

ARKANSAS REGISTER

Transmittal Sheet

Use only for **FINAL** and **EMERGENCY RULES**



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For Office

Use Only:

Effective Date _____ Code Number _____

Name of Agency _____

Department _____

Contact _____ E-mail _____ Phone _____

Statutory Authority for Promulgating Rules _____

Rule Title: _____

Intended Effective Date

(Check One)

Date

☐

Emergency (ACA 25-15-204)

Legal Notice Published _____

☐

10 Days After Filing (ACA 25-15-204)

Final Date for Public Comment _____

☐

Other _____

(Must be more than 10 days after filing date.)

Reviewed by Legislative Council _____

Adopted by State Agency _____

Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)

Contact Person

E-mail Address

Date

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)



Signature

Phone Number

E-mail Address

Title

Date

**STATE OF ARKANSAS
DEPARTMENT OF LABOR AND LICENSING
STATE BOARD OF COLLECTION AGENCIES**

RULES
rev. 10/16/97
rev.12/09/2021

ARTICLE I – GENERAL

Section 1-1.DEFINITIONS

The following definitions shall apply:

“Act” means Arkansas Code Annotated §17-24-101 *et seq*, unless noted otherwise.

“Agency” means a collection agency as defined in the Act.

“Board” means the State Board of Collection Agencies.

“Collector” means any person who uses any instrumentality of interstate commerce, including but not limited to the mails or other mode of contact, in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. The terms “collector” and “debt collector” shall be used interchangeably.

“Licensee” means a collection agency duly licensed by the Board.

“Manager” means any person who regularly supervises the activities of other collectors and/or solicitors in an agency.

“Solicitor” means any person who, for compensation, undertakes to secure business for an agency.

“Rules” means any rule promulgated and duly enacted by the Board.

Section 1-2. ORGANIZATION

A. Meetings The Board established pursuant to the Act will generally meet quarterly, but may meet less often as necessary, or more often at the written call of the chair or written request of any two members. The Board shall not meet fewer than two times in a calendar year or state fiscal year. Meetings shall be conducted pursuant to the Arkansas Freedom of Information Act. A majority of the Board’s full membership shall constitute a quorum for conducting business and shall be required for the passage of any motion.

B. Officers The Board shall select a Chair, Vice-Chair, and Secretary at the last regular meeting of each calendar year. Officers' terms shall be for one calendar year, beginning on January 1. No member may hold more than one office concurrently.

C. Staff By Act 910 of 2019, the Board became a division of the Arkansas Department of Labor and Licensing. The Department shall, in consultation with the Board, designate a Director to provide executive support to the Board. The Director may hire additional administrative staff as necessary, subject to Department approval.

Section 1-3. VARIANCES

A. Procedural The Director may grant procedural variances from these rules in individual cases where he/she finds that:

1. The provision from which the variance is granted is not statutorily mandated; and
2. No party will be injured by granting the variance; and
3. The rule from which the variance is granted would not, in the particular case, be unreasonable or unnecessarily burdensome.

The Director shall notify the Board at its next meeting of the granting of such variances and the reasons therefore.

B. Substantive Proposed variances, waivers, or other exceptions to these Rules, not consistent the above description of a procedural variance, shall be deemed substantive. The Board may hear requests for substantive variances on a case-by-case basis pursuant to the Arkansas Administrative Procedure Act.

ARTICLE II – LICENSURE

Section 2-1. LICENSE REQUIREMENTS

A. Application All applications for licensure as a collection agency shall be submitted on forms provided by the Director, pursuant to the Act (Ark. Code Ann. §17-24-303(a)), along with:

1. The name and address of all officers of the collection Agency. The address shall be an actual street address and shall include the city, state and zip or postal code. A post office box number alone is not acceptable as an address.
2. A surety bond payable to the Board, pursuant to the Act (§17-24-306), in the amounts as set forth below:
 - a. Ten Thousand Dollars (\$10,000) for agencies with up to five (5) collectors;
 - b. Twenty Thousand Dollars (\$20,000) for agencies with six (6) to twelve (12) collectors;

- c. Twenty-Five Thousand Dollars (\$25,000) for agencies with more than twelve (12) collectors.
3. The required \$125.00 fee set forth in the Act (§17-24-305(a)).
4. Any other information as required by the Board.

B. Agency Managers Each licensee or applicant shall register with the Board at least one manager.

- 1.** The proposed manager(s) of each agency must have an acceptable credit reputation and must maintain said reputation after licensing. An agency shall provide the necessary information and authorization for the Board to obtain a credit report. A credit record which includes any of the following will be deemed unacceptable:

 - a.** Judgments, foreclosures, or tax liens within the past five (5) years.
 - b.** Accounts charged to profit and loss, unpaid claims for collection or repossessions within the last five (5) years.
 - c.** A payment history of accounts paid sixty (60) days late more than three (3) times within the past five (5) years.
 - d.** Other unfavorable economic or financial deficiency that may negatively affect future financial responsibility or invoke public welfare concerns.
- 2.** Pursuant to Ark. Code Ann. §17-1-108(c), the credit report requirement, above, may be waived if the agency holds a substantially similar license in another state or territory of the United States. Another US state or territory's license is substantially similar to Arkansas's if it requires familiarity with the federal Fair Debt Collection Practices Act. An agency seeking such a waiver shall:

 - a.** Provide the Board with evidence of such licensure in good standing; and
 - b.** Not have had a license revoked for an act of bad faith or a violation of law, rule, or ethics; and
 - c.** Not hold a suspended or probationary license in any US jurisdiction.

C. Additional Locations Collection agencies operating at more than one office or location must obtain and maintain a separate license and surety bond for each location.

D. Change of Ownership Licenses issued by the Board are not transferable. When 50% or more of the assets, stock or equity of a collection agency is transferred and/or sold, the agency shall promptly give written notice to the Board.

E. Registration of Employees Licensees shall report to the Board the names, aliases, and dates of hire of all employees involved in debt collection activities, including collectors, solicitors, and managers, and remit the \$20.00 registration fee for each, as set forth in the Act (§17-24-305(a)), within ninety (90) days of such hires.

1. An agency shall maintain a listing of all pseudonyms (aliases) used by an office or employee of the collection agency in relation to collection activities. This listing shall be submitted to the Board upon application or renewal of its license. A listing of pseudonyms shall be maintained by the collection agency one year after termination of employment.

2. Licensees shall register their collectors, solicitors, and managers (and their aliases) for each licensing period (July 1 – June 30).

F. Change of Address It is the responsibility of each licensee to notify the Board in a timely fashion of any changes to its physical and/or mailing address. All surety bonds must bear the agency's current physical address.

Section 2-2. RETROACTIVE LICENSES

Pursuant to the Act (§17-24-103 (a)(3)), an agency operating without a license may pay a civil penalty of \$10,000 to the Board and be licensed retroactively after meeting all other requirements for obtaining a license (see Section 2-1, above). A retroactive license shall have an effective start date corresponding to an agency's initial debt collection activity in Arkansas and shall end on the date the retroactive license is issued. Any subsequent debt collection activities shall require regular licensure in accordance with Section 2-1.

Section 2-3. LICENSE TERMINATION

A. No Fault An agency's license shall automatically terminate:

1. When the agency ceases operation; or
2. When the agency's ownership is transferred or conveyed (see Section 2-1, D); or
3. When the surety bond (see Section 2-1, A.2) is not renewed or is cancelled; or
4. When the license is surrendered; or
5. When the license has not been renewed in a timely fashion. (See Section 2-4.)

B. Disciplinary Additionally, the Board has the authority to revoke, suspend, or refuse a license for violations of State and/or Federal debt collection laws when appropriate evidence is presented. See Section 4-2.

Section 2-4. LICENSE RENEWAL

A. Expiration Date Licenses issued between March 1 and December 31 shall expire on June 30th of the year following their issuance. Licenses issued in January and February shall expire on June 30 of the same year.

B. Renewal Application Applications for license renewal shall consist of:

1. an application form provided by the Director; and
2. the same fees for licensure and for registering employees as required for a new license; and
3. the same documentation as required for a new license, including but not be limited to, documents pertaining to a change in agency managers, changes in ownership, current surety bond, and information regarding an agency's collectors.

C. Failure to Renew Failure to complete the renewal process by June 30th shall be construed as an agency having knowingly and willingly allowed its license to expire.

1. An agency that continues or continued to operate or practice debt collection activities in Arkansas after its license has expired may be subject to a civil penalty, at the Board's discretion.
2. Failure to receive a renewal notice or reminder from the Board is not justification for failure to renew an agency's license on time.
3. Should a later request for licensing be made by the holder of an expired license, it shall be treated as a new application.

Section 2-5. LICENSE DENIAL

A. Administrative If the Director determines an application for a new license (Section 2-1) or for license renewal (Section 2-4) is deficient in such a manner that cannot or should not be remedied by a procedural variance (see Section 1-3, A), he or she shall deny the application and provide to the applicant in writing the reasons therefore within 10 business days.

B. Appeal An applicant aggrieved by such a denial may appeal in writing to the Board within 30 days of receipt of the denial. Such an appeal may also constitute a request for a substantive variance (see Section 1-3, B). The Director will schedule such an appeal for a hearing at an upcoming meeting of the Board. Hearings shall be conducted in accordance with the Act (§17-24-308) and with the Arkansas Administrative Procedure Act. (Ark. Code Ann. §25-15-201 *et seq.*)

C. Refund Should an applicant choose not to appeal a denial by the Director, or should the Board uphold such a denial, any funds remitted to the Board may be returned to the applicant upon written request within thirty (30) days of notice of the denial or of the Board's decision.

ARTICLE III – AGENCY CONDUCT

Section 3-1. ACCOUNTING

A. Posting Payments All funds collected by an agency on behalf of its clients shall be posted and credited to the debtor's account and to the account of the client for whom it was collected.

B. Remitting Payments Pursuant to the Act, (§17-24-104), any funds collected by an agency on behalf of a client shall be remitted to the client no later than the last day of the calendar month following the month in which the funds were collected.

1. An agency that fails to remit such funds to a client by the last day of the calendar month following the month they were collected shall not be entitled to a collection fee and shall remit to the client the total funds collected. An agency that fails to remit the total funds collected for the client within sixty-one (61) days of the date of collection shall be subject to disciplinary action by the Board (see Section 4-2, B).

2. An agency shall, within the month of April each year, give written notice to each of its clients, pursuant to the Act (§17-24-310), that collected funds must be rendered to clients by the end of the calendar month following the date of collection. (This notice is not required for clients who are also Arkansas licensees.)

D. Collection Fees Pursuant the Act, (§17-24-309), an agency shall not charge its client(s):

1. a fee greater than fifty percent (50%) of the total amount collected for any one client; or
2. a fee greater than fifty percent (50%) of the total amount collected on any one account; or
3. a minimum fee greater than one dollar (\$1.00) on any partially or totally collected account.

Section 3-2. COMMUNICATION BY AGENCY

A. Agency Name A collection agency shall use only its name or tradestyle exactly as it appears on its license when attempting to collect a debt.

B. Debtor Workplaces Pursuant to the Act (§17-24-307), 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 by mail at his or her home and the mail has not been returned and no answer has been received.

C. Disclosure Pursuant to the Act (§17-24-508), when an agency communicates with a debtor, the agency must disclose, in a written or telephone communication, the specific reason for the communication, the name of the creditor, the licensed name of the agency, the date of communication in written communication; and in oral communication, the identity of the collector making the contact.

D. Prohibited Activities A licensee shall not engage in any of the practices or activities prohibited by the Act, including but not limited to:

1. Harassment or abuse;
2. False or misleading statements;
3. Unfair practices;
4. Improper communication with a consumer/debtor; and/or
5. Other prohibited behavior or actions such as those set forth in §17-24-307 and §17-24-503 *et seq.*

ARTICLE IV – ENFORCEMENT

Section 4-1. INVESTIGATIONS

The Director and/or his or her designee may verify any and all information received on a license application, license renewal, or complaint. The Director may require that anyone being investigated pursuant to a license application, renewal or complaint respond in writing to answer questions and concerns related to the above. The Director may require such authorizations, financial statements and/or references of all applicants for a license or licensees as it deems necessary and may make an investigation or cause an independent investigation to be made concerning the agency's reputation, integrity and/or business practices pursuant to the Act (§17-24-303). The Director may investigate the collection records of a licensee, and for that purpose the Director shall have free access to the books and/or papers of a licensee relating thereto.

Section 4-2. DISCIPLINARY ACTION

A. Lack of License If the Board determines an agency has failed to obtain or maintain a license, it may assess a civil penalty of between fifty dollars (\$50.00) and five hundred dollars (\$500.00) for each day the agency operated while unlicensed.

1. Such penalties do not preclude private causes of action by debtors and/or creditors relating to debt collection activities conducted while an agency was unlicensed.
2. The Board may also seek injunctive relief pursuant to the Act (§17-24-105).
3. See also Section 2-2 regarding retroactive licensure.

B. Other Violations The Board may refuse to issue or renew a license, or may revoke or suspend a license, or place on probation, reprimand, or take other disciplinary action as the Board may deem proper, including fines not to exceed \$500.00 per day per complaint, for any one or any combination of violations of the Act and/or these rules which regulate the activities of collection agencies. Such violations shall be considered and treated as engaging in unethical practices or resorting to illegal means or methods of collection.

C. Notice and Hearing Pursuant to the Act (§17-24-103(b)(2) and §17-24-308) and to the Arkansas Administrative Procedure Act, none of disciplinary actions described herein shall be ordered without proper notice and hearing. Nothing in this section shall preclude the disposition of disputes by consent agreement or other informal means.

Section 4-3. COLLECTION OF SURETY BOND

The Board, upon finding a licensee has failed to pay its client(s), shall make a claim on the licensee's surety bond. The Board shall proceed as follows:

A. Notice The Board and/or Director shall notify interested parties of the noncompliance. This notice shall contain the name and address of the licensee whose bond has been collected and how to file a proper claim. The notice may be served by certified mail and/or by publishing once a week for two consecutive weeks in a newspaper that has a statewide circulation.

B. Claims Claims must be filed within ninety (90) days following the notice date . Claims must include the name and address of the claiming party; an itemized list of the amounts claimed; and any information or documentation required by the Board.

C. Awards At the expiration of ninety (90) days, the Board shall hold a hearing to determine the amount, if any, to be awarded on the claims. Notice of the hearing shall be given to all who filed timely claims. At the hearing, the Board may hear evidence to determine the validity of any or all claims and shall either approve or deny the claims. In the event that the bond is insufficient to pay all the approved claims, disbursement shall be made on a pro rata basis. In the event that a bond surplus arises, the funds may be returned to the bonding company, at the discretion of the Board.