

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; modifying requirements of the
5 collection agency program; providing for fees, penalties
6 and generally revising provisions regulating collection
7 agencies and debt collections; modifying the function of
8 the collection agency board; repealing existing provisions;
9 and providing for an effective date.

10

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

12

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

15

16

CHAPTER 25

1 COLLECTION AGENCIES

2

3 40-25-101. Short title.

4

5 This act may be cited as the "Wyoming Collection Agency
6 Act."

7

8 40-25-102. Definitions.

9

10 (a) As used in this act:

11

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

14

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

18

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

21

22 (iv) "Business debt" means the obligation
23 arising from a credit transaction between business or
24 commercial enterprises for goods or services used or to be

1 used primarily in a commercial or business enterprise and
2 not for personal, family or household purposes;

3

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

6

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

10

11 (vii) "Consumer" means any natural person
12 obligated or allegedly obligated to pay any debt;

13

14 (viii) "Control" means owning twenty-five
15 percent (25%) or more of the voting shares of the licensee
16 or having the power to direct the licensee's management or
17 policies;

18

19 (ix) "Credit card servicing company" means a
20 company that prior to default, performs the contractual
21 duties in the administration of credit card debt such as
22 collecting payments;

23

1 (x) "Creditor" means any person who offers or
2 extends credit creating a debt or to whom a debt is owed.
3 "Creditor" shall not include any person to the extent that
4 the person receives an assignment or transfer of a debt in
5 default solely for the purpose of facilitating collection
6 of the debt for another;

7

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

14

15 (xii) "Debt collection" means:

16

17 (A) Collecting or attempting to collect,
18 directly or indirectly, debts owed or due or asserted to be
19 owed or due another;

20

21 (B) Taking an assignment of or purchasing
22 debts in default for collection purposes and taking any
23 affirmative action to collect the debts;

24

1 (C) Directly or indirectly soliciting for
2 collection debts owed or due or asserted to be owed or due
3 another; or

4

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

7

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

14

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

17

18 (xv) "Home office" means the principal place of
19 business of the collection agency;

20

21 (xvi) "Individual" means a natural person;

22

23 (xvii) "Licensee" means a person licensed under
24 this act;

1

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

6

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

10

11 (xx) "Resident manager" means an individual who
12 is a bona fide resident of Wyoming and who is employed by
13 or under contract with a collection agency to gather and
14 distribute information pertinent to the debt collection
15 business between the commissioner, the collection agency
16 and consumers;

17

18 (xxi) "Security device" means a surety bond or a
19 cash deposit;

20

21 (xxii) "This act" means W.S. 40-25-101 through
22 40-25-121.

23

1 **40-25-103. Collection agency board; appointment;**
2 **membership; meetings; compensation, per diem and travel**
3 **expenses.**

4
5 (a) The collection agency board is created. For the
6 purpose of carrying out the provisions of this act, the
7 governor shall appoint a five (5) person collection agency
8 board. The director of the department of audit shall serve
9 as an ex officio member of the board. The appointed board
10 shall consist of:

11
12 (i) One (1) member of the board who is an
13 attorney-at-law actively engaged in collection work and
14 licensed to practice law in Wyoming;

15
16 (ii) Two (2) members of the board who are
17 officers, partners, owners or managers of a licensed
18 collection agency;

19
20 (iii) Two (2) members of the board who are
21 members of the public at large and are neither an attorney-
22 at-law nor affiliated with a collection agency, but who are
23 or have been users of credit or collection services.

24

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

4
5 (c) No person shall be appointed as a member of the
6 board who has not been a bona fide resident of the state of
7 Wyoming for at least five (5) years immediately prior to
8 his appointment. The attorney-at-law and the officers,
9 partners, owners or managers of a collection agency shall
10 have engaged in the collection business within the state of
11 Wyoming for a period of five (5) years immediately prior to
12 appointment. The members of the public at large shall have
13 at least five (5) years experience as users of credit or
14 collection services.

15
16 (d) Upon the death, resignation or removal of any
17 member of the board, the governor shall appoint a member to
18 serve the remaining unexpired term. Any member of the board
19 may be removed by the governor as provided in W.S. 9-1-202.

20
21 (e) Members of the board shall elect one (1) of their
22 members chairman to serve for a term of two (2) years.

23

1 (f) The board shall meet when called by the
2 commissioner or when requested by a majority of the members
3 of the board. Members of the board shall receive the same
4 salary, mileage and per diem for attending and traveling to
5 and from board meetings in the same manner and amount as
6 members of the Wyoming legislature. Members shall submit
7 request for reimbursement for salary, mileage and per diem
8 to the division.

9

10 **40-25-104. Powers and duties of the board.**

11

12 (a) The board shall:

13

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

20

21 (ii) Order any licensee to cease any activity or
22 practice which the board deems to be deceptive, dishonest
23 or a violation of state or federal laws or regulations;

24

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

4

5 (iv) Conduct examinations of the books and
6 records of licensees and conduct investigations as
7 necessary and proper for the enforcement of the provisions
8 of this act and the rules promulgated under the authority
9 of this act;

10

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

13

14 (vi) Require that all application, renewal,
15 licensing, examination and all other fees included under
16 this act, except the amount paid for data processing by a
17 nationwide licensing system and database, shall be
18 deposited by the board with the state treasurer into the
19 financial institutions administration account;

20

21 (vii) Require a background investigation
22 including fingerprint checks for state and national
23 criminal history record checks as necessary. The board may
24 utilize background checks completed by the division of

1 criminal investigation, other government agencies in
2 Wyoming or in other states, the federal bureau of
3 investigation or a nationwide licensing system;

4

5 (viii) Determine the content of application
6 forms and the means by which an applicant applies for,
7 renews or makes changes to a license under this act. The
8 board may require applicants to utilize a nationwide
9 licensing system and database for the processing of
10 applications and fees;

11

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

14

15 (x) Require the collection agency to reimburse
16 the consumer for any amounts paid in excess of lawful
17 amounts expressly authorized by the agreement creating the
18 debt or permitted by law;

19

20 (xi) Require the collection agency to reimburse
21 the creditor for any amounts not paid as expressly
22 authorized by the agreement between the collection agency
23 and the creditor;

24

1 (xii) Hire any experts necessary and proper to
2 assist the board in its duties under this act.

3

4 **40-25-105. License or notification requirements.**

5

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

12

13 (i) Within Wyoming;

14

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

18

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

22

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

1

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

5

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

9

10 (iii) The person:

11

12 (A) Is located in another state that
13 regulates and licenses collection agencies; and

14

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

19

20 (c) Any person engaged in debt collection shall
21 provide the board with written notification, as set by rule
22 of the board, within ten (10) business days after
23 commencing collection activities in each year that
24 collections are made or attempted if the person:

1

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

5

6 (ii) Is exempt from licensing pursuant to
7 subsection (b) of this section.

8

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

16

17 **40-25-106. Exemptions.**

18

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

20

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

24

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

4
5 (A) The person acting as a debt collector
6 does so only for persons to whom it is so related or
7 affiliated;

8
9 (B) The debt is collected in the same
10 company name; and

11
12 (C) The principal business of the person is
13 not the collection of debts.

14
15 (iii) Any officer or employee of the United
16 States, any state or any political subdivision to the
17 extent that collecting or attempting to collect any debt is
18 in the performance of his official duties;

19
20 (iv) Any person while serving or attempting to
21 serve legal process on any other person in connection with
22 the judicial enforcement of any debt;

23

1 (v) Any person collecting or attempting to
2 collect any debt owed or due or asserted to be owed or due
3 another to the extent the activity:

4

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

7

8 (B) Concerns a debt which was originated by
9 the person;

10

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

13

14 (D) Concerns a debt obtained by the person
15 as a secured party in a commercial credit transaction
16 involving the creditor.

17

18 (vi) Any person whose business is a credit card
19 servicing company;

20

21 (vii) Any person whose business is a mortgage
22 servicing company;

23

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

3

4 (ix) Any licensed attorney acting in an attorney
5 client relationship with a creditor who conducts debt
6 collection activities in the name of the creditor.

7

8 **40-25-107. Application for license to do business as**
9 **a collection agency.**

10

11 (a) The board shall receive and act on all
12 applications for licenses to do business as a collection
13 agency. Applications shall be filed in the manner
14 prescribed by the board, shall contain the information as
15 prescribed by the board, shall be updated as prescribed by
16 the board to keep the information current, and shall be
17 accompanied by an application fee not to exceed one
18 thousand dollars (\$1,000.00) for the home office location
19 and an amount not to exceed one hundred dollars (\$100.00)
20 for each additional branch location, as set by the board
21 pursuant to W.S. 40-25-110(a). When an application for
22 licensure is denied or withdrawn, the board shall retain
23 all fees paid by the applicant.

24

1 (b) An application for license may be granted if the
2 board finds:

3

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

11

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

19

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

24

1 (iv) The applicant has not been the subject of
2 any administrative action or enforcement proceeding by any
3 state or federal government agency involving the revocation
4 of any license or authority substantially equivalent to a
5 license under this act;

6

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

10

11 (vi) The applicant has provided information on
12 the application as required by the board pursuant to
13 subsection (a) of this section.

14

15 (c) The board may collect an examination fee not to
16 exceed one hundred dollars (\$100.00) as set by rule of the
17 board pursuant to W.S. 40-25-110(a) for each examination
18 given pursuant to paragraph (b)(vii) of this section.

19

20 (d) The board is empowered to conduct investigations
21 as deemed necessary to determine the existence of the
22 requirements in subsection (b) of this section.

23

1 (e) Within ten (10) business days of receiving the
2 application, the board shall notify the applicant by
3 certified mail, return receipt requested, if the
4 application is complete or to request additional
5 information.

6

7 (f) Within thirty (30) days of determining that an
8 application is complete, the board shall approve or deny
9 the application and shall notify the applicant of the
10 approval or denial by certified mail, return receipt
11 requested. The applicant shall have thirty (30) days from
12 the receipt of denial of the application to request a
13 hearing on the denial.

14

15 (g) If a hearing is held and the board is the
16 prevailing party, the applicant shall reimburse the board
17 for his reasonable and necessary expenses incurred as a
18 result of the hearing.

19

20 (h) Every licensee shall license and maintain a home
21 office as a principal location for the transaction of debt
22 collection business. A separate license shall be required
23 for each place of business from which debt collection
24 business is directly or indirectly conducted with Wyoming

1 consumers. The board may issue additional branch licenses
2 to the same applicant upon compliance with all the
3 provisions of this act governing the issuance of a single
4 license. Each license shall remain in full force and effect
5 unless the licensee does not satisfy the renewal
6 requirements of W.S. 40-25-109, or the license is
7 relinquished, suspended or revoked. All branch licenses
8 shall be terminated upon the relinquishment or revocation
9 of a home office license.

10

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

13

14 (k) No licensee shall change the location of any
15 place of business, consolidate two (2) or more locations,
16 open a new location or close any location, without giving
17 the commissioner prior written notice and paying a license
18 modification fee not to exceed one hundred dollars
19 (\$100.00) as set by rule of the board pursuant to W.S.
20 40-25-110(a).

21

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

1

2 (n) The board may suspend action upon a license
3 application pending resolution of any criminal charges,
4 before any court of competent jurisdiction, against an
5 applicant that would disqualify that applicant if
6 convicted.

7

8 **40-25-108. Change in control of a licensee.**

9

10 (a) A licensee shall give the board written notice of
11 a proposed change of control of a licensee within fifteen
12 (15) business days after learning of the proposed change of
13 control.

14

15 (b) The board may require the licensee to provide
16 additional information concerning the proposed persons in
17 control of the licensee. The additional information shall
18 be limited to the same information required of the licensee
19 or persons in control of the licensee as part of its
20 original license or renewal application.

21

22 (c) Upon a change in the control of the licensee the
23 licensee shall reapply and submit the required fees, not to
24 exceed one thousand dollars (\$1,000.00) for a home office

1 location and an amount not to exceed one hundred dollars
2 (\$100.00) for each additional branch location as determined
3 by the board pursuant to W.S. 40-25-110(a). The license is
4 not transferable or assignable to the new person in control
5 of the licensee.

6

7 (d) Before filing a request for approval to acquire
8 control, a person may request in writing a determination
9 from the board as to whether the person would be considered
10 a person in control of a licensee upon consummation of a
11 proposed transaction. If the board determines that the
12 person would not be a person in control of a licensee, the
13 board shall enter an order stating the proposed person and
14 transaction is not subject to the requirements of
15 subsections (a) through (c) of this section.

16

17 **40-25-109. License renewal and annual report.**

18

19 (a) Each license issued under this act shall expire
20 on December 31. The license shall be renewed annually not
21 less than thirty (30) days before the stated expiration
22 date. The renewal fee for each license shall not exceed
23 one thousand dollars (\$1,000.00) for the home office
24 location and an amount not to exceed one hundred dollars

1 (\$100.00) for each additional branch location, as set by
2 the board pursuant to W.S. 40-25-110(a).

3

4 (b) The licensee shall have a thirty-one (31) day
5 grace period to reinstate each expired license. In
6 addition to paying the renewal fee pursuant to subsection
7 (a) of this section, the board may establish a late fee not
8 to exceed one hundred dollars (\$100.00) for each license
9 reinstatement, as set by the board pursuant to W.S.
10 40-25-110(a). If the license has not been reinstated
11 before February 1 of the new license period, it shall not
12 be eligible for reinstatement until the applicant has met
13 all the requirements of W.S. 40-25-107.

14

15 (c) The renewal fee shall be accompanied by a report,
16 in a form prescribed by the board.

17

18 **40-25-110. Fees.**

19

20 (a) Except as otherwise specifically provided by
21 statute, the board is authorized to establish application,
22 examination, license, renewal fees or late fees for
23 collection agencies regulated under this act and shall
24 establish those fees in accordance with the following:

1

2 (i) Fees shall be established by rule or
3 regulation promulgated in accordance with the Wyoming
4 Administrative Procedure Act;

5

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

12

13 (iii) The board shall maintain records
14 sufficient to support the fees charged.

15

16 (b) All application, examination, licensing and
17 renewal fees collected by the board shall be deposited with
18 the state treasurer, who shall credit the money to the
19 financial institutions administration account. All monies
20 paid into the account pursuant to this act are continuously
21 appropriated to the use of the board for the payment of all
22 necessary expenses incurred in the administration of this
23 act.

24

1 **40-25-111. Security devices.**

2

3 (a) All licensees shall maintain a security device
4 payable to the state of Wyoming in accordance with this
5 section. The security device to be maintained shall be in
6 the amount of twenty-five thousand dollars (\$25,000.00).
7 This amount shall be increased by an additional sum of five
8 thousand dollars (\$5,000.00) for each licensed office.

9

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

19

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

22

23 (d) In the event that a licensee has violated any of
24 the provisions of this act or of a rule or order lawfully

1 made pursuant to this act, or federal law or regulation
2 pertaining to collections, and has damaged any person by
3 the violation, then the security device shall be forfeited
4 and paid to the state of Wyoming for the benefit of any
5 person so damaged, in an amount sufficient to satisfy the
6 violation or the security device in its entirety if the
7 violation exceeds the amount of the security device.

8

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

16

17 (f) Surety bonds shall remain effective continuously
18 until released in writing by the board. If a bond has not
19 been previously released by the board, the bond shall
20 expire two (2) years after the date of the surrender,
21 revocation or expiration of the license.

22

23 (g) A cash deposit allowing a licensee to earn
24 interest on the deposit shall be held with the state

1 treasurer until released in writing by the board. If a
2 cash deposit has not been previously released by the board,
3 the deposit shall be released back to the depositor two (2)
4 years after the date of the surrender, revocation or
5 expiration of the license.

6

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

14

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

1 board within the time allowed, the right of the licensee to
2 conduct a collection agency shall terminate.

3

4 **40-25-112. Examinations and investigations.**

5

6 (a) The board may conduct examinations of any
7 licensee under this act at intervals it deems necessary to
8 determine compliance with this act and other applicable
9 laws, rules and regulations.

10

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

19

20 (c) If a licensee's or person's records are located
21 outside Wyoming, the licensee or person shall have the
22 option to make them available to the board at a convenient
23 location within Wyoming, or pay the reasonable and
24 necessary expenses for the board or its representative to

1 examine them at the place where they are maintained. The
2 board may designate representatives, including comparable
3 officials of the state in which the records are located, to
4 inspect them on its behalf.

5

6 (d) Each licensee or person subject to examination or
7 investigation under this act shall pay to the board an
8 amount assessed by the board to cover the direct and
9 indirect cost of examinations or investigations conducted
10 pursuant to this section not to exceed one hundred dollars
11 (\$100.00) per hour.

12

13 **40-25-113. Records; confidentiality of records;**
14 **cooperative agreements.**

15

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

1

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

7

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

11

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

17

18 (e) Except as provided in subsection (f) of this
19 section, all information or reports obtained by the board
20 from an applicant or licensee are 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 board 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 board may disclose confidential information
19 to collection supervising agencies in other states or to
20 federal regulatory authorities or to appropriate
21 prosecuting attorneys.

22

23 (m) The board 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 board may accept the
6 parties' reports of examination and reports of
7 investigation in lieu of conducting his own examinations or
8 investigations.

9

10 (n) The board may enter into contracts with any
11 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 board from
18 disclosing to the public a list of persons licensed under
19 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 board;

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 board may suspend, not to exceed six (6)
8 months, or revoke a license if the board 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 board;

17

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

20

21 (iv) The licensee refuses to permit the board to
22 make any examination authorized by this act;

23

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

3

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

8

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

11

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

17

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

23

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 board finds that
11 probable cause for revocation of a license exists and that
12 enforcement of this act and the public interest require
13 immediate suspension of the license pending investigation,
14 the board may, after a hearing upon five (5) days written
15 notice, enter an order suspending the license for not more
16 than thirty (30) days.

17

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

23

24 **40-25-117. Orders to cease and desist.**

1

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

10

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

17

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

1 requested to the last known address of the person or shall
2 be served as provided by the Wyoming Rules of Civil
3 Procedure. Notice of the order shall include:

4

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

8

9 (ii) A statement of the facts in support of the
10 allegations;

11

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

14

15 (d) In an emergency, the board may petition the
16 district court for the issuance of a temporary restraining
17 order.

18

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

21

22 (f) An order to cease and desist remains effective
23 and enforceable pending the completion of an administrative

1 proceeding pursuant to the Wyoming Administrative Procedure
2 Act.

3

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

10

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

14

15 **40-25-118. Consent orders.**

16

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

1 adopted or an order issued under this act has been
2 violated.

3

4 **40-25-119. Civil penalties.**

5

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

15

16 **40-25-120. Criminal penalties.**

17

18 (a) A person who intentionally makes a false
19 statement, misrepresentation or false certification in a
20 record filed or required to be maintained under this act or
21 who intentionally makes a false entry or omits a material
22 entry in the record is guilty of a felony, punishable by
23 not less than three (3) years imprisonment or a fine of not
24 less than ten thousand dollars (\$10,000.00), or both.

1

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

7

8 **40-25-121. Hearings.**

9

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

15

16 **Section 2.** W.S. 33-11-101 through 33-11-116 are
17 repealed.

18

19 **Section 3.** This act is effective July 1, 2011.

20

21

(END)