

**DRAFT ONLY
NOT APPROVED FOR
INTRODUCTION**

SENATE FILE NO. _____

[STAFF NOTE: ALL CHANGES SINCE THE SEPTEMBER COMMITTEE MEETING ARE SHOWN IN STRIKE AND UNDERLINE.]

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 protection in collection transactions;
3 transferring the collection agency program from the
4 collection agency board to the Wyoming department of audit,
5 banking division as specified; modifying requirements of
6 the program; providing for reimbursement; terminating the
7 collection agency board; transferring funds; and providing
8 for an effective date.

9

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

11

1 **Section 1.** W.S. 33-11-101, 33-11-102, 33-11-105
 2 through 33-11-113 and 33-11-115 are repealed and recreated
 3 as 40-25-101 through 40-25-120 to read:

4

5

CHAPTER 25

6

COLLECTION AGENCIES

7

8

40-25-101. Short title.

9

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

12

13

40-25-102. Definitions.

14

15

(a) As used in this act:

16

17

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

19

20

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

23

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

6

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

10

11 ~~(iv)~~ (v) "Commissioner" means the Wyoming banking
12 commissioner;

13

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

17

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

20

21 ~~(vii)~~ (viii) "Control" means owning twenty-five
22 percent (25%) or more of the voting shares of the licensee

1 or having the power to direct the licensee's management or
2 policies;

3

4 ~~(viii)~~ (ix) "Credit card servicing company" means
5 a company that prior to default, performs the contractual
6 duties in the administration of credit card debt such as
7 collecting payments;

8

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

15

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

22

23 ~~(xi)~~ (xii) "Debt collection" means:

1

2

3

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

4

5

6

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

8

9

10

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

11

12

13

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

15

16

17

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

18

19

20

21

22

~~(xii)~~ (xiii) "Debt collector" means any person who uses any instrumentality of interstate commerce in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to

1 collect, directly or indirectly, debts owed or asserted to
2 be owed or due another;

3

4 ~~(xiii)~~ (xiv) "Division" means the division of
5 banking within the Wyoming department of audit;

6

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

10

11 (xvi) "Home office" means the principal place of
12 business of the collection agency;

13

14 ~~(xv)~~ (xvii) "Licensee" means a person licensed
15 under this act;

16

17 ~~(xvi)~~ (xviii) "Mortgage servicing company" means
18 a company, that prior to default, performs the contractual
19 duties in the administration of mortgage loans such as
20 collecting payments;

21

1 ~~(xvii)~~(xix) "Person" means an individual, sole
 2 proprietorship, partnership, corporation, limited liability
 3 company or other entity, public or private;

4

5 ~~(xviii)~~(xx) "This act" means W.S. 40-25-101
 6 through 40-25-120.

7 **[Staff Note:**

8 **New definitions:** applicant, commissioner, control, credit
 9 card servicing company, debt collection, division, Fair
 10 Debt Collection Practices Act, licensee, mortgage servicing
 11 company and person.

12 **Deleted definitions:** board, location information,
 13 revocation, solicitor and suspension.]

14

15 **40-25-103. Powers and duties of commissioner.**

16

17 (a) In addition to any other powers and duties
 18 imposed upon the commissioner by law, the commissioner
 19 shall:

20

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

27

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

6

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

10

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

16

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

19

20 (vi) Require that all application, renewal,
21 licensing, examination and all other fees included under
22 this act, except the amount paid for data processing by a
23 nationwide licensing system and database, shall be

1 deposited by the commissioner with the state treasurer into
2 the financial institutions administration account within
3 the earmarked revenue fund;

4

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

12

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

19

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

22

1 (x) Require the collection agency to reimburse
2 the consumer for any amounts paid in excess of lawful
3 amounts expressly authorized by the agreement creating the
4 debt or permitted by law;

5

6 (xi) Require the collection agency to reimburse
7 the creditor for any amounts not paid as expressly
8 authorized by the agreement between the collection agency
9 and the creditor.

10 **[Staff Note: From 33-11-105 - Powers and duties of**
11 **collection agency board and similar to W.S. 40-23-103 -**
12 **Powers and duties of commissioner.]**
13

14 **40-25-104. License requirements.**

15

16 (a) With the exception of those persons exempt
17 pursuant to W.S. 40-25-105, no person shall engage in debt
18 collection without first obtaining a collection agency
19 license in accordance with this act.

20

21 (b) This act shall apply to any collection agency
22 that has a place of business located:

23

24 (i) Within Wyoming;

25

1 (ii) Outside Wyoming and collects or attempts to
2 collect from consumers who are Wyoming residents; or

3

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

7 **[Staff Note: From 33-11-102 - Licenses required and**
8 **similar to 40-23-104 - License requirements.**

9

10 **40-25-105. Exemptions from license requirements.**

11

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

13

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

17

18 (ii) Any person while acting as a debt collector
19 for another person, both of whom are related by common
20 ownership or affiliated by corporate control, if the person
21 acting as a debt collector does so only for persons to whom
22 it is so related or affiliated, if the debt is collected in
23 the same company name and if the principal business of the
24 person is not the collection of debts;

1

2 (iii) Any officer or employee of the United
3 States, ~~or~~ any state or any political subdivision to the
4 extent that collecting or attempting to collect any debt is
5 in the performance of his official duties;

6

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

10

11 (v) Any nonprofit organization which, at the
12 request of consumers, performs bona fide consumer credit
13 counseling and assists consumers in the liquidation of
14 their debts by receiving payments from the consumers and
15 distributing the amounts to creditors;

16

17 (vi) Any person collecting or attempting to
18 collect any debt owed or due or asserted to be owed or due
19 another to the extent the activity:

20

21 (A) Is incidental to a bona fide fiduciary
22 obligation or a bona fide escrow arrangement;

23

1 (B) Concerns a debt which was originated by
2 the person;

3

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

6

7 (D) Concerns a debt obtained by the person
8 as a secured party in a commercial credit transaction
9 involving the creditor.

10

11 (vii) Any person whose business is a credit card
12 servicing company;

13

14 (viii) Any person whose business is a mortgage
15 servicing company;

16

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

19

20 (x) Any licensed attorney acting in an attorney-
21 client relationship with a creditor who conducts debt
22 collection activities in the name of the creditor.

23 **[Staff Note: This provision is similar to 40-23-105 -**
24 **Exemptions from license requirements.]**

1

2 **40-25-106. Application for license to do business as**
3 **a collection agency.**

4

5 (a) The commissioner shall receive and act on all
6 applications for licenses to do business as a collection
7 agency. Applications shall be filed in the manner
8 prescribed by the commissioner, shall contain the
9 information as prescribed by the commissioner, shall be
10 updated as prescribed by the commissioner to keep the
11 information current, and shall be accompanied by an
12 application fee not to exceed one thousand dollars
13 (\$1,000.00) for the home office location and an amount not
14 to exceed one hundred dollars (\$100.00) for each additional
15 branch location, as set by the commissioner pursuant to
16 W.S. 40-25-109(a). When an application for licensure is
17 denied or withdrawn, the commissioner shall retain all fees
18 paid by the applicant.

19

20 (b) An application for license may be granted if the
21 commissioner finds:

22

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

8
9 (ii) The applicant has not been convicted of a
10 felony, pled guilty or nolo contendere to a felony in a
11 domestic, foreign or military court during the seven (7)
12 year period preceding the date of the application for
13 licensing, or at any time preceding the date of application
14 if the felony involved an act of fraud, dishonesty, breach
15 of trust or money laundering;

16
17 (iii) The applicant has not been convicted of,
18 pled guilty or nolo contendere to a misdemeanor in a
19 domestic, foreign or military court involving an act of
20 fraud, dishonesty, breach of trust or money laundering;

21
22 (iv) The applicant has not been the subject of
23 any administrative action or enforcement proceeding by any

1 state or federal government agency involving the revocation
2 of any license or authority substantially equivalent to a
3 license under this act;

4

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

8

9 (vi) The applicant has provided information on
10 the application as required by the commissioner pursuant to
11 subsection (a) of this section.

12

13 (c) The commissioner is empowered to conduct
14 investigations as deemed necessary to determine the
15 existence of the requirements in subsection (b) of this
16 section.

17

18 (d) Upon written request, an applicant is entitled to
19 a hearing on the question of his qualifications for a
20 license if:

21

22 (i) The commissioner has notified the applicant
23 in writing that his application has been denied; or

1

2 (ii) The commissioner has not issued a license
3 within sixty (60) days after a complete application for the
4 license was filed.

5

6 (e) Notwithstanding any provision under the Wyoming
7 Administrative Procedure Act, a request for hearing shall
8 not be made more than fifteen (15) days after the applicant
9 has received notification by certified mail that the
10 application has been denied and stating in substance the
11 commissioner's finding supporting denial of the application
12 or that objections have been filed and the substance
13 thereof.

14

15 (f) If a hearing is held and the commissioner is the
16 prevailing party, the applicant and those filing objections
17 shall reimburse, pro rata, the commissioner for his
18 reasonable and necessary expenses incurred as a result of
19 the hearing.

20

21 (g) Every licensee shall license and maintain a home
22 office as a principal location for the transaction of debt
23 collection business. A separate license shall be required

1 for each place of business from which debt collection
2 activities are directly or indirectly conducted. The
3 commissioner may issue additional branch licenses to the
4 same applicant upon compliance with all the provisions of
5 this act governing the issuance of a single license. Each
6 license shall remain in full force and effect unless the
7 licensee does not satisfy the renewal requirements of W.S.
8 40-25-108, or the license is relinquished, suspended or
9 revoked. All branch licenses shall be terminated upon the
10 relinquishment or revocation of a home office license.

11

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

14

15 (j) No licensee shall change the location of any
16 place of business, consolidate two (2) or more locations,
17 open a new location or close any location, without giving
18 the commissioner prior written notice and paying a license
19 modification fee not to exceed one hundred dollars
20 (\$100.00) as set by rule of the commissioner pursuant to
21 W.S. 40-25-109(a).

22

1 (k) A licensee shall not engage in the business of
2 debt collection at any place of business for which he does
3 not hold a license.

4
5 (m) The commissioner may suspend action upon a
6 license application pending resolution of any criminal
7 charges, before any court of competent jurisdiction,
8 against an applicant that would disqualify that applicant
9 if convicted.

10 **[Staff Note: From 33-11-107 - Application for license;**
11 **qualifications; financial statement and similar to**
12 **40-23-107 - Application for license to do business as a**
13 **mortgage lender or mortgage broker.]**
14

15 **40-25-107. Change in control of a licensee.**

16
17 (a) A licensee shall give the commissioner written
18 notice of a proposed change of control of a licensee within
19 fifteen (15) business days after learning of the proposed
20 change of control.

21
22 (b) The commissioner may require the licensee to
23 provide additional information concerning the proposed
24 persons in control of the licensee. The additional
25 information shall be limited to the same information

1 required of the licensee or persons in control of the
2 licensee as part of its original license or renewal
3 application.

4

5 (c) The licensee shall reapply and submit the
6 required fees, not to exceed one thousand dollars
7 (\$1,000.00) for a home office location and an amount not to
8 exceed one hundred dollars (\$100.00) for each additional
9 branch location upon a change in the control of the
10 licensee as determined by the commissioner pursuant to W.S.
11 40-25-109(a). The license is not transferable nor
12 assignable to the new persons in control of the licensee.

13

14 (d) Before filing a request for approval to acquire
15 control, a person may request in writing a determination
16 from the commissioner as to whether the person would be
17 considered a person in control of a licensee upon
18 consummation of a proposed transaction. If the
19 commissioner determines that the person would not be a
20 person in control of a licensee, the commissioner shall
21 enter an order stating the proposed person and transaction
22 is not subject to the requirements of subsections (a)
23 through (c) of this section.

1 **[Staff Note: This provision is similar to 40-23-108-**
2 **Change in control of a licensee.]**
3

4 **40-25-108. License renewal and annual report.**
5

6 (a) Each license issued under this act shall expire
7 on December 31. The license shall be renewed annually not
8 less than thirty (30) days before the stated expiration
9 date. The renewal fee for each license shall not exceed
10 one thousand dollars (\$1,000.00) for the home office
11 location and an amount not to exceed one hundred dollars
12 (\$100.00) for each additional branch location, as set by
13 the commissioner pursuant to W.S. 40-25-109(a).
14

15 (b) The licensee shall have a thirty-one (31) day
16 grace period to reinstate each expired license. In
17 addition to paying the renewal fee pursuant to subsection
18 (a) of this section, the commissioner may establish a late
19 fee not to exceed one hundred dollars (\$100.00) for each
20 license reinstatement, as set by the commissioner pursuant
21 to W.S. 40-25-109(a). If the license has not been
22 reinstated before February 1 of the new license period, it
23 shall not be eligible for reinstatement until the applicant
24 has met all the requirements of W.S. 40-25-106.

1

2 ~~(b)~~(c) The renewal fee shall be accompanied by a
3 report, in a form prescribed by the commissioner.

4 **[Staff Note: From 33-11-110 - License; renewals; fee;
5 license nontransferable; display and similar to 40-23-109 -
6 License renewal and annual report.]**

7

8 **40-25-109. Fees.**

9

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

16

17 (i) Fees shall be established by rule or
18 regulation promulgated in accordance with the Wyoming
19 Administrative Procedure Act;

20

21 (ii) Fees shall be established in an amount to
22 ensure that, to the extent practicable, the total revenue
23 generated from the fees collected approximates, but does
24 not exceed, the direct and indirect costs of administering

1 the regulatory provisions required for collection agencies
2 under this act;

3

4 (iii) The commissioner shall maintain records
5 sufficient to support the fees charged.

6

7 (b) All application, examination, licensing and
8 renewal fees collected by the commissioner shall be
9 deposited with the state treasurer, who shall credit the
10 money to a separate account within the earmarked revenue
11 fund. All monies paid into the account are appropriated to
12 the use of the division for the payment of all necessary
13 expenses incurred in the administration of this act.

14 **[Staff Note: From 33-11-111 - Disposition of fees; similar**
15 **to W.S. 33-1-201 - Fees generally.]**

16

17 **40-25-110. Surety bonds.**

18

19 (a) All licensees shall maintain a surety bond to the
20 state of Wyoming in accordance with this section. The bond
21 to be maintained shall be in the amount of twenty-five
22 thousand dollars (\$25,000.00). This amount shall be
23 increased by an additional sum of five thousand dollars
24 (\$5,000.00) for each licensed office. The bond shall be a

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

10

11 (b) In the event that a licensee has violated any of
12 the provisions of this act or of a rule or order lawfully
13 made pursuant to this act, or federal law or regulation
14 pertaining to collections, and has damaged any person by
15 the violation, then the bond shall be forfeited and paid by
16 the surety to the state of Wyoming for the benefit of any
17 person so damaged, in an amount sufficient to satisfy the
18 violation or the bond in its entirety if the violation
19 exceeds the amount of the bond.

20

21 (c) The bond shall be conditioned that the principal,
22 as a licensee under this act, shall pay and turn over to or
23 for the use of any claimant from whom any debt is taken or

1 received for collection, the proceeds of the collection
2 less the charges for collection in accordance with the
3 terms of the agreement made between the principal and the
4 claimant.

5

6 (d) Surety bonds shall remain effective continuously
7 until released in writing by the banking commissioner. If
8 a bond has not been previously released by the banking
9 commissioner, the bond shall expire two (2) years after the
10 date of the surrender, revocation or expiration of the
11 license.

12

13 (e) A licensee may file a new bond with the banking
14 commissioner at any time. A surety company may file with
15 the banking commissioner notice of its withdrawal as surety
16 of any licensee. Upon the filing of a new bond or a notice
17 of withdrawal, the liability of the former surety for all
18 future acts of the licensee shall terminate except as
19 provided in subsection (d) of this section.

20

21 (f) Upon filing notice with the banking commissioner
22 by any surety company of its withdrawal as the surety of
23 any licensee, or upon the revocation by the insurance

1 commissioner of the authority of any surety company to
2 transact business in Wyoming, the banking commissioner
3 shall immediately give notice to the licensee of the
4 withdrawal or revocation. Within thirty (30) days from the
5 date of notification the licensee shall file a new bond
6 with the banking commissioner. If a licensee fails to file
7 a new bond satisfactory to the banking commissioner within
8 the time allowed, the right of the licensee to conduct a
9 collection agency shall terminate.

10 **[Staff Note: From 33-11-108 - Bond required for license;**
11 **terms, conditions and execution; amount; notice to surety;**
12 **new bond; from 33-11-109 - Bond of agency; limitation of**
13 **actions and similar to 40-23-110 Surety bonds.]**
14

15 **40-25-111. Examinations and investigations.**

16
17 (a) The commissioner may conduct examinations of any
18 licensee under this act at intervals he deems necessary to
19 determine compliance with this act and other applicable
20 laws, rules and regulations.

21
22 (b) The commissioner may at any time investigate the
23 business books and records of any licensee or person
24 engaged in debt collection activities for the purpose of
25 determining compliance with this act or securing

1 information required under this act. For these purposes,
2 the commissioner shall have free and reasonable access to
3 the offices, places of business, books and records of the
4 licensee.

5
6 (c) If a licensee's or person's records are located
7 outside Wyoming, the licensee or person shall have the
8 option to make them available to the commissioner at a
9 convenient location within Wyoming, or pay the reasonable
10 and necessary expenses for the commissioner or his
11 representative to examine them at the place where they are
12 maintained. The commissioner may designate
13 representatives, including comparable officials of the
14 state in which the records are located, to inspect them on
15 his behalf.

16
17 (d) Each licensee or person subject to examination or
18 investigation under this act shall pay to the commissioner
19 an amount assessed by the commissioner to cover the direct
20 and indirect cost of examinations or investigations
21 conducted pursuant to this section not to exceed one
22 hundred dollars (\$100.00) per hour.

1 **[Staff Note: From 33-11-112 - Action upon complaints;**
2 **records of proceedings; and similar to 40-23-111 -**
3 **Examinations and investigations.]**
4

5 **40-25-112. Records; confidentiality of records;**
6 **cooperative agreements.**
7

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

19 (b) Every licensee shall keep a record of each
20 collection account, including but not limited to all
21 collections and all disbursements made by the licensee, for
22 a period of two (2) years from the date of last entry in
23 each collection account.
24

1 (c) The records of a licensee may be maintained
2 electronically provided they can be reproduced in writing
3 upon request of the commissioner.

4
5 (d) No licensee may intentionally make any false
6 entry in any collection agency record or intentionally
7 mutilate, destroy or otherwise dispose of any collection
8 record within the time limit provided in subsection (b) of
9 this section.

10
11 (e) Except as provided in subsection (f) of this
12 section, all information or reports obtained by the
13 commissioner from an applicant or licensee are
14 confidential.

15
16 (f) Except as provided in P.L. 110-289, section 1512,
17 the requirements under any federal law or state law
18 regarding the privacy or confidentiality of any information
19 or material provided to any national registry, and any
20 privilege arising under federal or state law, including the
21 rules of any federal or state court, with respect to the
22 information or material, shall continue to apply to the
23 information or material after the information or material

1 has been disclosed to any national registry. The
2 information and any other confidential material obtained by
3 the commissioner may be shared with all state and federal
4 regulatory officials with collection agency industry
5 oversight authority without the loss of privilege or the
6 loss of confidentiality protections provided by federal law
7 or any state law.

8

9 (g) Information or material that is subject to a
10 privilege or confidentiality under subsection (f) of this
11 section shall not be subject to:

12

13 (i) Disclosure under any federal or state law
14 governing the disclosure to the public of information held
15 by an officer or agency of the federal government or the
16 respective state; or

17

18 (ii) Subpoena, discovery or admission into
19 evidence, in any private civil action or administrative
20 process, unless with respect to any privilege held by the
21 registry with respect to the information or material, the
22 person to whom the information or material pertains waives
23 that privilege, in whole or in part.

1

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

7

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

13

14 (k) The commissioner may disclose confidential
15 information to collection supervising agencies in other
16 states or to federal regulatory authorities or to
17 appropriate prosecuting attorneys.

18

19 (m) The commissioner may enter into cooperative,
20 coordinating or information sharing agreements with any
21 other collection supervisory agency or any organization
22 affiliated with or representing one (1) or more collection
23 supervisory agencies with respect to the periodic

1 examination or other supervision of any office in Wyoming
2 of an out-of-state licensee, and the commissioner may
3 accept the parties' reports of examination and reports of
4 investigation in lieu of conducting his own examinations or
5 investigations.

6

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

13

14 (o) This section does not prohibit the commissioner
15 from disclosing to the public a list of persons licensed
16 under this act.

17 **[Staff Note: From 33-11-113. Records of license and bond**
18 **actions; confidentiality and similar to 40-23-112 -**
19 **Records; confidentiality of records; exception.]**

20

21 **40-25-113. 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
25 sufficient funds to pay all sums due or owed to clients.

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

8

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

13 **[Staff Note: This provision is similar to 40-23-116 -**
14 **Trust accounts.]**

15

16 **40-25-114. Prohibited practices.**

17

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

20

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

1

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

3

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

7

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

14

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

21

1 (vi) Falsify any information or make any
 2 misleading statements in any application authorized under
 3 this act; or

4
 5 (vii) Violate any provisions of the federal Fair
 6 Debt Collection Practices Act.

7 **[Staff Note: From 33-11-115 - Prohibited acts; penalty for**
 8 **violations; injunctive relief and similar to 40-23-117 -**
 9 **Prohibited practices.]**
 10

11 **40-25-115. License suspension or revocation.**

12
 13 (a) The commissioner may suspend, not to exceed six
 14 (6) months, or revoke a license if the commissioner finds:

15
 16 (i) Any fact or condition exists that, if it had
 17 existed at the time when the licensee applied for its
 18 license, would have been grounds for denying the
 19 application;

20
 21 (ii) The licensee violated any provision of this
 22 act or any rule or order validly promulgated by the
 23 commissioner;

24

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

3

4 (iv) The licensee refuses to permit the
5 commissioner to make any examination authorized by this
6 act;

7

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

10

11 (vi) The competence, experience, character or
12 general fitness of the licensee indicates that it is not in
13 the public interest to permit the licensee to continue to
14 conduct business;

15

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

18

19 (viii) The licensee or any partner, officer,
20 director or manager of the licensee has been convicted of
21 any felony or convicted of a misdemeanor involving any
22 aspect of the debt collection business, breach of trust, or
23 fraudulent or dishonest dealing;

1

2 (ix) The licensee or any partner, officer,
3 director or manager of the licensee has had a license
4 substantially equivalent to a license under this act, and
5 issued by another state, denied, revoked or suspended under
6 the laws of that state;

7

8 (x) The licensee has filed an application for a
9 license which as of the date the license was issued, or as
10 of the date of an order denying, suspending or revoking a
11 license, was incomplete in any material respect or
12 contained any statement that was, in light of the
13 circumstances under which it was made, false or misleading
14 with respect to any material fact.

15

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

1

2 (c) The commissioner may, in his discretion,
3 reinstate a license, terminate a suspension or grant a new
4 license to a person whose license has been revoked or
5 suspended if no fact or condition then exists which clearly
6 would justify the commissioner in refusing to grant a
7 license.

8 **[Staff Note: This provision is similar to 40-23-118 -**
9 **License suspension or revocation.]**
10

11 **40-25-116. Orders to cease and desist.**

12

13 (a) If the commissioner determines that a violation
14 of this act or of a rule adopted or an order issued under
15 this act by a licensee is likely to cause immediate and
16 irreparable harm to the licensee, its customers or the
17 public as a result of the violation or cause insolvency of
18 the licensee, the commissioner may issue an order requiring
19 the licensee to cease and desist from the violation. The
20 order becomes effective upon service upon the licensee.

21

22 (b) If the commissioner determines that a person is
23 conducting debt collection activities governed under this
24 act without a valid license, the commissioner may issue an

1 order requiring the unlicensed person to cease and desist
2 from debt collection. The order becomes effective upon
3 service upon the unlicensed person.

4

5 (c) Before issuing a final cease and desist order
6 under subsections (a) and (b) of this section, the
7 commissioner shall serve notice of intent to issue the
8 order upon the person being ordered to cease and desist.
9 The notice shall be in writing and shall direct the person
10 to discontinue the violations of law and cease and desist
11 debt collection. The notice shall be served by certified
12 mail return receipt requested to the last known address of
13 the person or shall be served as provided by the Wyoming
14 Rules of Civil Procedure. Notice of the order shall
15 include:

16

17 (i) A statement of the grounds for issuing the
18 proposed order, including a citation to the statute or rule
19 involved;

20

21 (ii) A statement of the facts in support of the
22 allegations;

23

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

3

4 (d) In an emergency, the commissioner may petition
5 the district court for the issuance of a temporary
6 restraining order.

7

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

10

11 (f) An order to cease and desist remains effective
12 and enforceable pending the completion of an administrative
13 proceeding pursuant to the Wyoming Administrative Procedure
14 Act.

15

16 (g) A person served with an order to cease and desist
17 for violating this act may petition the district court for
18 a judicial order setting aside, limiting or suspending the
19 enforcement, operation or effectiveness of the order
20 pending the completion of an administrative proceeding
21 pursuant to the Wyoming Administrative Procedure Act.

22

1 (h) The commissioner shall commence a contested case
2 proceeding within twenty (20) days after issuing an order
3 to cease and desist.

4 **[Staff Note: This provision is similar to 40-23-119 -**
5 **Orders to cease and desist.]**
6

7 **40-25-117. Consent orders.**

8

9 The commissioner may enter into a consent order at any time
10 with a person to resolve a matter arising under this act.
11 A consent order shall be signed by the person to whom it is
12 issued or by the person's authorized representative and
13 shall indicate agreement with the terms contained in the
14 order. A consent order may provide that it does not
15 constitute an admission by a person that this act or a rule
16 adopted or an order issued under this act has been
17 violated.

18 **[Staff Note: This provision is similar to 40-23-120 -**
19 **Consent orders.]**
20

21 **40-25-118. Civil penalties.**

22

23 (a) The commissioner may impose a civil penalty upon
24 a person who violates this act or a rule adopted or an
25 order issued under this act in an amount not to exceed five

1 hundred dollars (\$500.00) per day for each day the
2 violation is outstanding, plus the state's costs and
3 expenses for the investigation and prosecution of the
4 matter, including reasonable attorney's fees.

5

6 (b) Any penalties collected pursuant to this section
7 shall be deposited in the public school fund of the
8 appropriate county as required by article 7, section 5 of
9 the Wyoming constitution.

10 **[Staff Note: From 33-11-106 - Authority to make rules and**
11 **regulations; violations; penalties and similar to 40-23-121**
12 **- Civil penalties.]**

13

14 **40-25-119. Criminal penalties.**

15

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

23

24 (b) An individual who knowingly engages in any
25 activity for which a license is required under this act,

1 without being licensed under this act is guilty of a felony
2 punishable by not less than three (3) years imprisonment or
3 a fine of not less than ten thousand dollars (\$10,000.00),
4 or both.

5

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

11 **[Staff Note: This provision is similar to 40-23-122 -**
12 **Criminal penalties.]**

13

14 **40-25-120. Hearings.**

15

16 Except as otherwise provided in W.S. 40-25-103(a)(x) and
17 (xi), 40-25-107(c) and 40-25-108, the commissioner shall
18 not suspend or revoke a license, issue an order to cease
19 and desist or assess a civil penalty without notice and an
20 opportunity to be heard.

21 **[Staff Note: This provision is similar to 40-23-123 -**
22 **Hearings.]**

23

24 **Section 2.** W.S. 33-11-103, 33-11-104, 33-11-114 and
25 33-11-116 are repealed.

1

2

Section 3.

3

4

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

5

6

~~(i) Wyoming consumers be protected from improper and abusive methods used by any collection agencies;~~

7

8

~~(ii) There is established a system of regulation to ensure that persons using the services of a collection agency are properly represented;~~

9

10

11

12

~~(iii)~~ (i) All duties of the collection agency board with respect to collection agencies be transferred to the banking division of the department of audit. Effective July 1, 2010, all duties of the collection agency board with respect to collection agencies not assumed by the banking division are terminated;

13

14

15

16

17

18

19

~~(iv)~~ (ii) Any contract, agreement or obligation entered into or assumed by the collection agency board with respect to collection agencies, if the execution or

20

21

22

23

1 assumption was within the lawful powers of the collection
2 agency board, be assumed by the banking division;

3

4 ~~(v)~~(iii) Any rule adopted by the collection
5 agency board with respect to collection agencies remain in
6 effect unaltered as rule of the banking division until
7 amended or repealed by the banking division.

8

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

14

15 **Section 5.** This act is effective July 1, 2010.

16

17

(END)