

**Effective 5/12/2020**

**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