

## CHAPTER 11

### COLLECTION AGENCIES

#### 33-11-101. Definitions.

(a) As used in this act:

(i) "Board" means the collection agency board created by W.S. 33-11-103;

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

(iii) "Collection agency" means any person who:

(A) Engages in any business, the purpose of which is the collection of any debts for Wyoming creditors;

(B) Regularly collects or attempts to collect for Wyoming creditors, directly or indirectly, debts owed or due or asserted to be owed or due another;

(C) Takes assignment of debts for the purpose of collecting such debts;

(D) Directly or indirectly, solicits for collection debts owed or due or asserted to be owed or due a Wyoming creditor;

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

(F) Collects debts incurred in this state from debtors located in this state by means of interstate communications, including telephone, mail or facsimile or any other electronic method, from the debt collector's location in another state.

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

(v) "Consumer" means any natural person obligated or allegedly obligated to pay any debt;

(vi) "Creditor" means any person who offers or extends credit creating a debt or to whom a debt is owed, but "creditor" does not include:

(A) Any person or collection agency, to the extent that the person or agency receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of the debt for another; or

(B) Any person whose principal office is located outside the state of Wyoming and who only maintains a branch or satellite office in this state.

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

(viii) "Debt collector" means any person employed or engaged by a collection agency to perform the collection of debts owed or due or asserted to be owed or due to another, including any owner or shareholder of the collection agency business who engages in the collection of debts;

(ix) "Location information" means a consumer's place of abode and his telephone number at that place or his place of employment;

(x) "Revocation" means withdrawal or termination of the license and authority to conduct a collection agency in this state, and disqualification to renew the license, permanently or for an indefinite period of time;

(xi) "Solicitor" means any person employed or engaged by a collection agency, including an owner or shareholder of the agency, who solicits or attempts to solicit debts, accounts, notes or other evidence of indebtedness for collection by the person or any other person;

(xii) "Suspension" means withdrawal or termination of the license and authority to conduct a collection agency in this state, and disqualification to renew the license, for a period not to exceed one (1) year;

(xiii) "This act" means W.S. 33-11-101 through 33-11-116.

(b) The term "collection agency" does not include:

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

(ii) Any officer or employee of the United States or of any state, to the extent that collecting or attempting to collect a debt is in the performance of his official duties;

(iii) Any person while serving or attempting to serve legal process on another person in connection with the judicial enforcement of any debt;

(iv) Any person whose principal business is the making of loans or the servicing of debt, and who acts as a loan correspondent, seller or servicing agent for the owner or holder of a debt which is secured by a mortgage on real property, whether or not the debt is also secured by an interest in personal property;

(v) Any person whose collection activities are carried on in the true name of the creditor, and are confined to the operation of a business other than a collection agency, including but not limited to banks, trust companies, savings and loan associations, abstract companies doing an escrow business, real estate brokers, attorneys, insurance companies, credit unions or loan or finance companies;

(vi) Any person whose business is the servicing of credit card debt;

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

(viii) Any licensed attorney acting in an attorney-client relationship with the creditor, and who conducts the collection in the true name of the client.

(c) Repealed by Laws 1993, ch. 21, § 2.

Source: Laws 1945, ch. 146, § 2; C.S. 1945, § 37-802; W.S. 1957, § 33-151; Laws 1991, ch. 112, § 1; 1993, ch. 21, §§ 1,2; 1999, ch. 55, § 1.

33-11-102. Licenses required. No person shall conduct a collection agency or act as a debt collector or solicitor within this state without first having obtained a license as provided in this act, except that a debt collector or solicitor acting in the course of his employment for a collection agency licensed in Wyoming is not required to have an individual license.

Source: Laws 1945, ch. 146, § 1; C.S. 1945, § 37-801; W.S. 1957, § 33-152; 1993, ch. 21, § 1.

33-11-103. Collection agency board created; membership; appointment; term; qualifications; chairman.

(a) The collection agency board is created. The board shall consist of three (3) members appointed by the governor. One (1) member shall be an attorney-at-law who is actively engaged in collection work. One (1) shall be an officer, partner, owner or resident manager of a licensed collection agency, who is not an attorney-at-law. One (1) shall be a member of the public at large who is neither an attorney-at-law nor affiliated with a collection agency, but who is or has been a user of credit or collection services. Commencing in 1993, members of the board shall be appointed for a term of four (4) years. Members of the board shall serve until their successors are duly appointed and qualified.

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

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

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

Source: Laws 1945, ch. 146, § 3; C.S. 1945, § 37-803; W.S. 1957, § 33-153; Laws 1981, ch. 25, § 1; 1987, ch. 175, § 1; Laws 1991, ch. 240, § 1; 1993, ch. 21, § 1.

33-11-104. Collection agency board; compensation, per diem and travel expense. All members of the collection agency board shall be paid salary, per diem and mileage in the same manner and amount as members of the Wyoming legislature when attending any regular or called meeting of the board. Salary, per diem and travel expense

for all board members shall be paid solely from the account containing the license fees established and payable under this act.

Source: Laws 1945, ch. 146, § 4; C.S. 1945, § 37-804; W.S. 1957, § 33-154; Laws 1967, ch. 143, § 1; 1973, ch. 245, § 3; 1981, ch. 25, § 1; 1991, ch. 240, § 1; 1993, ch. 21, § 1.

33-11-105. Powers and duties of collection agency board.

(a) The board shall assist and advise the chairman, who shall have charge of the administration of this act. All applications for licenses under this act shall be referred by the chairman to the board for consideration. The board shall investigate the qualifications of the applicant. If the board finds the applicant fails to meet the required qualifications, the board shall reject the application; otherwise the application shall be approved and a license issued on payment of license fees and filing of a bond as required by this act.

(b) The board shall refuse to issue or renew a license:

(i) If an individual applicant or licensee is not an adult;

(ii) If an applicant or licensee is not authorized to do business in this state;

(iii) If the licensee does not have an established office in Wyoming with a bona fide resident of Wyoming as a resident manager, or in the case of an applicant, the application does not disclose the proposed office location in Wyoming and the name of the proposed resident manager;

(iv) If an applicant, or an owner, officer, director, partner or resident manager of an applicant or licensee:

(A) Knowingly made a false statement of a material fact in any application for a collection agency license or renewal thereof, or in any documentation provided to support the application or renewal;

(B) Has had a license to conduct a collection agency denied, not renewed, suspended or revoked by this state or any other state for any reason other than the nonpayment of licensing fees or failure to meet bonding requirements;

(C) Has been convicted in any court of a felony involving forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, fraud or conspiracy to commit fraud;

(D) Has had a judgment entered against him in any civil action involving forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, fraud or conspiracy to commit fraud;

(E) Has failed to pay or satisfy any judgment debt or penalty imposed by any court; or

(F) Has knowingly failed to comply with or violated any provision of this act or the rules and regulations of the board adopted pursuant to this act.

Source: Laws 1945, ch. 146, § 5; C.S. 1945, § 37-805; W.S. 1957, § 33-155; Laws 1981, ch. 25, § 1; 1991, ch. 240, § 1; 1993, ch. 21, § 1.

33-11-106. Authority to make rules and regulations; violations; penalties. The board shall make reasonable rules and regulations for the administration of this act, and for prescribing acceptable professional standards of conduct of licensees. Any violation of the rules and regulations of the board shall be grounds for the imposition of a civil penalty not to exceed one thousand dollars (\$1,000.00) or suspension, revocation or refusal to renew any license issued under this act, or any combination thereof.

Source: Laws 1945, ch. 146, § 16; C.S. 1945, § 37-816; W.S. 1957, § 33-156; Laws 1991, ch. 26, § 1; 1993, ch. 21, § 1.

33-11-107. Application for license; qualifications; financial statement.

(a) A person desiring to conduct a collection agency business in this state shall apply in writing on forms approved by the board. The application shall be signed and verified by the applicant and filed in the office of the board. The application shall state:

(i) The name and place of residence of the person making the application;

(ii) Whether the business is organized as a corporation, partnership or sole proprietorship;

(iii) The name or names under which the business will be conducted;

(iv) The street address of the office where the business will be conducted;

(v) The name of the person who will be the resident manager of the office;

(vi) Other information as the board may require to determine the qualifications of the applicant and the resident manager to be licensed to conduct a collection agency business.

(b) The application shall be accompanied by a financial statement of the applicant, showing the applicant to be financially sound.

(c) All applicants shall have an established office in Wyoming with a bona fide resident of Wyoming as a resident manager of the office. All resident managers shall pass an examination as prescribed by the board to determine the fitness of the resident manager to conduct a collection agency business.

(d) The board may collect an examination fee not to exceed one hundred dollars (\$100.00) for each examination given. The board shall establish by rule the amount and method of payment of the examination fee. All fees collected shall be credited to the account and used as provided by W.S. 33-11-111.

Source: Laws 1945, ch. 146, § 6; C.S. 1945, § 37-806; W.S. 1957, § 33-157; Laws 1981, ch. 25, § 1; 1985, ch. 41, § 1; 1991, ch. 240, § 1; 1993, ch. 21, § 1.

33-11-108. Bond required for license; terms, conditions and execution; amount; notice to surety; new bond.

(a) The applicant shall be notified when the application is approved. Within twenty (20) days after notification, the applicant shall file and thereafter maintain a deposit with the state treasurer or a bond as required by this act. The license shall be issued upon approval of the bond by the board and the attorney general. The bond shall be issued by a surety company licensed and authorized to do business in Wyoming, in the sum of ten thousand dollars (\$10,000.00) and shall run to the state of Wyoming and to any party who may be a claimant. The bond shall be executed and acknowledged by the applicant as principal. The applicant may satisfy the bond requirement of this section by depositing with the state treasurer ten thousand dollars (\$10,000.00) cash.

(b) The bond shall be conditioned that the principal, as a licensee under this act, shall pay and turn over to or for the use of any claimant from whom any debt is taken or received for collection, the proceeds of such collection less the charges for collection in accordance with the terms of the agreement made between the principal and the claimant.

(c) The bond shall cover all debts placed with the licensee for collection. Any claim under the bond shall be presented to the board. The board shall promptly notify the surety. If the surety fails to pay or settle the claim within thirty (30) days after notice from the board, the claimant may bring suit on the bond in the claimant's own name. The aggregate liability of the surety for any and all claims which may arise under the bond shall in no event exceed the amount of the penalty of the bond.

(d) A licensee may file a new bond with the board at any time. A surety company may file with the board notice of its withdrawal as surety of any licensee. Upon the filing of a new bond or a notice of withdrawal, the liability of the former surety for all future acts of the licensee shall terminate except as provided in W.S. 33-11-109.

(e) Upon filing notice with the board by any surety company of its withdrawal as the surety of any licensee, or upon the revocation by the insurance commissioner of the authority of any surety company to transact business in this state, the board shall immediately give notice to the licensee of the withdrawal or revocation. Within thirty (30) days from the date of notification the licensee shall file a new bond with the board. If a licensee fails to file a new bond satisfactory to the board within the time allowed, the right of the licensee to conduct a collection agency shall terminate.

Source: Laws 1945, ch. 146, § 7; C.S. 1945, § 37-807; W.S. 1957, § 33-158; Laws 1981, ch. 25, § 1; 1985, ch. 41, § 1; 1991, ch. 240, § 1; 1993, ch. 21, § 1.

33-11-109. Bond of agency; limitation of actions. No action shall be brought upon any bond required to be given under this act after the expiration of two (2) years from the revocation or expiration of the license issued to the licensee and principal under the bond. Except for any action commenced upon the bond prior to expiration of the two (2) year period, all liability of the surety upon the bond shall cease on the expiration date.

Source: Laws 1945, ch. 146, § 8; C.S. 1945, § 37-808; W.S. 1957, § 33-159; 1993, ch. 21, § 1.

33-11-110. License; renewals; fee; license nontransferable; display.

(a) Fees for the licensing of collection agencies shall be set by the board. All fees shall be established in accordance with W.S. 33-1-201. Each office or place of business shall be licensed separately.

(b) Each collection agency license expires one (1) year from the date of issuance. A collection agency license is not transferable. Each collection agency license shall be displayed in a conspicuous place in licensee's place of business.

Source: Laws 1945, ch. 146, § 9; C.S. 1945, § 37-809; W.S. 1957, § 33-160; Laws 1976, ch. 14, § 1; 1981, ch. 25, § 1; 1987, ch. 48, § 1; 1991, ch. 240, § 1; 1993, ch. 21, § 1.

33-11-111. Disposition of fees. All fees and money received and collected by the board shall be deposited with the state treasurer, who shall credit the money to an account within the earmarked revenue fund. All monies paid into the state treasury and credited to the account are appropriated to the use of the collection agency board for the payment of all necessary expenses incurred in administering this act, including the payment of per diem, salary and mileage to members of the board.

Source: Laws 1945, ch. 146, § 10; C.S. 1945, § 37-810; W.S. 1957, § 33-161; Laws 1973, ch. 245, § 3; 1981, ch. 25, § 1; 1991, ch. 240, § 1; 1993, ch. 21, § 1.

33-11-112. Action upon complaints; records of proceedings.

(a) Any interested person may file a verified written complaint charging any collection agency licensee with the violation of this act or the rules adopted by the board, or with conduct that shows the licensee is unworthy to continue to operate a collection agency within this state. The complaint shall be filed with the board which shall investigate the complaint if necessary or refer the complaint to appropriate staff for investigation and referral back to the board for proper disposition.

(b) The board, on its own motion, may make, or cause to be made, an investigation of the conduct of any licensee. As a part of an investigation, the board may audit the books and accounts of a licensee. The audit may be conducted by an auditor from the state department of audit or by a certified public accountant contracted by the board.

(c) Repealed by Laws 1981, ch. 25, § 2.

(d) For the purpose of an investigation or for hearing a complaint, the board may hold a hearing in accordance with the Wyoming Administrative Procedure Act. The hearing may be conducted by a hearing examiner. The chairman may subpoena witnesses and books, records and documents relative to the inquiry. Witnesses may be required to testify under oath. If the board finds the licensee has violated the provisions of this act or

the rules promulgated by the board, the licensee may be sanctioned by a civil penalty not to exceed one thousand dollars (\$1,000.00) or refusal to renew, suspension or revocation of his license or any combination thereof. Any civil penalties assessed pursuant to this section shall be credited to the common school land income account.

(e) A copy of the complaint and a complete record of the investigation and the disposition made shall be retained by the board in the office of the board.

Source: Laws 1945, ch. 146, § 11; C.S. 1945, § 37-811; W.S. 1957, § 33-162; W.S. 1977, § 33-11-112; Laws 1981, ch. 25, §§ 1, 2; 1991, ch. 26, § 1; ch. 240, § 1; 1993, ch. 21, § 1.

33-11-113. Records of license and bond actions; confidentiality.

(a) The board shall keep a record of all applications for licenses and all bonds filed. The record shall state whether or not a license has been issued under the application and bond. If a bond is withdrawn, replaced or revoked, or the license to operate a collection agency is temporarily terminated because of the failure of the surety on the bond, the facts shall be reflected in the record with the date of filing any order of suspension, revocation or reinstatement. The application form and bond, and records relating thereto shall be open for inspection as a public record in the office of the board.

(b) Financial statements, credit reports and other financial information required by the board in support of a license application or in an investigation, and unresolved complaints or complaints found to be without merit are confidential and are not subject to inspection as a public record.

Source: Laws 1945, ch. 146, § 12; C.S. 1945, § 37-812; W.S. 1957, § 33-163; Laws 1981, ch. 25, § 1; 1991, ch. 240, § 1; 1993, ch. 21, § 1.

33-11-114. Furnishing or advertising legal services; scope of authority to solicit, acquire or collect claims. No licensee, under the terms of this act, shall render legal services or advertise directly or indirectly, that it will render legal services, but any licensee can solicit claims exclusively for the purpose of collection, take assignments thereof for the purpose of collection by suit or otherwise, and for such purpose, shall be deemed to be the real party in interest in any suit brought upon such assigned claim.

Source: Laws 1945, ch. 146, § 15; C.S. 1945, § 37-815; W.S. 1957, § 33-164.

33-11-115. Prohibited acts; penalty for violations; injunctive relief.

(a) In addition to other penalties, any person who carries on the business of a collection agency without first having obtained a license, or who carries on a collection agency business after the termination, suspension, revocation or expiration of a license, is guilty of a misdemeanor and upon conviction shall be fined not less than fifty dollars (\$50.00) nor more than seven hundred fifty dollars (\$750.00), imprisoned in the county jail not more than six (6) months, or both.

(b) When it appears to the board that any person is violating any of the provisions of this act, the board may, in its own name, bring an action in a court of competent jurisdiction for an injunction, and courts of this state may enjoin any person from violating this act regardless of whether proceedings have been or may be instituted before the board or whether proceedings have been or may be instituted under subsection (a) of this section. The proceedings shall be prosecuted by the attorney general, or if approved by the attorney general, by private counsel engaged by the board.

Source: Laws 1945, ch. 146, § 13; C.S. 1945, § 37-813; W.S. 1957, § 33-165; Laws 1981, ch. 25, § 1; 1991, ch. 240, § 1; 1993, ch. 21, § 1; 1999, ch. 55, § 1.

33-11-116. Prosecution of violations. The district attorney shall prosecute all violations of this act occurring within his district.

Source: Laws 1945, ch. 146, § 14; C.S. 1945, § 37-814; W.S. 1957, § 33-166; Laws 1981, Sp. Sess., ch. 22, § 1; 1993, ch. 21, § 1.