

## **Title 12. Collection Agencies**

### **Chapter 1 General Provisions**

#### **12-1-1 Registration and bond required.**

No person shall conduct a collection agency, collection bureau, or collection office in this state, or engage in this state in the business of soliciting the right to collect or receive payment for another of any account, bill, or other indebtedness, or advertise for or solicit in print the right to collect or receive payment for another of any account, bill, or other indebtedness, unless at the time of conducting the collection agency, collection bureau, collection office, or collection business, or of advertising or soliciting, that person or the person for whom he may be acting as agent, is registered with the Division of Corporations and Commercial Code and has on file a good and sufficient bond as hereinafter specified.

Amended by Chapter 235, 1999 General Session

#### **12-1-2 Amount of bond -- Conditions -- Right of action.**

- (1) The bond shall be for the sum of \$10,000, payable to the state of Utah.
- (2) The bond shall provide that the person giving it shall, upon written demand, remit the collection proceeds to or for the person for whom any account, bill, or other indebtedness is taken for collection in accordance with the collection agreement. The Division of Corporations and Commercial Code may specify the form of the bond and may require it to contain additional provisions and conditions it considers necessary or proper to protect the persons for whom the collection is undertaken.
- (3) If a bond becomes forfeited or the sureties for it become liable upon it, any person injured by the acts of forfeiture or by the acts resulting in the sureties' liability, or who by law is entitled to the benefit of the security, may maintain an action on the bond in his own name against the person giving the bond and against the sureties to recover the amount of the bond to which he may be entitled. One recovery does not bar recoveries for other breaches of the bond so long as the sureties are liable in the aggregate only to the extent of the undertaking.

Amended by Chapter 213, 1993 General Session

#### **12-1-3 Term of bond -- Limitation of action.**

Such bond shall be for the term of one year from the date thereof, unless the Division of Corporations and Commercial Code and the person giving the same shall agree on a longer period. No action thereon shall be begun after two years from its expiration.

Amended by Chapter 66, 1984 General Session

#### **12-1-5 Record of registrations and bonds -- Right of inspection.**

The Division of Corporations and Commercial Code shall keep a record of all registrations and bonds filed with it under the provisions hereof, with the names, places of residence, and places of business of the principals and sureties, and the name of the officer before whom the bond was executed or acknowledged, and the record shall be open to public inspection.

Amended by Chapter 235, 1999 General Session

**12-1-6 Violation of title -- Penalty.**

Any person, member of a partnership, or officer of any association or corporation who fails to comply with any provision of this title is guilty of a class A misdemeanor.

Amended by Chapter 213, 1993 General Session

**12-1-7 Exceptions.**

This title does not apply to:

- (1) an attorney authorized to practice in this state;
- (2) a national bank;
- (3) a bank or trust company incorporated under the laws of this state; or
- (4) the following licensed under Title 31A, Insurance Code:
  - (a) a title insurance agency; or
  - (b) a title insurance producer.

Amended by Chapter 297, 2009 General Session

**12-1-8 Designating and limiting activities as to assignments.**

Any collector having complied with the provisions of this chapter, may receive accounts, bills or other indebtedness, take assignments for the purpose of collections, and at the direction of the assignor bring suit as assignee, provided however, that all accounts shall be within the statute of limitations as provided by law. All legal processes, pleadings, and court representations shall be prepared and conducted by a duly licensed attorney, and a copy of summons and complaint, in all cases, shall be served on defendants.

Amended by Chapter 171, 1998 General Session

**12-1-9 Information void if no bond filed by collection agency.**

- (1) As used in this section, "consumer reporting agency" means any person transacting business in this state who, for a fee, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information about consumers for the purpose of providing consumer reports to third parties.
- (2) Information about the credit rating or credit worthiness of a consumer supplied to a consumer reporting agency by a collection agency as defined under the Fair Debt Collection Practices Act, 15 U.S.C. Sec. 1692 et seq., that does not have a bond on file with the Division of Corporations and Commercial Code as required under this chapter, is void on its face.

Enacted by Chapter 111, 1990 General Session

**12-1-10 Applications -- Fees.**

- (1) Each application for registration under this chapter shall be made on a form provided by the Division of Corporations and Commercial Code.
- (2) Each applicant shall pay to the Division of Corporations and Commercial Code an application fee determined under Section 63J-1-504.

Amended by Chapter 183, 2009 General Session

**12-1-11 Collection fee -- Convenience fees.**

- (1) As used in this section:
  - (a) "Creditor" is as defined in 15 U.S.C. Sec. 1692a.
  - (b) "Debt" means an obligation or alleged obligation to pay money arising out of a transaction for money, property, insurance, or services.
  - (c) "Debtor" means a person obligated or allegedly obligated to pay a debt.
  - (d) "Financial transaction card" means the same as that term is defined in Section 13-38a-102.
  - (e) "Third party debt collection agency" means:
    - (i) a debt collector as defined in 15 U.S.C. Sec. 1692a; or
    - (ii) a person who would be a debt collector under 15 U.S.C. Sec. 1692a, except that the person does not use an instrumentality of interstate commerce or the mail.
- (2)
  - (a) A creditor may require a debtor to pay a collection fee in addition to any other amount owed to the creditor for a debt if:
    - (i) imposing a collection fee on the debtor or in relation to the debt is not prohibited or otherwise restricted by another federal or state law;
    - (ii) the creditor contracts with a third party debt collection agency or licensed attorney to collect the debt;
    - (iii) the third party debt collection agency with which the creditor contracts is registered under this title;
    - (iv) there is a written agreement between the creditor and the debtor that:
      - (A) creates the debt; and
      - (B) provides for the imposition of the collection fee in accordance with this section; and
    - (v) the obligation to pay the collection fee is imposed at the time of assignment of the debt to a third party debt collection agency or licensed attorney in accordance with an agreement described in Subsection (2) (a)(iv).
  - (b) The creditor shall establish the amount of the collection fee imposed under this Subsection (2), except that the amount may not exceed the lesser of:
    - (i) the actual amount a creditor is required to pay a third party debt collection agency or licensed attorney, regardless of whether that amount is a specific dollar amount or a percentage of the principal amount owed to the creditor for a debt; or
    - (ii) 40% of the principal amount owed to the creditor for a debt.
  - (c) An obligation to pay a collection fee imposed under this Subsection (2) is in addition to any obligation to pay attorney fees that may otherwise exist.
- (3)
  - (a) Subject to Subsection (3)(b), a third party debt collection agency that accepts a financial transaction card for the transaction of business may charge a convenience fee for a transaction processed over:
    - (i) the phone;
    - (ii) text or similar short message service; or
    - (iii) the Internet.
  - (b) Before a third party debt collection agency charges a convenience fee as described in Subsection (3)(a), the third party debt collection agency shall:
    - (i) clearly disclose to the debtor that the third party debt collection agency will charge the debtor a convenience fee, in a time and manner that allows the debtor to accept or reject the convenience fee;
    - (ii) disclose to the debtor the amount of the convenience fee; and

(iii) give the debtor an alternative payment method option for which a convenience fee does not apply.

Amended by Chapter 121, 2020 General Session