WEST VIRGINIA CODE CHAPTER 47 ARTICLE 16

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§47-16-1. Citation of article.

This article may be cited as the "Collection Agency Act of 1973."

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§47-16-2. Definitions.

The following words and terms as used in this article shall be construed as follows:

(a) "Claim" means any obligation for the payment of money due or asserted to be due to another person, firm, corporation or association.

(b) "Collection agency" means and includes all persons, firms, corporations and associations: (1) Directly or indirectly engaged in the business of soliciting from or collecting for others any account, bill or indebtedness originally due or asserted to be owed or due another and all persons, firms, corporations and associations directly or indirectly engaged in asserting, enforcing or prosecuting those claims; (2) which, in attempting to collect or in collecting his or her or its own accounts or claims uses a fictitious name or names other than his or her or its own name; (3) which attempts to or does give away or sell to others any system or series of letters or forms for use in the collection of accounts or claims which assert or indicate directly or indirectly that the claims or accounts are being asserted or collected by any person, firm, corporation or association other than the creditor or owner of the claim or account; or (4) directly or indirectly engaged in the business of soliciting, or who holds himself or herself out as engaged in the business of soliciting, debts of any kind owed or due, or asserted to be owed or due, to any solicited person, firm, corporation or association for fee, commission or other compensation.

The term "collection agency" shall not mean or include: (1) Regular employees of a single creditor or of a collection agency licensed hereunder; (2) banks; (3) trust companies; (4) savings and loan associations; (5) building and loan associations; (6) industrial loan companies; (7) small loan companies; (8) abstract companies doing an escrow business; (9) duly licensed real estate brokers or agents when the claims or accounts being handled by such broker or agent are related to or in connection with such brokers' or agents' regular real estate business; (10) express and telegraph companies subject to public regulation and supervision; (11) attorneys-at-law handling claims and collections in their own names and not operating a collection agency under the management of a layman; (12) any person, firm, corporation or association acting under the order of any court of competent jurisdiction; or (13) any person collecting a debt owed to another person only where: (A) Both persons are related by wholly-owned, common ownership or affiliated by wholly-owned corporate control; (B) the person collecting the debt acts only on behalf of persons related as described in paragraph (A) of this subdivision; and (C) debt collection is not the principal business of the person collecting the debt.

(c) "Commissioner" means the State Tax Commissioner or his or her agent.

(d) "Customer" means any person, firm, corporation or association who has filed, assigned or sold any claim or chose in action with or to a collection agency for collection.

(e) "Licensee" means any person holding a business franchise registration certificate under section two, article twelve, chapter eleven of this code and under the provisions of this

article.

(f) "Trust account" means a special account established by a collection agency with a banking institution in this state, wherein funds collected on behalf of a customer shall be deposited.

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§47-16-3. Scope.

No person, firm, corporation or association shall establish or conduct within this state a collection agency except as authorized by this article.

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§47-16-4. Requirements for conduct of agency.

(a) License. -- No person, firm, corporation or association shall conduct within this state a collection agency without having first applied for and obtained a business franchise registration certificate pursuant to section two, article twelve, chapter eleven of this code, nor shall any person, firm, corporation or association establish or operate a collection agency or the business of a collection agency, unless such person, firm, corporation or association maintains an office within the State of West Virginia. The business franchise registration certificate shall be deemed the collection agency's license. A license is required for each collection agency, including each principal office and all branch offices thereof.

(b) Bond. -- Each applicant shall file with the commissioner a continuing surety bond executed by a corporation which is licensed to transact the business of fidelity and surety insurance in the State of West Virginia to run concurrently with the registration tax period, which bond must be filed with, and approved by, said commissioner before the license herein provided may be issued. A separate bond shall be filed for each collection agency including each principal office and all branch offices thereof. Each bond shall be in the amount of $5,000 payable to the State of West Virginia, and conditioned that any such person will pay all damages to the state or a private person resulting from any unlawful act or action by such person or his or its agent in connection with the conduct of the business of the collection agency. This continuing bond shall be filed with the Tax Commissioner.

An action may be brought in any court of competent jurisdiction upon the bond by any person to whom the licensee fails to account and pay as set forth in such bond. The aggregate liability of the surety for all breaches of the condition of the bond shall not exceed the sum of such bond.

Upon entering judgment for the prevailing party in any action on the bond required by this article, the court shall include in the judgment, reasonable compensation for the services of such party's attorney in the action.

The license of any licensee shall be void upon termination of the bond of the surety company, unless, prior to such termination, a new bond has been filed with the commissioner.

Should the license of any surety company to transact business in this state be terminated, all bonds given pursuant to this article upon which such company is surety shall thereupon be suspended, and the commissioner shall immediately notify each affected licensee of such suspension and require that a new bond be filed. This notice shall be by registered or certified mail, return receipt requested, and shall be addressed to the licensee at his or its principal place of business as shown by the commissioner's records. The failure of any licensee to file a bond with new or additional surety within thirty days after being advised in writing by the commissioner of the necessity to do so shall be cause for the commissioner to revoke the license.

(c) Record Keeping. -- Each collection agency licensed to operate in this state shall keep a

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record of all sums collected by such agency and of all disbursements made by such agency, and shall maintain or make available all such records and all records as to customers' funds at such agency's principal place of business within this state. Each collection agency shall maintain records of collections for and payments to customers for a period of six years from the date of last entry therein.

No collection agency, nor any employee thereof, shall intentionally make a false entry in any such collection agency record nor intentionally mutilate, destroy or otherwise dispose of any such record within the time limits provided in this section. Such records shall at all times be open for inspection by the commissioner, or his duly appointed representative.

No licensee shall commingle the money of collection agency customers with other moneys, but shall maintain a separate trust account in a bank for customers' funds.

Each collection agency shall, within a period of thirty days after the close of each and every calendar month, pay to such agency's customers the net proceeds due on all collections made during the preceding calendar month. When the net proceeds due the customer are less than $5 at the end of any calendar month, the collection agency may defer for a period not to exceed ninety days the payment of said proceeds, if monthly statements are mailed or delivered to the customer.

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§47-16-5. Penalty; civil liability.

(a) Any person, firm, corporation or association violating any of the provisions of this article shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than $1,000.

(b) Any person, firm, corporation or association violating any of the provisions of this article shall, in addition to any civil liability arising by virtue of such violation, also be civilly liable as otherwise provided by law.

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