

**DRAFT ONLY
NOT APPROVED FOR
INTRODUCTION**

HOUSE BILL NO. _____

Collection agencies.

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

A BILL

for

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

13

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

2

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

5

6

CHAPTER 25

7

COLLECTION AGENCIES

8

9 **40-25-101. Short title.**

10

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

13

14 **40-25-102. Definitions.**

15

16 (a) As used in this act:

17

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

20

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

1

2 (iii) "Board" means the collection agency board

3 created by W.S. 40-25-103;

4

5 (iv) "Business debt" means the obligation

6 arising from a credit transaction between business or

7 commercial enterprises for goods or services used or to be

8 used primarily in a commercial or business enterprise and

9 not for personal, family or household purposes;

10

11 (v) "Collection agency" means any person who in

12 the ordinary course of business engages in debt collection;

13

14 (vi) "Commissioner" means the Wyoming banking

15 commissioner;

16

17 (vii) "Communication" means conveying

18 information regarding a debt in written or oral form,

19 directly or indirectly, to any person through any medium;

20

21 (viii) "Consumer" means any natural person

22 obligated or allegedly obligated to pay any debt;

23

1 (ix) "Control" means owning twenty-five percent
2 (25%) or more of the voting shares of the licensee or
3 having the power to direct the licensee's management or
4 policies;

5

6 (x) "Credit card servicing company" means a
7 company that prior to default, performs the contractual
8 duties in the administration of credit card debt such as
9 collecting payments;

10

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

17

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

1

2

(xiii) "Debt collection" means:

3

4

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

5

6

7

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

8

9

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

10

11

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

12

13

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

14

15

(xiv) "Debt collector" means any person who uses any instrumentality of interstate commerce in any business the principal purpose of which is the collection of any

16

17

1 debts, or who regularly collects or attempts to collect,
2 directly or indirectly, debts owed or asserted to be owed
3 or due another;

4

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

7

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

10

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

13

14 (xviii) "Individual" means a natural person;

15

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

18

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

23

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

4

5 (xxii) "Resident manager" means an individual
6 who is a bona fide resident of Wyoming and who is employed
7 by or under contract with a collection agency to gather and
8 distribute information pertinent to the debt collection
9 business between the commissioner, the collection agency
10 and consumers;

11

12 (xxiii) "Security device" means a surety bond or
13 a cash deposit;

14

15 (xxiv) "This act" means W.S. 40-25-101 through
16 40-25-121.

17

18 **40-25-103. Collection agency board; appointment;**
19 **membership; duties; meetings; compensation, per diem and**
20 **travel expenses.**

21

22 (a) The collection agency board is created. For the
23 purpose of carrying out the provisions of this act, the

1 governor shall appoint a three (3) person collection agency
2 board. The director of the department of audit shall serve
3 as an ex officio member of the board. The appointed board
4 shall consist of:

5

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

9

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

13

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

18

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

22

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

11

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

16

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

19

20 (f) The board shall meet when called by the
21 commissioner or when requested by a majority of the members
22 of the board. Members of the board shall receive the same
23 salary, mileage and per diem for attending and traveling to

1 and from board meetings in the same manner and amount as
2 members of the Wyoming legislature. Members shall submit
3 request for reimbursement for salary, mileage and per diem
4 to the division.

5

6 (g) The board shall:

7

8 (i) Consult with and provide advice and counsel
9 to the commissioner on issues relating to collection
10 agencies;

11

12 (ii) Recommend to the commissioner any changes
13 in laws or regulations governing collection agencies as may
14 be necessary to meet changes in the debt collection
15 industry;

16

17 (iii) Assist the commissioner in gathering and
18 providing information to the legislature regarding the
19 activities of collection agencies conducting business in
20 Wyoming.

21

22 **40-25-104. Powers and duties of commissioner.**

23

1 (a) In addition to any other powers and duties
2 imposed upon the commissioner by law, the commissioner
3 shall:

4
5 (i) Perform any and all acts necessary to
6 promulgate, administer and enforce the provisions of this
7 act and any rules, regulations, orders, limitations,
8 standards, requirements or licenses issued under this act,
9 and to exercise all incidental powers as necessary to carry
10 out the purposes of this act;

11
12 (ii) Order any licensee to cease any activity or
13 practice which the commissioner deems to be deceptive,
14 dishonest or a violation of state or federal laws or
15 regulations;

16
17 (iii) Conduct investigations, issue subpoenas,
18 and hold hearings as necessary to determine whether a
19 person has violated any provision of this act;

20
21 (iv) Conduct examinations of the books and
22 records of licensees and conduct investigations as
23 necessary and proper for the enforcement of the provisions

1 of this act and the rules promulgated under the authority
2 of this act;

3

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

6

7 (vi) Require that all application, renewal,
8 licensing, examination and all other fees included under
9 this act, except the amount paid for data processing by a
10 nationwide licensing system and database, shall be
11 deposited by the commissioner with the state treasurer into
12 the financial institutions administration account;

13

14 (vii) Require a background investigation
15 including fingerprint checks for state and national
16 criminal history record checks as necessary. The
17 commissioner may utilize background checks completed by the
18 division of criminal investigation, other government
19 agencies in Wyoming or in other states, the federal bureau
20 of investigation or a nationwide licensing system;

21

22 (viii) Determine the content of application
23 forms and the means by which an applicant applies for,

1 renews or makes changes to a license under this act. The
2 commissioner may require applicants to utilize a nationwide
3 licensing system and database for the processing of
4 applications and fees;

5

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

8

9 (x) Require the collection agency to reimburse
10 the consumer for any amounts paid in excess of lawful
11 amounts expressly authorized by the agreement creating the
12 debt or permitted by law;

13

14 (xi) Require the collection agency to reimburse
15 the creditor for any amounts not paid as expressly
16 authorized by the agreement between the collection agency
17 and the creditor.

18

19 **40-25-105. License or notification requirements.**

20

21 (a) With the exception of those persons exempt from
22 the provisions of this act pursuant to W.S. 40-25-106 or
23 exempt from licensing pursuant to subsection (b) of this

1 section, no person shall engage in debt collection without
2 first obtaining a collection agency license in accordance
3 with this act if he is located:

4

5 (i) Within Wyoming;

6

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

10

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

14

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

17

18 (i) The collection activity is limited to
19 collecting debts not incurred in this state from consumers
20 located in this state;

21

1 (ii) The collection activities are conducted by
2 means of interstate communications, including telephone,
3 mail or facsimile transmission; and
4

5 (iii) The person:

6
7 (A) Is located in another state that
8 regulates and licenses collection agencies; and
9

10 (B) That state does not require Wyoming
11 collection agencies to obtain a license to collect debts in
12 that state if Wyoming collection agencies' collection
13 activities are limited in the same manner.
14

15 (c) Any person engaged in debt collection shall
16 provide the commissioner with written notification, as set
17 by rule of the commissioner, within ten (10) business days
18 after commencing collection activities in each year that
19 collections are made or attempted if the person:
20

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

1

2 (ii) Is exempt from licensing pursuant to
3 subsection (b) of this section.

4

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

12

13 **40-25-106. Exemptions.**

14

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

16

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

20

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

1

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

5

6 (B) The debt is collected in the same
7 company name; and

8

9 (C) The principal business of the person is
10 not the collection of debts.

11

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

16

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

20

21 (v) Any person collecting or attempting to
22 collect any debt owed or due or asserted to be owed or due
23 another to the extent the activity:

1

2

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

4

5

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

7

8

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

10

11

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

14

15

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

17

18

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

20

21

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

23

1 (ix) Any licensed attorney acting in an attorney
2 client relationship with a creditor who conducts debt
3 collection activities in the name of the creditor.

4
5 **40-25-107. Application for license to do business as**
6 **a collection agency.**

7
8 (a) The commissioner shall receive and act on all
9 applications for licenses to do business as a collection
10 agency. Applications shall be filed in the manner
11 prescribed by the commissioner, shall contain the
12 information as prescribed by the commissioner, shall be
13 updated as prescribed by the commissioner to keep the
14 information current, and shall be accompanied by an
15 application fee not to exceed one thousand dollars
16 (\$1,000.00) for the home office location and an amount not
17 to exceed one hundred dollars (\$100.00) for each additional
18 branch location, as set by the commissioner pursuant to
19 W.S. 40-25-110(a). When an application for licensure is
20 denied or withdrawn, the commissioner shall retain all fees
21 paid by the applicant.

22

1 (b) An application for license may be granted if the
2 commissioner 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;

1

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

7

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

11

12 (vi) The applicant has provided information on
13 the application as required by the commissioner pursuant to
14 subsection (a) of this section;

15

16 (vii) The applicant has employed or contracted
17 with a resident manager. Every resident manager shall pass
18 an examination as prescribed by the commissioner to
19 determine the fitness of the resident manager to conduct
20 business on behalf of a collection agency;

21

22 (c) The commissioner may collect an examination fee
23 not to exceed one hundred dollars (\$100.00) as set by rule

1 of the commissioner pursuant to W.S. 40-25-110(a) for each
2 examination given pursuant to subsection (b)(vii) of this
3 section.

4

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

9

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

15

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

23

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

5

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

20

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

23

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

8

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

12

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

18

19 **40-25-108. Change in control of a licensee.**

20

21 (a) A licensee shall give the commissioner written
22 notice of a proposed change of control of a licensee within

1 fifteen (15) business days after learning of the proposed
2 change of control.

3

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

11

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

20

21 (d) Before filing a request for approval to acquire
22 control, a person may request in writing a determination
23 from the commissioner as to whether the person would be

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

8

9 **40-25-109. License renewal and annual report.**

10

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

19

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

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

7

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

10

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

12

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

19

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

23

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

7

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

10

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

19

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

21

22 (a) All licensees shall maintain a security device
23 payable to the state of Wyoming in accordance with this

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

5

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

15

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

18

19 (d) In the event that a licensee has violated any of
20 the provisions of this act or of a rule or order lawfully
21 made pursuant to this act, or federal law or regulation
22 pertaining to collections, and has damaged any person by
23 the violation, then the security device shall be forfeited

1 and paid to the state of Wyoming for the benefit of any
2 person so damaged, in an amount sufficient to satisfy the
3 violation or the security device in its entirety if the
4 violation exceeds the amount of the security device.

5

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

13

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

20

21 (g) A cash deposit allowing a licensee to earn
22 interest on the deposit shall be held with the state
23 treasurer until released in writing by the banking

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

5

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

13

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

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

3

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

5

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

10

11 (b) The commissioner 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 commissioner shall have free and reasonable access to
17 the 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 commissioner at a
23 convenient location within Wyoming, or pay the reasonable

1 and necessary expenses for the commissioner or his
2 representative to examine them at the place where they are
3 maintained. The commissioner may designate representatives,
4 including comparable officials of the state in which the
5 records are located, to inspect them on his behalf.

6

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

13

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

16

17 (a) Every licensee shall maintain records in
18 conformity with generally accepted accounting principles in
19 a manner that will enable the commissioner to determine
20 whether the licensee is complying with the provisions of
21 this act. The recordkeeping system of a licensee shall be
22 sufficient if he makes the required information available.
23 The records need not be kept in the place of business where

1 debt collection activities are conducted, if the
2 commissioner is given free access to the records wherever
3 located.

4

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

10

11 (c) The records of a licensee may be maintained
12 electronically provided they can be reproduced in writing
13 upon request of the commissioner.

14

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

20

21 (e) Except as provided in subsection (f) of this
22 section, all information or reports obtained by the

1 commissioner from an applicant or licensee are
2 confidential.

3

4 (f) Except as provided in P.L. 110-289, section 1512,
5 the requirements under any federal law or state law
6 regarding the privacy or confidentiality of any information
7 or material provided to any national registry, and any
8 privilege arising under federal or state law, including the
9 rules of any federal or state court, with respect to the
10 information or material, shall continue to apply to the
11 information or material after the information or material
12 has been disclosed to any national registry. The
13 information and any other confidential material obtained by
14 the commissioner may be shared with all state and federal
15 regulatory officials with collection agency industry
16 oversight authority without the loss of privilege or the
17 loss of confidentiality protections provided by federal law
18 or any state law.

19

20 (g) Information or material that is subject to a
21 privilege or confidentiality under subsection (f) of this
22 section shall not be subject to:

23

1 (i) Disclosure under any federal or state law
2 governing the disclosure to the public of information held
3 by an officer or agency of the federal government or the
4 respective state; or

5

6 (ii) Subpoena, discovery or admission into
7 evidence, in any private civil action or administrative
8 process, unless with respect to any privilege held by the
9 registry with respect to the information or material, the
10 person to whom the information or material pertains waives
11 that privilege, in whole or in part.

12

13 (h) Any Wyoming law relating to the disclosure of
14 confidential supervisory information or any information or
15 material described in subsection (f) of this section that
16 is inconsistent with subsection (f) of this section shall
17 be superceded by the requirements of this section.

18

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

1

2 (k) The commissioner may disclose confidential
3 information to collection supervising agencies in other
4 states or to federal regulatory authorities or to
5 appropriate prosecuting attorneys.

6

7 (m) The commissioner may enter into cooperative,
8 coordinating or information sharing agreements with any
9 other collection supervisory agency or any organization
10 affiliated with or representing one (1) or more collection
11 supervisory agencies with respect to the periodic
12 examination or other supervision of any office in Wyoming
13 of an out-of-state licensee, and the commissioner may
14 accept the parties' reports of examination and reports of
15 investigation in lieu of conducting his own examinations or
16 investigations.

17

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

1

2 (o) This section does not prohibit the commissioner
3 from disclosing to the public a list of persons licensed
4 under this act.

5

6 **40-25-114. Trust accounts.**

7

8 (a) Each licensee shall maintain a trust account for
9 the benefit of its clients which shall contain at all times
10 sufficient funds to pay all sums due or owed to clients.
11 The trust account shall be maintained in a financial
12 institution which is insured by the federal deposit
13 insurance corporation or the national credit union
14 administration, until disbursed to the creditor. The trust
15 account shall be clearly designated as a trust account,
16 shall be noninterest bearing and shall be used only to pay
17 the sums due or owed to clients and not as an operating
18 account.

19

20 (b) A deposit of all funds received to a trust
21 account followed by a transfer of the agency share of the
22 collection to an operating account is not a violation of
23 this act.

1

2 **40-25-115. Prohibited practices.**

3

4 (a) No licensee or person required to have a license
5 shall:

6

7 (i) Use any collection letter, demand or notice
8 that simulates a legal process or purports to be from any
9 local, city, county, state or government authority or
10 attorney;

11

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

13

14 (iii) Refuse or fail to comply with a rule
15 adopted pursuant to this act or any lawful order of the
16 commissioner;

17

18 (iv) Aid or abet any person operating or
19 attempting to operate in violation of this act, except that
20 nothing in this act shall prevent any licensed collection
21 agency from accepting, as forwarded, claims for collection
22 from any collection agency or attorney whose place of
23 business is outside Wyoming;

1

2 (v) Render or advertise that it will render
3 legal services, unless the licensee is a lawyer, except
4 that a licensee may solicit claims for collection and take
5 assignments and pursue the collection thereof subject to
6 the provisions of law concerning the unauthorized practice
7 of law;

8

9 (vi) Falsify any information or make any
10 misleading statements in any application authorized under
11 this act; or

12

13 (vii) Violate any provisions of the federal Fair Debt
14 Collection Practices Act.

15

16 **40-25-116. License suspension or revocation.**

17

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

20

21 (i) Any fact or condition exists that, if it had
22 existed at the time when the licensee applied for its

1 license, would have been grounds for denying the
2 application;

3

4 (ii) The licensee violated any provision of this
5 act or any rule or order validly promulgated by the
6 commissioner;

7

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

10

11 (iv) The licensee refuses to permit the
12 commissioner to make any examination authorized by this
13 act;

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

16

17 (vi) The competence, experience, character or
18 general fitness of the licensee indicates that it is not in
19 the public interest to permit the licensee to continue to
20 conduct business;

21

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

1

2 (viii) The licensee or any partner, officer,
3 director or manager of the licensee has been convicted of
4 any felony or convicted of a misdemeanor involving any
5 aspect of the debt collection business, breach of trust, or
6 fraudulent or dishonest dealing;

7

8 (ix) The licensee or any partner, officer,
9 director or manager of the licensee has had a license
10 substantially equivalent to a license under this act, and
11 issued by another state, denied, revoked or suspended under
12 the laws of that state;

13

14 (x) The licensee has filed an application for a
15 license which as of the date the license was issued, or as
16 of the date of an order denying, suspending or revoking a
17 license, was incomplete in any material respect or
18 contained any statement that was, in light of the
19 circumstances under which it was made, false or misleading
20 with respect to any material fact.

21

22 (b) Notwithstanding any provision of the Wyoming
23 Administrative Procedure Act, if the commissioner finds

1 that probable cause for revocation of a license exists and
2 that enforcement of this act and the public interest
3 require immediate suspension of the license pending
4 investigation, he may, after a hearing upon five (5) days
5 written notice, enter an order suspending the license for
6 not more than thirty (30) days.

7

8 (c) The commissioner may, in his discretion,
9 reinstate a license, terminate a suspension or grant a new
10 license to a person whose license has been revoked or
11 suspended if no fact or condition then exists which clearly
12 would justify the commissioner in refusing to grant a
13 license.

14

15 **40-25-117. Orders to cease and desist.**

16

17 (a) If the commissioner determines that a violation
18 of this act or of a rule adopted or an order issued under
19 this act, by a licensee, is likely to cause immediate and
20 irreparable harm to the licensee, its customers or the
21 public as a result of the violation or cause insolvency of
22 the licensee, the commissioner may issue an order requiring

1 the licensee to cease and desist from the violation. The
2 order becomes effective upon service upon the licensee.

3

4 (b) If the commissioner determines that a person is
5 conducting debt collection activities governed under this
6 act without a valid license, the commissioner may issue an
7 order requiring the unlicensed person to cease and desist
8 from debt collection. The order becomes effective upon
9 service upon the unlicensed person.

10

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

22

1 (i) A statement of the grounds for issuing the
2 proposed order, including a citation to the statute or rule
3 involved;

4

5 (ii) A statement of the facts in support of the
6 allegations;

7

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

10

11 (d) In an emergency, the commissioner may petition
12 the district court for the issuance of a temporary
13 restraining order.

14

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

17

18 (f) An order to cease and desist remains effective
19 and enforceable pending the completion of an administrative
20 proceeding pursuant to the Wyoming Administrative Procedure
21 Act.

22

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

7

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

11

12 **40-25-118. Consent orders.**

13

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

23

1 **40-25-119. Civil penalties.**

2

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

12

13 **40-25-120. Criminal penalties.**

14

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

22

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

6

7 **40-25-121. Hearings.**

8

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

14

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

17

18 **Section 3.**

19

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

22

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

1

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

6

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

11

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

17

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

21

22 (iv) Current members of the collection agency
23 board as of the effective date of this act shall continue

1 to serve on the collection agency board through their
2 respective current term unless removed by the governor as
3 provided in W.S. 9-1-202.

4

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

10

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

12

13

(END)