

**DRAFT ONLY  
NOT APPROVED FOR  
INTRODUCTION**

SENATE FILE NO. \_\_\_\_\_

Collections 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 collections 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 2 through 33-11-113 and 33-11-115 are repealed and recreated  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) "Business debt" means the obligation  
 21 arising from a credit transaction between business or  
 22 commercial enterprises for goods or services used or to be

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

3

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

7

8 (iv) "Commissioner" means the Wyoming banking  
9 commissioner;

10

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

14

15 (vi) "Consumer" means any natural person  
16 obligated or allegedly obligated to pay any debt;

17

18 (vii) "Control" means owning twenty-five percent  
19 (25%) or more of the voting shares of the licensee or  
20 having the power to direct the licensee's management or  
21 policies;

22

1           (viii) "Credit card servicing company" means a  
2 company that prior to default, performs the contractual  
3 duties in the administration of credit card debt such as  
4 collecting payments;

5  
6           (ix) "Creditor" means any person who offers or  
7 extends credit creating a debt or to whom a debt is owed.  
8 "Creditor" shall not include any person to the extent that  
9 the person receives an assignment or transfer of a debt in  
10 default solely for the purpose of facilitating collection  
11 of the debt for another;

12  
13           (x) "Debt" means any obligation or alleged  
14 obligation of a consumer to pay money arising out of a  
15 transaction in which the money, property, insurance or  
16 services which are the subject of the transaction are  
17 primarily for personal, family or household purposes,  
18 whether or not the obligation has been reduced to judgment;

19  
20           (xi) "Debt collection" means:

21  
22           (A) Engaging in a business whose principal  
23 purpose is the collection of debts of others;

1

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

5

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

8

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

12

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

15

16                   (xii) "Debt collector" means any person who uses  
17 any instrumentality of interstate commerce or the mails in  
18 any business the principal purpose of which is the  
19 collection of any debts, or who regularly collects or  
20 attempts to collect, directly or indirectly, debts owed or  
21 asserted to be owed or due another;

22

1           (xiii) "Division" means the division of banking  
2 within the Wyoming department of audit;

3

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

6

7           (xv) "Licensee" means a person licensed under  
8 this act;

9

10           (xvi) "Mortgage servicing company" means a  
11 company, that prior to default, performs the contractual  
12 duties in the administration of mortgage loans such as  
13 collecting payments;

14

15           (xvii) "Person" means an individual, sole  
16 proprietorship, partnership, corporation, limited liability  
17 company or other entity, public or private;

18

19           (xviii) "This act" means W.S. 40-25-101 through  
20 40-25-120.

21 **[Staff Note:**

22 **New definitions:** applicant, commissioner, control, credit  
23 card servicing company, debt collection, division, Fair  
24 Debt Collection Practices Act, licensee, mortgage servicing  
25 company and person.

1 **Deleted definitions:** board, location information,  
2 revocation, solicitor and suspension.]  
3

4 **40-25-103. Powers and duties of commissioner.**

5  
6 (a) In addition to any other powers and duties  
7 imposed upon the commissioner by law, the commissioner  
8 shall:

9  
10 (i) Perform any and all acts necessary to  
11 promulgate, administer and enforce the provisions of this  
12 act and any rules, regulations, orders, limitations,  
13 standards, requirements or licenses issued under this act,  
14 and to exercise all incidental powers as necessary to carry  
15 out the purposes of this act;

16  
17 (ii) Order any licensee to cease any activity or  
18 practice which the commissioner deems to be deceptive,  
19 dishonest, a violation of state or federal laws or  
20 regulations or unduly harmful to the interests of the  
21 public;

22

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

4  
5           (iv) Conduct examinations of the books and  
6 records of licensees and conduct investigations as  
7 necessary and proper for the enforcement of the provisions  
8 of this act and the rules promulgated under the authority  
9 of this act;

10  
11           (v) Issue orders that are necessary to execute,  
12 enforce and effectuate the purposes of this act;

13  
14           (vi) Require that all application, renewal,  
15 licensing, examination and all other fees included under  
16 this act, except the amount paid for data processing by a  
17 nationwide licensing system and database, shall be  
18 deposited by the commissioner with the state treasurer into  
19 the financial institutions administration account within  
20 the earmarked revenue fund;

21  
22           (vii) Require a background investigation  
23 including fingerprint checks for state and national

1 criminal history record checks as necessary. The  
2 commissioner may utilize background checks completed by the  
3 division of criminal investigation, other government  
4 agencies in Wyoming or in other states, the federal bureau  
5 of investigation or a nationwide licensing system;

6

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

13

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

16

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

21

22 (xi) Require the collection agency to reimburse  
23 the creditor for any amounts not paid as expressly

1 authorized by the agreement between the collection agency  
2 and the creditor.

3 **[Staff Note: From 33-11-105 - Powers and duties of**  
4 **collection agency board and similar to W.S. 40-23-103 -**  
5 **Powers and duties of commissioner.]**  
6

7 **40-25-104. License requirements.**

8  
9 (a) With the exception of those persons exempt  
10 pursuant to W.S. 40-25-105, no person shall engage in debt  
11 collection without first obtaining a collection agency  
12 license in accordance with this act.

13

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

16

17 (i) Within Wyoming;

18

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

21

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

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

3

4 **40-25-105. Exemptions from license requirements.**

5

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

7

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

11

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

19

20 (iii) Any officer or employee of the United  
21 States or any state to the extent that collecting or  
22 attempting to collect any debt is in the performance of his  
23 official duties;

24

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

4

5           (v) Any nonprofit organization which, at the  
6 request of consumers, performs bona fide consumer credit  
7 counseling and assists consumers in the liquidation of  
8 their debts by receiving payments from the consumers and  
9 distributing the amounts to creditors;

10

11           (vi) Any person collecting or attempting to  
12 collect any debt owed or due or asserted to be owed or due  
13 another to the extent the activity:

14

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

17

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

20

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

23

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

4

5 (vii) Any person whose business is a credit card  
6 servicing company;

7

8 (viii) Any person whose business is a mortgage  
9 servicing company;

10

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

13

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

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

19

20 **40-25-106. Application for license to do business as**  
21 **a collection agency.**

22

23 (a) The commissioner shall receive and act on all  
24 applications for licenses to do business as a collection

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

13

14 (b) An application for license may be granted if the  
15 commissioner finds:

16

17 (i) The financial responsibility and experience,  
18 character and fitness of the license applicant, of the  
19 owners or persons in charge of the applicant and  
20 individuals designated in charge of the applicant's places  
21 of business, are such as to warrant belief that the  
22 business will be operated honestly and fairly within the  
23 purposes of this act;

1

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

9

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

14

15 (iv) The applicant has not been the subject of  
16 any administrative action or enforcement proceeding by any  
17 state or federal government agency involving the revocation  
18 of any license or authority substantially equivalent to a  
19 license under this act;

20

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

1

2 (vi) The applicant has provided information on  
3 the application as required by the commissioner pursuant to  
4 subsection (a) of this section.

5

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

10

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

14

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

17

18 (ii) The commissioner has not issued a license  
19 within sixty (60) days after a complete application for the  
20 license was filed.

21

22 (e) Notwithstanding any provision under the Wyoming  
23 Administrative Procedure Act, a request for hearing shall

1 not be made more than fifteen (15) days after the applicant  
2 has received notification by certified mail that the  
3 application has been denied and stating in substance the  
4 commissioner's finding supporting denial of the application  
5 or that objections have been filed and the substance  
6 thereof.

7

8 (f) If a hearing is held, the applicant and those  
9 filing objections shall reimburse, pro rata, the  
10 commissioner for his reasonable and necessary expenses  
11 incurred as a result of the hearing.

12

13 (g) Every licensee shall license and maintain a home  
14 office as a principal location for the transaction of debt  
15 collection business. A separate license shall be required  
16 for each place of business from which debt collection  
17 activities are directly or indirectly conducted. The  
18 commissioner may issue additional branch licenses to the  
19 same applicant upon compliance with all the provisions of  
20 this act governing the issuance of a single license. Each  
21 license shall remain in full force and effect unless the  
22 licensee does not satisfy the renewal requirements of W.S.  
23 40-25-108, or the license is relinquished, suspended or

1 revoked. All branch licenses shall be terminated upon the  
2 relinquishment or revocation of a home office license.

3

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

6

7 (j) No licensee shall change the location of any  
8 place of business, consolidate two (2) or more locations,  
9 open a new location or close any location, without giving  
10 the commissioner prior written notice and paying a license  
11 modification fee not to exceed one hundred dollars  
12 (\$100.00) as set by rule of the commissioner pursuant to  
13 W.S. 40-25-109(a).

14

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

18

19 (m) The commissioner may suspend action upon a  
20 license application pending resolution of any criminal  
21 charges, before any court of competent jurisdiction,  
22 against an applicant that would disqualify that applicant  
23 if convicted.

1 **[Staff Note: From 33-11-107 - Application for license;**  
2 **qualifications; financial statement and similar to**  
3 **40-23-107 - Application for license to do business as a**  
4 **mortgage lender or mortgage broker.]**  
5

6 **40-25-107. Change in control of a licensee.**

7  
8 (a) A licensee shall give the commissioner written  
9 notice of a proposed change of control of a licensee within  
10 fifteen (15) business days after learning of the proposed  
11 change of control.  
12

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

21 (c) The licensee shall reapply and submit the  
22 required fees, not to exceed one thousand dollars  
23 (\$1,000.00) for a home office location and an amount not to  
24 exceed one hundred dollars (\$100.00) for each additional  
25 branch location upon a change in the control of the

1 licensee as determined by the commissioner pursuant to W.S.  
2 40-25-109(a). The license is not transferable nor  
3 assignable to the new persons in control of the licensee.  
4

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

15 **[Staff Note: This provision is similar to 40-23-108-**  
16 **Change in control of a licensee.]**  
17

18 **40-25-108. License renewal and annual report.**  
19

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

1 location and an amount not to exceed one hundred dollars  
2 (\$100.00) for each additional branch location, as set by  
3 the commissioner pursuant to W.S. 40-25-109(a).

4  
5 (b) The renewal fee shall be accompanied by a report,  
6 in a form prescribed by the commissioner.

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

10  
11 **40-25-109. Fees.**

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

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

22  
23 (ii) Fees shall be established in an amount to  
24 ensure that, to the extent practicable, the total revenue  
25 generated from the fees collected approximates, but does

1 not exceed, the direct and indirect costs of administering  
2 the regulatory provisions required for collection agencies  
3 under this act;

4

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

7

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

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

17

18 **40-25-110. Surety bonds.**

19

20 (a) All licensees shall maintain a surety bond to the  
21 state of Wyoming in accordance with this section. The bond  
22 to be maintained shall be in the amount of twenty-five  
23 thousand dollars (\$25,000.00). This amount shall be

1 increased by an additional sum of five thousand dollars  
2 (\$5,000.00) for each licensed office. The bond shall be a  
3 continuing obligation of the issuing surety. The surety's  
4 liability under the bond for any claims made under the bond  
5 either individually or in the aggregate shall in no event  
6 exceed the face amount of the bond issued. The bond shall  
7 be issued by a surety authorized to do business in the  
8 state of Wyoming. The bond, including any and all riders  
9 and endorsements executed subsequent to the effective date  
10 of the bond, shall be placed on file with the commissioner.

11

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

21

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

8

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

14

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

22

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

13 **[Staff Note: From 33-11-108 - Bond required for license;**  
14 **terms, conditions and execution; amount; notice to surety;**  
15 **new bond; from 33-11-109 - Bond of agency; limitation of**  
16 **actions and similar to 40-23-110 Surety bonds.]**  
17

18           **40-25-111. Examinations and investigations.**  
19

20           (a) The commissioner may conduct examinations of any  
21 licensee under this act at intervals he deems necessary to  
22 determine compliance with this act and other applicable  
23 laws, rules and regulations.  
24

1           (b) The commissioner may at any time investigate the  
2 business books and records of any licensee or person  
3 engaged in debt collection activities for the purpose of  
4 determining compliance with this act or securing  
5 information required under this act. For these purposes,  
6 the commissioner shall have free and reasonable access to  
7 the offices, places of business, books and records of the  
8 licensee.

9

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

20

21           (d) Each licensee or person subject to examination or  
22 investigation under this act shall pay to the commissioner  
23 an amount assessed by the commissioner to cover the direct

1 and indirect cost of examinations or investigations  
2 conducted pursuant to this section not to exceed one  
3 hundred dollars (\$100.00) per hour.

4 **[Staff Note: From 33-11-112 - Action upon complaints;**  
5 **records of proceedings; and similar to 40-23-111 -**  
6 **Examinations and investigations.]**  
7

8 **40-25-112. Records; confidentiality of records;**  
9 **cooperative agreements.**

10

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

21

22 (b) Every licensee shall keep a record of each  
23 collection account, including but not limited to all  
24 collections and all disbursements made by the licensee, for

1 a period of two (2) years from the date of last entry in  
2 each collection account.

3

4 (c) The records of a licensee may be maintained  
5 electronically provided they can be reproduced in writing  
6 upon request of the commissioner.

7

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

13

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

18

19 (f) Except as provided in P.L. 110-289, section 1512,  
20 the requirements under any federal law or state law  
21 regarding the privacy or confidentiality of any information  
22 or material provided to any national registry, and any  
23 privilege arising under federal or state law, including the

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

11

12 (g) Information or material that is subject to a  
13 privilege or confidentiality under subsection (f) of this  
14 section shall not be subject to:

15

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

20

21 (ii) Subpoena, discovery or admission into  
22 evidence, in any private civil action or administrative  
23 process, unless with respect to any privilege held by the

1 registry with respect to the information or material, the  
2 person to whom the information or material pertains waives  
3 that privilege, in whole or in part.  
4

5 (h) Any Wyoming law relating to the disclosure of  
6 confidential supervisory information or any information or  
7 material described in subsection (f) of this section that  
8 is inconsistent with subsection (f) of this section shall  
9 be superceded by the requirements of this section.  
10

11 (j) This section shall not apply with respect to the  
12 information or material relating to the employment history  
13 of, and publicly adjudicated disciplinary and enforcement  
14 actions against, any collection agency that is included in  
15 the registry for access by the public.  
16

17 (k) The commissioner may disclose confidential  
18 information to collection supervising agencies in other  
19 states or to federal regulatory authorities or to  
20 appropriate prosecuting attorneys.  
21

22 (m) The commissioner may enter into cooperative,  
23 coordinating or information sharing agreements with any

1 other collection supervisory agency or any organization  
2 affiliated with or representing one (1) or more collection  
3 supervisory agencies with respect to the periodic  
4 examination or other supervision of any office in Wyoming  
5 of an out-of-state licensee, and the commissioner may  
6 accept the parties' reports of examination and reports of  
7 investigation in lieu of conducting his own examinations or  
8 investigations.

9

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

16

17 (o) This section does not prohibit the commissioner  
18 from disclosing to the public a list of persons licensed  
19 under this act.

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

23

24 **40-25-113. Trust accounts.**

25

1           (a) Each licensee shall maintain a trust account for  
2 the benefit of its clients which shall contain at all times  
3 sufficient funds to pay all sums due or owed to clients.  
4 The trust account shall be maintained in a financial  
5 institution which is insured by the federal deposit  
6 insurance corporation or the national credit union  
7 administration, until disbursed to the creditor. The trust  
8 account shall be clearly designated as a trust account and  
9 shall be used only to pay the sums due or owed to clients  
10 and not as an operating account.

11

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

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

18

19           **40-25-114. Prohibited practices.**

20

21           (a) No licensee or person required to have a license  
22 shall:

23

1           (i) Use any collection letter, demand or notice  
2 that simulates a legal process or purports to be from any  
3 local, city, county, state or government authority or  
4 attorney;

5

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

7

8           (iii) Refuse or fail to comply with a rule  
9 adopted pursuant to this act or any lawful order of the  
10 commissioner;

11

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

18

19           (v) Render or advertise that it will render legal  
20 services, unless the licensee is a lawyer, except that a  
21 licensee may solicit claims for collection and take  
22 assignments and pursue the collection thereof subject to the

1 provisions of law concerning the unauthorized practice of  
2 law;

3

4 (vi) Falsify any information or make any  
5 misleading statements in any application authorized under  
6 this act; or

7

8 (vii) Violate any provisions of the federal Fair  
9 Debt Collection Practices Act.

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

13

14 **40-25-115. License suspension or revocation.**

15

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

18

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

23

1           (ii) The licensee violated any provision of this  
2 act or any rule or order validly promulgated by the  
3 commissioner;

4  
5           (iii) The licensee is conducting its business in  
6 an unsafe or unsound manner;

7  
8           (iv) The licensee refuses to permit the  
9 commissioner to make any examination authorized by this  
10 act;

11  
12           (v) The licensee willfully fails to make any  
13 report required by this act;

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

19  
20           (vii) The bond of the licensee has been revoked,  
21 cancelled, expired or otherwise is not effective;

22

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

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

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

20  
21           (b) Notwithstanding any provision of the Wyoming  
22 Administrative Procedure Act, if the commissioner finds  
23 that probable cause for revocation of a license exists and

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

6

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

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

15

16 **40-25-116. Orders to cease and desist.**

17

18 (a) If the commissioner determines that a violation  
19 of this act or of a rule adopted or an order issued under  
20 this act by a licensee is likely to cause immediate and  
21 irreparable harm to the licensee, its customers or the  
22 public as a result of the violation or cause insolvency of  
23 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 **[Staff Note: This provision is similar to 40-23-119 -**  
12 **Orders to cease and desist.]**

13

14           **40-25-117. Consent orders.**

15

16 The commissioner may enter into a consent order at any time  
17 with a person to resolve a matter arising under this act.

18 A consent order shall be signed by the person to whom it is  
19 issued or by the person's authorized representative and  
20 shall indicate agreement with the terms contained in the  
21 order. A consent order may provide that it does not  
22 constitute an admission by a person that this act or a rule  
23 adopted or an order issued under this act has been  
24 violated.

1 **[Staff Note: This provision is similar to 40-23-120 -**  
2 **Consent orders.]**  
3

4 **40-25-118. Civil penalties.**

5  
6 (a) The commissioner may impose a civil penalty upon  
7 a person who violates this act or a rule adopted or an  
8 order issued under this act in an amount not to exceed five  
9 hundred dollars (\$500.00) per day for each day the  
10 violation is outstanding, plus the state's costs and  
11 expenses for the investigation and prosecution of the  
12 matter, including reasonable attorney's fees.

13

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

18 **[Staff Note: From 33-11-106 - Authority to make rules and**  
19 **regulations; violations; penalties and similar to 40-23-121**  
20 **- Civil penalties.]**  
21

22 **40-25-119. Criminal penalties.**

23

24 (a) A person who intentionally makes a false  
25 statement, misrepresentation or false certification in a  
26 record filed or required to be maintained under this act or

1 who intentionally makes a false entry or omits a material  
2 entry in the record is guilty of a felony, punishable by  
3 not less than three (3) years imprisonment or a fine of not  
4 less than ten thousand dollars (\$10,000.00), or both.

5  
6 (b) An individual who knowingly engages in any  
7 activity for which a license is required under this act,  
8 without being licensed under this act is guilty of a felony  
9 punishable by not less than three (3) years imprisonment or  
10 a fine of not less than ten thousand dollars (\$10,000.00),  
11 or both.

12  
13 (c) A person, except an individual, who knowingly  
14 engages in any activity for which a license is required  
15 under this act, without being licensed under this act is  
16 guilty of a misdemeanor punishable by a fine of not less  
17 than twenty-five thousand dollars (\$25,000.00).

18 **[Staff Note: This provision is similar to 40-23-122 -**  
19 **Criminal penalties.]**  
20

21 **40-25-120. Hearings.**

22  
23 Except as otherwise provided in W.S. 40-25-103(a)(x) and  
24 (xi), 40-25-107(c) and 40-25-108, the commissioner shall

1 not suspend or revoke a license, issue an order to cease  
2 and desist or assess a civil penalty without notice and an  
3 opportunity to be heard.

4 **[Staff Note: This provision is similar to 40-23-123 -**  
5 **Hearings.]**  
6

7 **Section 2.** W.S. 33-11-103, 33-11-104, 33-11-114 and  
8 33-11-116 are repealed.

9

10 **Section 3.**

11

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

14

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

17

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

21

22 (iii) All duties of the collection agency board  
23 with respect to collection agencies be transferred to the  
24 banking division of the department of audit. Effective

1 July 1, 2010, all duties of the collection agency board  
2 with respect to collection agencies not assumed by the  
3 banking division are terminated;

4

5 (iv) Any contract, agreement or obligation  
6 entered into or assumed by the collection agency board with  
7 respect to collection agencies, if the execution or  
8 assumption was within the lawful powers of the collection  
9 agency board, be assumed by the banking division;

10

11 (v) Any rule adopted by the collection agency  
12 board with respect to collection agencies remain in effect  
13 unaltered as rule of the banking division until amended or  
14 repealed by the banking division.

15

16 **Section 4.** There is transferred from the collection  
17 agency board to the banking division of the department of  
18 audit any appropriated or unexpended funds not otherwise  
19 obligated and any other property, if any, exclusively  
20 dedicated to collection agencies.

21

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

23

1

(END)