

ARKANSAS REGISTER

Transmittal Sheet



Sharon Priest
Secretary of State
State Capitol Rm. *026*
Little Rock, Arkansas 72201-1094

For Office Use Only: Effective Date 12/19/97 Code Number 031.00.97--001

Name of Agency State Board of Collection Agencies

Department _____

Contact Person Gale Reamey

Statutory Authority for Promulgating Rules A.C.A. 17-21-203

Intended Effective Date		Date
<input type="checkbox"/> Emergency	Legal Notice Published	10/25/97
<input checked="" type="checkbox"/> 10 Days After Filing	Final Date for Public Comment	11/25/97
<input type="checkbox"/> Other	Filed With Legislative Council	12/02/97
_____	Reviewed by Legislative Council	12/04/97
	Adopted by State Agency	12/12/97

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with Act 434 of 1967 As Amended.

John C. Dineen
Signature

Director
Title

12/15/97
Date

FILED
97 DEC -9 AM 10:50
SECRETARY OF STATE
STATE OF ARKANSAS

State of Arkansas

JoAnn C. Quirk
Director



FILED
AIR REGISTER DIV.
97 DEC -9 AM 10: 50

STATE BOARD OF COLLECTION AGENCIES

LAFAYETTE BUILDING
523 SOUTH LOUISIANA, SUITE 460
LITTLE ROCK, AR 72201
PHONE (501) 376-9814 FAX (501) 372-5383

BRANCH OFFICE
SECRETARY OF STATE
STATE OF ARKANSAS
BY _____

RULES AND REGULATIONS

Rev. 10/16/97

I. DEFINITIONS:

The following definitions shall apply:

"Act" means Arkansas Code Annotated §17-24-101 et seq, the Collection Agency Act.

"Agency" means a collection agency 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.

"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 collection agency duly licensed by the SBCA.

"Manager" means any person who regularly supervises the activities of collectors and/or any person or organization possessing a proprietary interest in an Agency.

"Solicitor" means any person who 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.

II. APPLICATION FOR LICENSURE AND REGISTRATION:

(a) 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 SBCA and include:

(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 code. A post office box number alone is not acceptable as an address;

(2) Proof of a surety bond, pursuant to A.C.A. §17-24-306 in the amounts as set forth below and these Rules and Regulations;

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

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

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

(3) The required fee(s) set forth in A.C.A. §17-24-305.

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

(b) The proposed manager 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 credit record includes any of the following:

- (1) Judgments, foreclosures, or tax liens within the past five (5) years.
- (2) Accounts charged to profit and loss, unpaid claims for collection or repossessions within the last five (5) years.
- (3) A late payment record of being more than three times sixty (60) days late to a creditor within the past five (5) years.
- (4) Any other unfavorable economic or financial deficiency which may affect future financial responsibility or invoke public welfare concerns.

(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.

III. DOING BUSINESS AT MORE THAN ONE OFFICE OR LOCATION:

If a collection agency does business at more than one office or location, a separate application and 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.

V. CHANGE OF OWNERSHIP:

When 50% or more of the assets, stock or equity of a collection agency are transferred and/or sold, a new collection agency application shall be filed with the State Board of Collection Agencies in accordance with §17-24-303.

VI. NEW HIRES:

Upon hiring a new collector or trainee, each licensee shall report to the SBCA the collector's name and address and remit the \$15.00 collector's fee within ninety (90) days of the hire.

VII. TERMINATION/SUSPENSION/REVOCAION OF LICENSE:

(a) The Agency's license shall automatically terminate:

(1) When the Agency ceases operation;

(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.

(3) When the bond is not renewed or is cancelled;

(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;

(5) When the license has not been renewed within 30 days of the time specified in A.C.A. §17-24-304.

(b) The SBCA 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.

VIII. RENEWALS:

(a) Every license issued shall expire annually on June 30th. Each licensee may renew the its license during the month preceding the expiration date by paying the required fee and updating the appropriate information.

(b) 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 complete the renewal process by July 30th shall result in the Agency having its license revoked. Should a later request for licensing be made, it shall be treated in all respects as a new applicant.

IX. DISPLAY OF LICENSE:

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

X. RECORDING OF PAYMENTS:

All collections of any amount on any account processed by an Agency shall be promptly entered on the debtor's account record.

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. §17-24-310, that collected funds must be rendered within 61 days of the date of collection, pursuant to A.C.A. §17-24-104.

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.

XIV. COMMUNICATION BY AGENCY:

(a) A collection agency shall use only the Agency name or tradestyle exactly as it appears on the Agency's license 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) 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 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.

XVI. DISCIPLINARY ACTION - Grounds

(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.
- (5) Failure to obtain or maintain a proper license.

(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.

XIX. INVESTIGATIONS:

(a) The SBCA may verify any and all information received 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 may request that anyone being investigated pursuant to a license application, renewal or complaint personally appear before the Board to answer questions and concerns related to the above.

(c) The SBCA 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 pursuant to A.C.A. §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 may investigate the collection records of a licensee, and for that purpose the SBCA shall have free access to the books and/or papers of a licensee relating thereto.

XVIII. COLLECTION/DISBURSEMENT OF BOND FOR FAILURE TO REMIT CLIENT FUNDS:

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

- (a) The SBCA or its representative shall cause notice of the noncompliance to be given. This notice shall contain the name and address of the collection agency (licensee) whose bond has been collected; 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; 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.
- (d) Once notice is given, any claim must be filed within ninety (90) days of the date of the first publication. A claim must state the name and address of the claiming party; an itemized list of the amounts claimed; and 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.
- (g) At the expiration of ninety (90) days, the SBCA shall hold a hearing to determine the amount, if any, to be awarded on all claims. Notice of this hearing shall be given by first class mail to all who filed timely claims.

(1) At the hearing, the SBCA may hear evidence to determine the validity of any or all claims and shall either approve or deny all claims properly filed.

(2) In the event that the bond is insufficient to pay all claims found to be valid by the SBCA, disbursement shall be made on a pro rata share. 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.