

ARKANSAS REGISTER

Proposed Rule Cover Sheet



Secretary of State
John Thurston
500 Woodlane Street, Suite 026
Little Rock, Arkansas 72201-1094
(501) 682-5070
www.sos.arkansas.gov



Name of Department Department of Labor and Licensing
Agency or Division Name State Board of Collection Agencies
Other Subdivision or Department, If Applicable _____
Previous Agency Name, If Applicable _____
Contact Person Boyd Maher
Contact E-mail boyd.maher@arkansas.gov
Contact Phone (501) 371-1435

Name of Rule State Board of Collection Agencies Rule (rev. 2021)
Newspaper Name Arkansas Democrat-Gazette
Date of Publishing August 5-7, 2021
Final Date for Public Comment September 7, 2021
Location and Time of Public Meeting 10:00AM, Wednesday, August 18, 2021

4th Floor Boardroom, 900 W. Capitol Ave, Little Rock, AR 72201

Interested parties can also participate remotely using Microsoft Teams.
For information on how to join by telephone or internet, please visit:
www.asbca.org/members-meetings.



State Board of Collection Agencies Department of Labor and Licensing

Asa Hutchinson
Governor

Daryl E Bassett
Secretary

PROPOSED REVISIONS TO AGENCY RULE EXECUTIVE SUMMARY

Purpose

The State Board of Collection Agencies is proposing a variety of updates to make its rule consistent with both statute and current practice.

Background

The last update to the Board's rules was promulgated in 1997, but the past quarter century has seen numerous revisions to its enabling statute (such as the Arkansas Fair Debt Collection Practices Act of 2009) and to statutes effecting state agencies generally (such as the Transformation and Efficiencies Act of 2019). The proposed revisions to the rules seek to incorporate these statutory changes. Additionally, the Board's daily operations have evolved since 1997, and the proposed changes would make the agency's rules consistent with current practice. Finally, the proposed updates seek to eliminate confusing, outdated, and redundant language and to incorporate a format that will lend itself to the upcoming Code of Arkansas Rules effort.

Key Revisions

- Define the relationship between the Board & professional staff following the 2019 Transformation Act.
- Allow for reciprocal licenses from other states in accordance with Act 426 of 2019.
- Incorporate fees and penalties authorized by Act 1023 of 2013 (ACA 17-24-305(a)) and Act 1249 of 2015 (ACA 17-24-013)
- Eliminate a late fee not authorized by statute.
- Remove a requirement for a written exam not authorized by statute.
- Establish / clarify procedures for license application, renewals, denials, sanctions, and appeals.
- Incorporate rules for licensee conduct arising from the 2009 Arkansas Fair Debt Collection Practices Act of 2009 (17-24-501 *et seq*)
- Cleaned up format for easy transition to the Code of Arkansas Rules.

Recommendation

Board staff recommends adoption of the changes as drafted. The Board voted unanimously at its meeting on May 19, 2021 to proceed with rulemaking.

**MARK-UP
VERSION**

**STATE OF ARKANSAS
DEPARTMENT OF LABOR AND LICENSING**

STATE BOARD OF COLLECTION AGENCIES

JoAnn C. Quirk, Director

Lafayette Building

523 South Louisiana, Suite 460

Little Rock, Arkansas 72201

Phone: (501) 376-9814 Fax: (501) 372-5383

RULES AND REGULATIONS

rev. 10/16/97

rev. 11/1/2021

ARTICLE I – GENERAL

Section 1-1.I. DEFINITIONS

The following definitions shall apply:

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

“Agency” means a ~~C~~ollection ~~A~~gency as defined in A.C.A. §17-24-101 of the Act.

“Board” means the ~~Arkansas State Board of Collection Agencies (also cited as “SBCA”).~~

“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.

~~“Communication” means the conveying of information regarding a debt directly or indirectly to any person through any medium.~~

~~“Creditor” means any person who offers or extends credit creating a debt or to whom a debt is owed.~~

“Licensee” means a ~~C~~ollection ~~A~~gency duly licensed by the ~~Board~~ SBCA.

“Manager” means any person who regularly supervises the activities of other collectors and/or solicitors ~~any person or organization possessing a proprietary interest in an agency.~~

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

“Rules and Regulations” means any rule or rules, regulation or regulations promulgated and duly enacted by the ~~SBCA~~ 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 II. APPLICATION FOR LICENSURE AND REGISTRATION

A. (a) Application All applications for licensure and registration as a collection agency shall be submitted to the State Board of Collection Agencies on forms provided by the Director SBCA, pursuant to the Act (Ark. Code Ann. §17-24-303(a)), and include 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.) Proof of a surety bond payable to the Board, pursuant to the Act A.C.A. (§17-24-306), in the amounts as set forth below; and these Rules and Regulations;

~~(A) for Agencies with (5) or less collectors, bond shall be in the amount of ten thousand dollars (\$10,000.00);~~

a. Ten Thousand Dollars (\$10,000) for agencies with up to five (5) collectors;

~~(B) for Agencies with six (6) to twelve (12) collectors, bond shall be in the amount of twenty thousand dollars (\$20,000.00);~~

b. Twenty Thousand Dollars (\$20,000) for agencies with six (6) to twelve (12) collectors;

~~(C) for Agencies with thirteen or more collectors, bond shall be in the amount of twenty five thousand dollars (\$25,000.00).~~

c. Twenty-Five Thousand Dollars (\$25,000) for agencies with more than twelve (12) collectors.

3. (3) The required \$125.00 fee(s) set forth in the Act A.C.A. (§17-24-305(a)).

4. Any other information as required by the Board.

~~(4) Proof of experience in the collection business and character and business references.~~

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

1. The proposed manager(s) of each new Agency or branch office shall be required to pass a written examination, prepared by the Director and approved by the Board, in order to assure that said manager is versed in the laws and rules and regulations which regulate the activities of collection agencies. This rule may be waived upon receipt of evidence of a minimum of one year of recent successful experience in Agency management. (c) The proposed manager, majority stockholders, partners, and/or owners of any proposed agency must have favorable reputations for personal integrity and morality, must have an acceptable credit reputation and must maintain said reputations after licensing. (d) The SBCA may refuse to issue or may revoke the license of any entity who does not have or fails to maintain a favorable credit record. An unfavorable 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:

(1a.) Judgments, foreclosures, or tax liens within the past five (5) years.

(2b.) Accounts charged to profit and loss, unpaid claims for collection or repossessions within the last five (5) years.

(3c.) A late-payment record of being more than three times history of accounts paid sixty (60) days late to a creditor more than three (3) times within the past five (5) years.

(4d.) Any oOther unfavorable economic or financial deficiency which 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.

~~(e) Should a license application be denied, funds remitted to the SBCA may be returned to the applicant upon written request within thirty (30) days of notice of denial. A fifty dollar (\$50.00) nonrefundable processing fee shall be retained by the SBCA.~~

C. Additional Locations ~~III. DOING BUSINESS AT MORE THAN ONE OFFICE OR LOCATION~~ If a collection agency does business operating at more than one office or location, must obtain and maintain a separate application license and surety bond shall be required for each location at which the Agency conducts or intends to conduct business and the ownership and name used at each location shall be identical.

IV. ADDITIONAL OFFICE(S) OR CHANGE OF LOCATION OF OFFICE(S):

~~(a) If a licensee opens an additional office(s) or changes the location of an existing office(s) other than at the time of renewal, the Agency shall notify the SBCA in writing of the new address at least 30 days prior to the opening of the office(s) or change of location(s).~~

~~(b) If, prior to the issuance of a license, an Agency changes the location of an existing office(s) or adds an additional office, the Agency shall immediately notify the SBCA, in writing, of the new address.~~

D. Change of Ownership ~~V. 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 are is transferred and/or sold, a new collection the agency application shall be filed with promptly give written notice to the State Board of Collection Agencies in accordance with § 17-24-303.

E. Registration of Employees ~~VI. NEW HIRES~~ Upon hiring a new collector or trainee, each licensee shall report to the SBCA Board the collector's names, aliases, and dates of hire of all employees involved in debt collection activities, including collectors, solicitors, and managers, and address and remit the \$1520.00 collector's registration fee for each, as set forth in the Act (§17-24-305(a)), within ninety (90) days of the such hires.

1. The 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 VII. TERMINATION/SUSPENSION/REVOCAION OF LICENSE

A. (a) The No Fault ~~An Agency's license shall automatically terminate:~~

~~(1.) When the Agency ceases operation; or~~

~~(2) When the Agency ceases to operate under the name on the license;~~

~~(A) The licensee shall notify the SBCA in writing by certified mail within 10 days when the Agency ceases to operate under the name on the certificate. Notice of bond termination is set forth in A.C.A. § 17-24-306.~~

~~(B) In the event of a change of the Agency name, the licensee may apply for a license in advance of the effective date of such change by filing an application and paying the appropriate fee as set forth in A.C.A. § 17-24-305. The application shall be handled as an original application.~~

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~~

~~(A) An Agency's license shall be suspended or revoked upon the effective date of cancellation of his bond, or upon expiration date of said bond, and said licensee must close his operation and cease all collections and solicitations until a new or renewal bond, properly executed, is provided to the SBCA.~~

~~(4.) When the license is revoked~~surrendered; or

~~(5.) When the license has not been renewed in a timely fashion. (See Section 2-4.) within 30 days of the time specified in A.C.A. § 17-24-304.~~

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

Section 2-4. LICENSE VIII. RENEWAL OF LICENSE

A. Expiration Date ~~(a) Every license issued between March 1 and December 31 shall expire annually on June 30th of the year following their issuance. Each licensee may renew its license during the month preceding the expiration date by paying the required fee and updating the appropriate information. Licenses issued in January and February shall expire on June 30 of the same year.~~

B. Renewal Application ~~(b) 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.

~~Any licensee who fails to remit all fees required for continuation of its license by July 15th shall be subject to a late fee of \$125.00.~~

C. Failure to Renew ~~(c)~~ Failure to complete the renewal process by ~~July~~ June 30th shall be construed as an agency having knowingly and willingly allowed its license to expire ~~result in the Agency having its license revoked.~~

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 in all respects as a new applicant 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. A fifty dollar (\$50.00) nonrefundable processing fee may be retained by the Board.

IX. DISPLAY OF LICENSE

~~The current license shall be prominently displayed at each location where the Agency conducts business.~~

ARTICLE III – AGENCY CONDUCT

Section 3-1 ACCOUNTING

A. Posting Payments ~~X. RECORDING OF PAYMENTS~~ All collections of any amount on any account processed funds collected by an Agency on behalf of its clients shall be promptly entered onposted and credited to the debtor's account recordand 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. XI. AVAILABILITY AND REMITTING COLLECTED FUNDS An Agency shall, within the month of April of each calendar year, give written notice to each of its clients, pursuant to A.C.A. the Act (§-17-24-310), that collected funds must be rendered to clients within 61 days ofby the end of the calendar month following the date of collection, pursuant to A.C.A. § 17-24-404. (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.

XII. CHANGE IN ADDRESS(ES)/COLLECTOR(S):

It is the responsibility of each licensee to notify the SBCA of any change of address. Failure to receive a renewal form from the SBCA shall not constitute an excuse for failure to pay the renewal fee or to renew one's license.

XIII. GRANTING VARIANCES

(a) The Director may grant 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;
- (2) No party will be injured by granting the variance;
- (3) The rule from which the variance is granted would not, in the particular case, be unreasonable or unnecessarily burdensome.

(b) The Director shall notify the Board of Directors of the granting of such variance, and the reasons therefore, at the next meeting of the Board.

Section 3-2XIV. COMMUNICATION BY AGENCY

A. Agency Name ~~(a) A collection agency shall use only the Agency its name or tradestyle exactly as it appears on the Agency's license when attempting to collect a debt issued by the SBCA in all communication, (e.g., ABC Collection Agency cannot use a name such as ABC Acceptance Company) except for skiptracing and envelopes.~~

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 ~~(b) Pursuant to the Act (§17-24-508), W~~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 registered licensed name of the Agency, the date of communication in written communication; and in oral communication, the identity of the collector making the contact.

XV. USE OF PSEUDONYMS

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

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

~~(a) The SBCA may refuse to issue or renew, or may revoke, suspend, place on probation, reprimand or take other disciplinary action as the SBCA may deem proper, including fines not to exceed \$500.00 per day per complaint, for any one or any combination of, but not limited to, the following which may be interpreted as a violation of the laws and/or rules and regulations which regulate the activities of collection agencies:~~

~~(1.) Harassment or abuse;~~

~~(2.) False or misleading statements;~~

~~(3.) Unfair practices;~~

~~(4.) Improper communication with a consumer/debtor; and/or-~~

~~(5.) Failure to obtain or maintain a proper license. Other prohibited behavior or actions such as those set forth in §17-24-307 and §17-24-503 et seq.~~

~~(b) A violation of the SBCA's Rules and Regulations shall be considered and treated as engaging in an unethical practice or resorting to an illegal means or method of collection within the meaning of A.C.A. § 17-24-307 (10), and the penalty or penalties, therefore, shall be the same as for a violation of said Act.~~

XVII. NOTICE

All required notices shall be sent to:

Arkansas State Board of Collection Agencies
523 S. Louisiana, Suite 460
Little Rock, AR 72201

XVIII. RESTRICTIONS ON COMMUNICATION WITH DEBTORS

Pursuant to A.C.A. § 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 home and the mail has not been returned and no answer has been received.

ARTICLE IV – ENFORCEMENT

Section 4-1XIX. INVESTIGATIONS

(a) The SBCA Director and/or his or her designee may verify any and all information received on by the SBCA pursuant to a license application, license renewal, or complaint, by telephone, correspondence, personal interviews or any other form of communication, with said verification being conducted by the Board of Directors or employees or agents of the SBCA. The SBCA may be reimbursed for actual and necessary expenses associated with such investigations. (b) The SBCA Director may request require that anyone being investigated pursuant to a license application, renewal or complaint personally appear before the Board respond in writing to answer questions and concerns related to the above. (c) The SBCA 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 net worth business practices pursuant to A.C.A. the Act (§ 17-24-303) and Act 1276 of 1997. The cost of any investigation may be borne by the Agency and shall be payable in such manner and time as the Board of Directors may direct. (d) The SBCA Director may investigate the collection records of a licensee, and for that purpose the SBCA 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 XX. COLLECTION/DISBURSEMENT OF SURETY BOND FOR FAILURE TO REMIT CLIENT FUNDS

The SBCA Board, upon finding a licensee has failed to pay it's client(s) or clients, shall collect make a claim on the licensee's surety bond required pursuant to A.C.A. § 17-24-306. When the SBCA has collected under this bond, it The Board shall proceed to disburse the funds in accordance with these Rules as follows:

A. Notice (a) The SBCA Board and/or Director its representative shall cause notice notify interested parties of the noncompliance to be given. This notice shall contain the name and address of the collection agency (licensee) whose bond has been collected and how to ; name and address of the owner or owners if the licensee was proprietorship or partnership; address of the SBCA; address where claims are to be sent; who may file a claim; requirements for a proper claim, and time to file. (b) Individual notice to interested persons need be given only when the SBCA has reasonable cause to believe that such person possesses a claim against the licensee's surety bond. (c) The notice requirement of this section may be served in any or all of the following manners: (1) by certified mail, return receipt requested to all who have expressed a complaint of noncompliance. Such notice shall be mailed to the business address of the claimant. (2) by certified mail, return receipt requested to all others that the SBCA has reason to believe have a claim as to the bond; and/or (3) by publishing once a week for two consecutive weeks in a newspaper that has a statewide circulation and in a newspaper in the county or the licensee with a countywide circulation, if there is such a paper.

B. Claims (d) Once notice is given, any eClaims must be filed within ninety (90) days of following the notice date of the first publication. A eClaims must state 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 attach the requisite proof that the licensee has received this amount. All claims must be timely filed or the claimant shall be forever barred and precluded from receiving any benefit in the surety bond. (e) Requisite proof means proof in the form of a cancelled check, money order, receipt or such other proof as the claimant may possess and must be provided to the SBCA by the claimant before any claim will be considered. (f) All expenses incurred in giving notice under this provision shall be paid from the proceeds of the bond.

C. Awards (g) At the expiration of ninety (90) days, the SBCA Board shall hold a hearing to determine the amount, if any, to be awarded on all the claims. Notice of this the hearing shall be given by first class mail to all who filed timely claims. (1) At the hearing, the SBCA Board may hear evidence to determine the validity of any or all claims and shall either approve or deny all the claims properly filed. (2) In the event that the bond is insufficient to pay all the approved claims found to be valid by the SBCA, disbursement shall be made on a pro rata share basis. In the event that a bond surplus arises, the funds may be returned to the bonding company, at the discretion of the Board of Directors. (3) Payment to those claimants which the SBCA has found to have valid claims shall be made within a reasonable time thereafter.

**STATE OF ARKANSAS
DEPARTMENT OF LABOR AND LICENSING**

STATE BOARD OF COLLECTION AGENCIES

RULES

rev. 10/16/97

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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. A fifty dollar (\$50.00) nonrefundable processing fee may be retained by the Board.

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.

