~ A collection agency ~~required to be licensed under this~~  
14 ~~chapter, which~~ that fails to remit to its client funds collected for the  
15 client within the calendar month following the month of collection, shall not  
16 be entitled to a collection fee and shall remit the total funds collected to  
17 the client.

18 (b) ~~In instances where~~ If a collection agency ~~has failed~~ fails to  
19 remit funds collected to its client within the calendar month following the  
20 month of collection, ~~if the collection agency and~~ and does not remit the total  
21 funds collected for the client to the client within sixty-one (61) days of  
22 the date of collection, ~~the collection agency's license shall be subject to~~  
23 ~~suspension or revocation by the State Board of Collection Agencies~~ may:

24 (1) Suspend or revoke the license of the collection agency; and

25 (2) Impose a civil penalty under § 17-24-103.

26  
27 SECTION 6. Arkansas Code § 17-24-301 is amended to read as follows:  
28 17-24-301. License required.

29 ~~It shall be unlawful for any person, partnership, association, or corporation~~  
30 ~~to conduct within this state a collection agency or engage within this state~~  
31 ~~in the business of collecting claims for others, or of soliciting the right~~  
32 ~~to collect or receive payment for any other person of any claim, or~~  
33 ~~advertise, either in print, by letter, in person, or otherwise, the right to~~  
34 ~~collect or receive payment for another of any claim, or seek to make~~  
35 ~~collection or obtain payment of any claim on behalf of another person without~~  
36 ~~having first applied for and obtained a license from the State Board of~~

*Collection Agencies.*

Unless licensed by the State Board of Collection Agencies under this subchapter it is unlawful to:

(1) Engage in the collection of delinquent accounts, bills, or other forms of indebtedness;

(2) Use a fictitious name or any name other than their own in the collection of their own accounts receivable; or

(3) Solicit claims for collection; or

(4) Purchase and attempt to collect delinquent accounts or bills.

SECTION 7. Arkansas Code § 17-24-303 is amended to read as follows:

17-24-303. Application – Issuance – Transferability.

(a) The State Board of Collection Agencies shall have the authority to require an applicant for a license to submit an application in writing containing such information as it shall deem necessary and pertinent and may require the character and business references which it deems appropriate.

~~(b) So long as a licensee's license is in full force and effect and in good standing, a licensee shall be entitled to a branch office certificate for any branch offices operated by the licensee upon the payment of the fee herein provided for the original license.~~

~~(c)~~(b) Licenses issued by the board are not transferable.

SECTION 8. Arkansas Code § 17-24-305(a), concerning licensing fees of the State Board of Collection Agencies, is amended to read as follows:

(a) The State Board of Collection Agencies may charge an annual license fee not to exceed one hundred twenty-five dollars (\$125) for licensing each collection agency and an annual fee of fifteen dollars (\$15.00) for ~~licensing~~ registering each employee of the licensed collection agency who as an employee solicits, collects, or attempts to collect any delinquent account or accounts by telephone, mail, personal contact, or otherwise.

SECTION 9. Arkansas Code § 17-24-306 is amended to read as follows:

17-24-306. Bond.

1 (a) The State Board of Collection Agencies shall require each licensee  
 2 to secure a surety bond in an amount not less than five thousand dollars  
 3 (\$5,000) nor more than twenty-five thousand dollars (\$25,000) for each  
 4 location, with the security on the bond to be approved by the board. ~~It is~~  
 5 ~~the specific intent of this chapter to permit the posting of a surety bond,~~  
 6 ~~certificate of deposit, or cash bond.~~

7 ~~(b) This bond shall provide that the person, partnership, association,~~  
 8 ~~or corporation giving the bond shall, upon written demand, pay and turn over~~  
 9 ~~to or for the person, partnership, association, or corporation from whom any~~  
 10 ~~account, bill, or other indebtedness is taken for collection in accordance~~  
 11 ~~with the terms of the agreement upon which it was received for collection.~~

12 ~~(e)(b)~~ The aggregate liability of the surety for all breaches of the  
 13 conditions of the bond shall, in no event, exceed the amount of the bond.  
 14 The surety shall have a right to cancel such bond upon giving thirty (30)  
 15 days' notice to the board and thereafter shall be relieved of liability for  
 16 any breach of condition occurring after the effective date of the  
 17 cancellation.

18 ~~(d)(c)~~ This The bond shall be made payable to the State Board of  
 19 Collection Agencies.

20 ~~(d)(1)~~ The board may promulgate ~~regulations under which it can~~ rules  
 21 to:

22 (1) disburse Disburse bond funds to claimants-;

23 (2) If the ~~bonds~~ bond proceeds are insufficient to satisfy all  
 24 legitimate claims, ~~the board shall~~ distribute the funds pro rata among the  
 25 claimants-; or

26 (3) In the discretion of the board, it may require the sureties  
 27 to deal directly with the claimants pursuant to regulations promulgated by  
 28 the board.

29  
 30 SECTION 10. Arkansas Code § 17-24-307(12), concerning grounds for  
 31 revocation, suspension, or refusal of a license, is amended to read as  
 32 follows:

33 ~~(12) No licensee shall address~~ Addressing a letter to or ~~telephone any~~  
 34 telephoning a debtor at his or her place of employment unless a good-faith  
 35 attempt has been made to contact the debtor at his or her usual place of  
 36 abode by letter and the mail has not been returned and no answer has been



1 received; or

2

3 SECTION 11. Arkansas Code § 17-24-309 is amended to read as follows:

4 17-24-309. Collection charges - Limits.

5 (a) No ~~person, partnership, association, or corporation~~ collection  
6 agency mentioned in ~~§ 17-24-301~~ § 17-24-103 shall charge as a collection  
7 charge or fee an amount in excess of fifty percent (50%) of the total amount  
8 actually collected on all accounts ~~held by the person, partnership,~~  
9 ~~association, or corporation for collection~~ for any one (1) client, nor more  
10 than fifty percent (50%) of the total amount actually collected on any one  
11 (1) account, nor shall a minimum charge in excess of one dollar (\$1.00) be  
12 made on any partially or totally collected account.

13 (b) All contracts providing for a greater collection charge or fee or  
14 a greater minimum charge than provided in this section entered into between  
15 any creditor in this state and any ~~person, partnership, association, or~~  
16 ~~corporation~~ collection agency covered by this chapter shall be void. The  
17 creditor shall have, in addition to all other remedies now or hereafter  
18 provided by law, a cause of action to recover all amounts collected by the  
19 ~~person, partnership, association, or corporation~~ collection agency on the  
20 creditor's account or accounts.

21

22 /s/ Cash

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24 APPROVED: 4/10/2009

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