

Arkansas Fair Debt Collection Practices Act

Arkansas Fair Debt Collection Statute

Arkansas Fair Debt Collection Practices Act § 17-24-101. Collection agency, defined

As used in this chapter, unless the context otherwise requires, "collection agency" means any person who works with or employs one (1) or more other persons, or any partnership, corporation, or association which engages in the collection of delinquent accounts, bills, or other forms of indebtedness, or any person, partnership, corporation, or association using a fictitious name or any name other than their own in the collection of their own accounts receivable, or any person, partnership, corporation, or association which solicits claims for collection.

Arkansas Fair Debt Collection Practices Act § 17-24-102. Exemptions

(a) The provisions of this chapter shall not be applicable to:

- (1) Regular employees of a single creditor;
- (2) Banks;
- (3) Trust companies;
- (4) Savings and loan associations;
- (5) Abstract companies doing an escrow business;
- (6) Licensed real estate brokers and agents when the claims or accounts being handled by the broker or agent are related to or in connection with the broker's or agent's regular real estate business;
- (7) Express and telegraph companies subject to public regulation and supervision;
- (8) Attorneys at law handling claims and collections in their own names and not operating a collection agency under the management of a layman or under names other than their own;
- (9) Persons, firms, corporations, or associations handling claims, accounts, or collections under an order of any court. However, child support collection agencies not operating pursuant to Title IV-D of the Social Security Act [FN1] are not exempt from this chapter and shall be subject to licensure; and

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

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

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

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

Arkansas Fair Debt Collection Practices Act § 17-24-103. Fines and penalties

(a) Any person, partnership, corporation, or association which engages in the business activities of a collection agency without a valid license issued pursuant to this chapter and any person, partnership, corporation, or association who shall violate any provision of this chapter shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500). Each day of the violation shall constitute a separate offense.

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

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

Arkansas Fair Debt Collection Practices Act § 17-24-104. Funds not remitted; punishment

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

(b) In instances where a collection agency has failed to remit funds collected to its client within the calendar month following the month of collection, if the collection agency does

not remit the total funds collected for the client to the client within sixty-one (61) days of the date of collection, the collection agency's license shall be subject to suspension or revocation by the State Board of Collection Agencies.

Arkansas Fair Debt Collection Practices Act § 17-24-105. Injunctions

When any person, partnership, corporation, or association engages in the business activities of a collection agency without a valid license issued pursuant to this chapter or has had the license revoked, suspended, or refused, in accordance with the provisions of this subchapter, the State Board of Collection Agencies shall have the right to petition the circuit court in the jurisdiction in which the collection activity has occurred and, upon affidavit, secure a writ of injunction, without bond, restraining and prohibiting the person, partnership, corporation, or association from operating the collection agency.

Arkansas Fair Debt Collection Practices Act § 17-24-201. Creation--Members

(a)(1) There is created a State Board of Collection Agencies composed of five (5) members to be appointed by the Governor.

(2) The members shall serve three-year terms without compensation except they may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

(b)(1)(A)(i) One (1) member shall be selected by the Governor from a list of three (3) names furnished him or her by the Associated Credit Bureaus of Arkansas and another shall be selected from a list of three (3) names submitted by the Arkansas members of the American Collectors Association.

(ii) The persons whose names are submitted to the Governor by the Associated Credit Bureaus of Arkansas and the Arkansas members of the American Collectors Association shall all be actively engaged as the owners or managers of a collection agency or someone employed by collection agencies in an executive capacity.

(B) All nominees on the list submitted to the Governor shall be individuals who have been actively engaged in connection with the operation of a collection agency for five (5) years next preceding their appointment.

(2) One (1) member, who shall not be a member of either such association, shall be selected from the public at large.

(3)(A) One (1) member shall represent the elderly and shall be sixty (60) years of age or older.

(B) This member shall not be actively engaged in or retired from the

operation of a collection agency.

(C) He or she shall be selected from the state at large subject to confirmation by the Senate and shall be a full voting member but shall not participate in the grading of examinations.

(4)(A) One (1) member shall be selected to represent the check-cashing industry.

(B) He or she shall be an Arkansas resident who is actively engaged as the owner or manager of a check-cashing operation licensed to do business in the State of Arkansas.

Arkansas Fair Debt Collection Practices Act § 17-24-202. Organization, meetings and quorum

(a)(1) The State Board of Collection Agencies shall meet and shall select from its membership a chair, vice chair, and secretary.

(2) No one (1) member of the board shall hold more than one (1) of the offices.

(b) Meetings of the board shall be held upon the written call of the chairman of the board or upon the written request of two (2) members of the board.

(c) A majority of the board shall constitute a quorum.

Arkansas Fair Debt Collection Practices Act § 17-24-203. Rules and regulations; promulgation; interpretation and application

(a) The State Board of Collection Agencies shall have the authority to promulgate rules and regulations to implement the provisions of this chapter which are not inconsistent herewith.

(b) The board shall use, to the greatest extent possible, the interpretation and construction of the Fair Debt Collection Practices Act [FN1] and any other applicable portions of the debt collection laws of the United States in interpreting and applying this chapter and the rules and regulations promulgated by the board.

Arkansas Fair Debt Collection Practices Act § 17-24-301. Requirement

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

Arkansas Fair Debt Collection Practices Act § 17-24-302. Licensing qualifications

(a) The State Board of Collection Agencies shall have the authority to issue a license to an applicant for a license to do business as a collection agency, provided that the applicant meets the following qualifications:

- (1) The applicant is at least twenty-one (21) years of age;
- (2) If a partnership, the names of the partners, their ages, sex, and their business address are provided, and the members of the partnership are at least twenty-one (21) years of age; and
- (3) The proposed managers of a corporation or the owners of not less than fifty percent (50%) of the stock of the corporation are at least twenty-one (21) years of age.

(b) No sheriff, deputy sheriff, constable, deputy constable, state police officer, or other law enforcement officer shall be licensed in any manner to engage in the business of operating a collection agency or acting as a collector for a collection agency.

Arkansas Fair Debt Collection Practices Act § 17-24-303. Application requirement

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

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

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

Arkansas Fair Debt Collection Practices Act § 17-24-304. Expiration date; renewal

(a) All collection agency licenses and collection agency employee licenses shall expire annually on June 30.

(b) All licensees under this chapter shall apply for the renewal of their licenses, on forms to be prescribed by the State Board of Collection Agencies, on or before July 1 of the fiscal year for which the licenses are sought.

(c) The board shall have the authority to require that the licensee's manager certify in writing that the requirement in § 17-24-310 has been met as a condition for renewal of the agency license.

Arkansas Fair Debt Collection Practices Act § 17-24-305. Fees--Disposition

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

(b) All income from fees imposed under this section shall be distributed as follows:

(1)(A) Beginning July 1, 2006, and each July 1 thereafter, the first one hundred fifteen thousand dollars (\$115,000) in fees received by the board shall be remitted in one (1) payment by the board to the Treasurer of State for the Department of Human Services--Division of Medical Services and deposited into a paying account as determined by the Chief Fiscal Officer of the State to be used in accordance with § 20-10-705.

(B) The funds remaining after the distribution in subdivision (b)(1)(A) of this section for the fiscal year ending June 30, 2007, and funds each July 1 thereafter received by the board in an amount not to exceed six hundred thousand dollars (\$600,000) each fiscal year shall be remitted by the board to the University of Arkansas for Medical Sciences for deposit into a financial institution in accordance with the policies of the University of Arkansas. The funds shall be expended for the College of Pharmacy and the College of Nursing in accordance with § 6-64-417.

(C) The funds remaining after the distributions in subdivisions (b)(1)(A) and (B) of this section for the fiscal year ending June 30, 2007, and funds received by the board each July 1 thereafter in an amount not to exceed two hundred fifty thousand dollars (\$250,000) each fiscal year shall be remitted by the board to Arkansas State University--Mountain Home for deposit into the Arkansas State University--Mountain Home Fund. The funds shall be expended exclusively for the Arkansas State University--Mountain Home Practical Nurse Program.

(D) Funds remaining after the distributions in subdivisions (b)(1)(A)-(C) of this section shall be deposited to the State Board of Collection Agencies account in some bank authorized to do business in this state.

Arkansas Fair Debt Collection Practices Act § 17-24-306. Bond

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

certificate of deposit, or cash bond.

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

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

(d) This bond shall be made payable to the State Board of Collection Agencies.

(e)(1) The board may promulgate regulations under which it can disburse bond funds to claimants.

(2) If the bonds are insufficient to satisfy all legitimate claims the board shall distribute the funds pro rata among the claimants. In the discretion of the board, it may require the sureties to deal directly with the claimants pursuant to regulations promulgated by the board.

Arkansas Fair Debt Collection Practices Act § 17-24-307. Revocation, suspension; etc.; grounds

The State Board of Collection Agencies shall have the authority to revoke, suspend, or refuse to issue a license for violation of this chapter, or upon receipt of evidence as follows:

- (1) False or misrepresented statements on application;
- (2) Sale or transfer of ownership of agency;
- (3) Conviction of any crime involving moral turpitude;
- (4) Aiding or abetting any unlicensed person to engage in business as a collection agency;
- (5) Publishing or posting, or causing to be published or posted, any list of debtors, commonly known as "deadbeat" lists;
- (6) Collecting or attempting to collect by the use of any methods contrary to the postal laws and regulations of the United States;
- (7) Having in his or her possession or making use of any badge, using a uniform of any law enforcement agency or any simulation thereof, or making any statements which might be construed as indicating an official connection with any federal, state, county, or city law enforcement agency, or any other

governmental agency, while engaged in collection agency business;

(8) Distributing any printed matter which is made to be similar or to resemble government forms or documents, or legal forms used in civil or criminal proceedings;

(9) Advertising for sale or threatening to advertise for sale any claim as a means of endeavoring to enforce payment thereof, or agreeing to do so for the purpose of soliciting claims, except where the licensee has acquired claims as an assignee for the benefit of creditors or where the licensee is acting under the order of a court of competent jurisdiction;

(10) Engaging in any unethical practices or resorting to any illegal means or methods of collection;

(11) Using profanity, obscenity, or vulgarity while engaged in the collection of claims;

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

(13) Using violence or threats of physical violence while engaged in the collection of claims.

Arkansas Fair Debt Collection Practices Act § 17-24-308. Revocation, suspension, or refusal--Procedure

(a)(1) Upon the receipt of evidence of any violation, the State Board of Collection Agencies shall order a hearing to be held.

(2) All interested parties shall be apprised, at least twenty (20) days prior to the hearing, as to the time and place of the hearing.

(3) The board shall have authority to summon and examine witnesses, gather information by affidavit and deposition, and subpoena those business records pertinent to the charges, as to any alleged violator.

(4) Revocation, suspension, or refusal to issue shall be by order of the board.

(b) Any party to the proceeding shall have the right to appeal from the order of the board to the Circuit Court of Pulaski County which shall try the case. The appeal may be taken by filing a petition with the clerk of the court within thirty (30) days of the date of the decision of the board. The decision of the circuit court shall be appealable to the Arkansas Supreme Court in the same manner as civil cases are appealed.

(c) In the event that the holder of a license shall fail to secure a renewal thereof, or in the

event of the suspension or revocation of the license by the board, and in the event that an appeal is taken to the courts as provided in this section, the holder of the license shall be allowed, during the period of the appeal, to operate the business of a collection agency as though no such action had been taken by the board.

Arkansas Fair Debt Collection Practices Act § 17-24-309. Limitations on collection charges

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

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

Arkansas Fair Debt Collection Practices Act § 17-24-310. Collection agency notice requirement

(a) Each collection agency required to be licensed under this chapter shall, annually, within the month of April, give written notice to each client for whom it is collecting or attempting to collect that collection agencies licensed by the State of Arkansas are required by law to remit collected funds to the clients within the calendar month following the month of collection.

(b) No such notice is required to a forwarder who is also a licensee of the State of Arkansas.

Arkansas Fair Debt Collection Practices Act § 17-24-401. "Long arm" jurisdiction

Any nonresident person, partnership, association, or any foreign corporation not authorized to do business in this state whose sole business contact with this state is the soliciting of accounts in this state by mail, telephone, telegraph, or by other like means originating outside this state, or the taking or accepting for collection of any account or accounts in this state by such means, shall by such acts:

(1) Subject himself or herself to the jurisdiction of the proper courts of this state under the procedure provided in §§ 17-24-403 and 17-24-404 on any cause of action arising out of or connected with the collection of any such account or accounts;

(2) Be deemed to have consented to comply with the maximum collection charges or fees provided in § 17-24-309; and

(3) Be deemed to have consented to and designated the Secretary of State to be the true and lawful attorney of the person, partnership, association, or corporation upon whom may be

served all legal process in any action, suit, or proceeding in any court by any resident of this state arising out of or connected with the collection of any such account or accounts. Such acts shall be signification of its agreement that any legal process in any court action or suit so served shall be of the same legal force and validity as personal service of process in this state upon the person, partnership, association, or corporation. Service of process shall be made upon the Secretary of State pursuant to § 17-24-403.

Arkansas Fair Debt Collection Practices Act § 17-24-402. Permitted motions

Nothing contained in § 17-24-404 shall be construed to prevent a nonresident person, partnership, association, or any foreign corporation upon whom service of process is had as provided in § 17-24-403 from filing a motion to quash a writ or to set aside service made as provided in § 17-24-403 on the grounds that the person, partnership, association, or foreign corporation has not done or committed any of the acts in this state which give rise to such service of process.

Arkansas Fair Debt Collection Practices Act § 17-24-403. Service of process

(a) Service of process in the action, suit, or proceeding in any court as authorized by § 17-24-401(3) shall be made by leaving three (3) copies in the office of the Secretary of State along with a notification that service is being effected pursuant to § 17-24-401, and by paying the Secretary of State the sum of twenty-five dollars (\$25.00). A certificate by the Secretary of State showing service and attached to the copy of the process presented to him or her for that purpose shall be sufficient evidence of the service. Service upon the Secretary of State as attorney shall be service upon the principal.

(b) The Secretary of State shall immediately mail one (1) copy of the court process to the defendant in the court proceeding by first class mail at the defendant's last known principal place of business, and shall keep a record of all process which shall show the day and hour of receipt. The Secretary of State shall file an affidavit showing compliance with this section in the court proceedings on or before the date the defendant is required to appear or respond, unless an extension of time is allowed by the court.

(c) No plaintiff or complainant shall be entitled to a judgment or determination by default in any court proceeding in which process is served under this section until the expiration of forty-five (45) days from the date of filing of the affidavit of compliance.

(d) Nothing contained in this section shall limit or abridge the right to serve any process, notice, order, pleading, or demand upon any person, partnership, association, or corporation in any other manner now or hereafter permitted by law.

Arkansas Fair Debt Collection Practices Act § 17-24-404. Filing defense pleading; requirement

(a) Before any nonresident person, partnership, association, or any foreign corporation upon whom service of process is had as provided by § 17-24-403 files or causes to be filed any pleading in any court action, suit, or proceeding instituted against a person, partnership, association, or corporation, he or she or it shall deposit with the clerk of the court in which the action, suit, or proceeding is pending cash or securities or bond with good and sufficient

sureties to be approved by the court, in an amount to be fixed by the court sufficient to secure the payment of any final judgment which may be rendered in the court proceeding.

(b) The court may in its discretion make an order dispensing with the deposit or bond where the person, partnership, association, or corporation makes a showing satisfactory to the court that it maintains in the State of Arkansas funds or securities, in trust or otherwise, sufficient and available to satisfy any final judgment which may be entered in the court action, suit, or proceeding.

(c) In any action, suit, or proceeding in which service is made as provided in § 17-24-403, the court, in its discretion, may order any postponement as may be necessary to afford the defendant reasonable opportunity to comply with subsection (a) of this section and to defend any court action.