

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Regulatory Sunset Act is amended by changing
5 Section 4.16 and by adding Section 4.26 as follows:

6 (5 ILCS 80/4.16)

7 Sec. 4.16. Acts repealed January 1, 2006. The following
8 Acts are repealed January 1, 2006:

9 The Respiratory Care Practice Act.

10 The Hearing Instrument Consumer Protection Act.

11 The Illinois Dental Practice Act.

12 The Professional Geologist Licensing Act.

13 The Illinois Athletic Trainers Practice Act.

14 The Barber, Cosmetology, Esthetics, and Nail Technology
15 Act of 1985.

16 ~~The Collection Agency Act.~~

17 The Illinois Roofing Industry Licensing Act.

18 The Illinois Physical Therapy Act.

19 (Source: P.A. 89-33, eff. 1-1-96; 89-72, eff. 12-31-95; 89-80,
20 eff. 6-30-95; 89-116, eff. 7-7-95; 89-366, eff. 7-1-96; 89-387,
21 eff. 8-20-95; 89-626, eff. 8-9-96.)

22 (5 ILCS 80/4.26 new)

23 Sec. 4.26. Act repealed on January 1, 2016. The following
24 Act is repealed on January 1, 2016:

25 The Collection Agency Act.

26 Section 10. The Collection Agency Act is amended by
27 changing Sections 2.02, 2.04, 3, 4.5, 5, 6a, and 9 as follows:

28 (225 ILCS 425/2.02) (from Ch. 111, par. 2004)

29 (Section scheduled to be repealed on January 1, 2006)

1 Sec. 2.02. "Collection agency" or "agency" means any
2 person, association, partnership, ~~or~~ corporation, or legal
3 entity who, for compensation, either contingent or otherwise,
4 or for other valuable consideration, offers services to collect
5 an alleged delinquent debt.

6 (Source: P.A. 89-387, eff. 1-1-96.)

7 (225 ILCS 425/2.04) (from Ch. 111, par. 2005.1)

8 (Section scheduled to be repealed on January 1, 2006)

9 Sec. 2.04. Child support indebtedness.

10 (a) Persons, associations, partnerships, ~~or~~ corporations,
11 or other legal entities engaged in the business of collecting
12 child support indebtedness owing under a court order as
13 provided under the Illinois Public Aid Code, the Illinois
14 Marriage and Dissolution of Marriage Act, the Non-Support of
15 Spouse and Children Act, the Non-Support Punishment Act, the
16 Illinois Parentage Act of 1984, or similar laws of other states
17 are not restricted (i) in the frequency of contact with an
18 obligor who is in arrears, whether by phone, mail, or other
19 means, (ii) from contacting the employer of an obligor who is
20 in arrears, (iii) from publishing or threatening to publish a
21 list of obligors in arrears, (iv) from disclosing or
22 threatening to disclose an arrearage that the obligor disputes,
23 but for which a verified notice of delinquency has been served
24 under the Income Withholding for Support Act (or any of its
25 predecessors, Section 10-16.2 of the Illinois Public Aid Code,
26 Section 706.1 of the Illinois Marriage and Dissolution of
27 Marriage Act, Section 4.1 of the Non-Support of Spouse and
28 Children Act, Section 26.1 of the Revised Uniform Reciprocal
29 Enforcement of Support Act, or Section 20 of the Illinois
30 Parentage Act of 1984), or (v) from engaging in conduct that
31 would not cause a reasonable person mental or physical illness.
32 For purposes of this subsection, "obligor" means an individual
33 who owes a duty to make periodic payments, under a court order,
34 for the support of a child. "Arrearage" means the total amount
35 of an obligor's unpaid child support obligations.

1 (a-5) A collection agency may not impose a fee or charge,
2 including costs, for any child support payments collected
3 through the efforts of a federal, State, or local government
4 agency, including but not limited to child support collected
5 from federal or State tax refunds, unemployment benefits, or
6 Social Security benefits.

7 No collection agency that collects child support payments
8 shall (i) impose a charge or fee, including costs, for
9 collection of a current child support payment, (ii) fail to
10 apply collections to current support as specified in the order
11 for support before applying collection to arrears or other
12 amounts, or (iii) designate a current child support payment as
13 arrears or other amount owed. In all circumstances, the
14 collection agency shall turn over to the obligee all support
15 collected in a month up to the amount of current support
16 required to be paid for that month.

17 As to any fees or charges, including costs, retained by the
18 collection agency, that agency shall provide documentation to
19 the obligee demonstrating that the child support payments
20 resulted from the actions of the agency.

21 After collection of the total amount or arrearage,
22 including statutory interest, due as of the date of execution
23 of the collection contract, no further fees may be charged.

24 (a-10) The Department of Professional Regulation shall
25 determine a fee rate of not less than 25% but not greater than
26 35%, based upon presentation by the licensees as to costs to
27 provide the service and a fair rate of return. This rate shall
28 be established by administrative rule.

29 Without prejudice to the determination by the Department of
30 the appropriate rate through administrative rule, a collection
31 agency shall impose a fee of not more than 29% of the amount of
32 child support actually collected by the collection agency
33 subject to the provisions of subsection (a-5). This interim
34 rate is based upon the March 2002 General Account Office report
35 "Child Support Enforcement", GAO-02-349. This rate shall apply
36 until a fee rate is established by administrative rule.

1 (b) The Department shall adopt rules necessary to
2 administer and enforce the provisions of this Section.

3 (Source: P.A. 93-896, eff. 8-10-04.)

4 (225 ILCS 425/3) (from Ch. 111, par. 2006)

5 (Section scheduled to be repealed on January 1, 2006)

6 Sec. 3. A person, association, partnership, ~~or~~
7 corporation, or other legal entity acts as a collection agency
8 when he or it:

9 (a) Engages in the business of collection for others of any
10 account, bill or other indebtedness;

11 (b) Receives, by assignment or otherwise, accounts, bills,
12 or other indebtedness from any person owning or controlling 20%
13 or more of the business receiving the assignment, with the
14 purpose of collecting monies due on such account, bill or other
15 indebtedness;

16 (c) Sells or attempts to sell, or gives away or attempts to
17 give away to any other person, other than one registered under
18 this Act, any system of collection, letters, demand forms, or
19 other printed matter where the name of any person, other than
20 that of the creditor, appears in such a manner as to indicate,
21 directly or indirectly, that a request or demand is being made
22 by any person other than the creditor for the payment of the
23 sum or sums due or asserted to be due;

24 (d) Buys accounts, bills or other indebtedness with
25 recourse and engages in collecting the same; or

26 (e) Uses a fictitious name in collecting its own accounts,
27 bills, or debts with the intention of conveying to the debtor
28 that a third party has been employed to make such collection.

29 (Source: P.A. 83-1539.)

30 (225 ILCS 425/4.5)

31 (Section scheduled to be repealed on January 1, 2006)

32 Sec. 4.5. Unlicensed practice; violation; civil penalty.

33 (a) Any person who practices, offers to practice, attempts
34 to practice, or holds oneself out to practice as a collection

1 agency without being licensed under this Act shall, in addition
2 to any other penalty provided by law, pay a civil penalty to
3 the Department in an amount not to exceed \$5,000 for each
4 offense as determined by the Department. The civil penalty
5 shall be assessed by the Department after a hearing is held in
6 accordance with the provisions set forth in this Act regarding
7 the provision of a hearing for the discipline of a licensee.

8 (b) The Department has the authority and power to
9 investigate any and all unlicensed activity. In addition to
10 taking any other action provided under this Act, whenever the
11 Department has reason to believe a person, association,
12 partnership, corporation, or other legal entity has violated
13 any provision of subsection (a) of this Section, the Department
14 may issue a rule to show cause why an order to cease and desist
15 should not be entered against that person, association,
16 partnership, corporation, or other legal entity. The rule shall
17 clearly set forth the grounds relied upon by the Department and
18 shall provide a period of 7 days from the date of the rule to
19 file an answer to the satisfaction of the Department. Failure
20 to answer to the satisfaction of the Department shall cause an
21 order to cease and desist to be issued immediately.

22 (c) The civil penalty shall be paid within 60 days after
23 the effective date of the order imposing the civil penalty. The
24 order shall constitute a judgment and may be filed and
25 execution had thereon in the same manner as any judgment from
26 any court of record.

27 (Source: P.A. 89-474, eff. 6-18-96.)

28 (225 ILCS 425/5) (from Ch. 111, par. 2008)

29 (Section scheduled to be repealed on January 1, 2006)

30 Sec. 5. Application for registration shall be made to the
31 Director on forms provided by the Department, shall be
32 accompanied by the required fee and shall state:

33 (1) The applicant's name and address;

34 (2) the names and addresses of the officers of the
35 collection agency and, if the collection agency is a

1 corporation, the names and addresses of all persons owning 10%
2 or more of the stock of such corporation, if the collection
3 agency is a partnership, the names and addresses of all
4 partners of the partnership holding a 10% or more interest in
5 the partnership, and, if the collection agency is a limited
6 liability company, the names and addresses of all members
7 holding 10% or more interest in the limited liability company;
8 and

9 (3) Such other information as the Department may deem
10 necessary.

11 (Source: P.A. 81-1381.)

12 (225 ILCS 425/6a) (from Ch. 111, par. 2009a)

13 (Section scheduled to be repealed on January 1, 2006)

14 Sec. 6a. Any registered collection agency whose
15 certificate of registration has expired may have the
16 certificate of registration restored by making application to
17 the Department and filing proof acceptable to the Department of
18 fitness to have the certificate of registration restored, and
19 by paying the required restoration fee.

20 However, any registered collection agency whose
21 certificate of registration has expired while the individual
22 registered or while a shareholder, partner, or member owning
23 50% or more of the shares of stock in a registered corporation
24 has expired while he has been engaged (1) in federal service on
25 active duty with the Army of the United States, the United
26 States Navy, the Marine Corps, the Air Force, the Coast Guard,
27 or the State Militia called into the service or training of the
28 United States of America, or (2) in training or education under
29 the supervision of the United States preliminary to induction
30 into the military service, may have his certificate of
31 registration restored or reinstated without paying any lapsed
32 renewal fees, restoration fee or reinstatement fee if within 2
33 years after termination of such service, training or education
34 other than by dishonorable discharge he furnishes the
35 Department with an affidavit to the effect that he has been so

1 engaged and that his service, training or education has been so
2 terminated.

3 (Source: P.A. 84-1299.)

4 (225 ILCS 425/9) (from Ch. 111, par. 2012)

5 (Section scheduled to be repealed on January 1, 2006)

6 Sec. 9. (a) The Department may refuse to issue or renew, or
7 may revoke, suspend, place on probation, reprimand or take
8 other disciplinary action as the Department may deem proper,
9 including fines not to exceed \$5,000 for a first violation and
10 not to exceed \$10,000 for a second or subsequent violation
11 ~~\$1,000 per licensee per complaint~~, for any one or any
12 combination of the following causes:

13 (1) Violations of this Act or of the rules promulgated
14 hereunder.

15 (2) Conviction of the collection agency or the
16 principals of the agency of any crime under the laws of any
17 U.S. jurisdiction which is a felony, a misdemeanor an
18 essential element of which is dishonesty, or of any crime
19 which directly relates to the practice of the profession.

20 (3) Making any misrepresentation for the purpose of
21 obtaining a license or certificate.

22 (4) Habitual or excessive use or addiction to alcohol,
23 narcotics, stimulants or any other chemical agent or drug
24 which results in the inability to practice with reasonable
25 judgment, skill, or safety by any of the principals of a
26 collection agency.

27 (5) Discipline by another U.S. jurisdiction or foreign
28 nation, if at least one of the grounds for the discipline
29 is the same or substantially equivalent to those set forth
30 in this Act.

31 (6) A finding by the Department that the licensee,
32 after having his license placed on probationary status, has
33 violated the terms of probation.

34 (7) Practicing or attempting to practice under a name
35 other than the name as shown on his or her license or any

1 other legally authorized name.

2 (8) A finding by the Federal Trade Commission that a
3 licensee violated the Federal Fair Debt and Collection Act
4 or its rules.

5 (9) Failure to file a return, or to pay the tax,
6 penalty or interest shown in a filed return, or to pay any
7 final assessment of tax, penalty or interest, as required
8 by any tax Act administered by the Illinois Department of
9 Revenue until such time as the requirements of any such tax
10 Act are satisfied.

11 (10) Using or threatening to use force or violence to
12 cause physical harm to a debtor, his family or his
13 property.

14 (11) Threatening to instigate an arrest or criminal
15 prosecution where no basis for a criminal complaint
16 lawfully exists.

17 (12) Threatening the seizure, attachment or sale of a
18 debtor's property where such action can only be taken
19 pursuant to court order without disclosing that prior court
20 proceedings are required.

21 (13) Disclosing or threatening to disclose information
22 adversely affecting a debtor's reputation for credit
23 worthiness with knowledge the information is false.

24 (14) Initiating or threatening to initiate
25 communication with a debtor's employer unless there has
26 been a default of the payment of the obligation for at
27 least 30 days and at least 5 days prior written notice, to
28 the last known address of the debtor, of the intention to
29 communicate with the employer has been given to the
30 employee, except as expressly permitted by law or court
31 order.

32 (15) Communicating with the debtor or any member of the
33 debtor's family at such a time of day or night and with
34 such frequency as to constitute harassment of the debtor or
35 any member of the debtor's family. For purposes of this
36 Section the following conduct shall constitute harassment:

1 (A) Communicating with the debtor or any member of
2 his or her family in connection with the collection of
3 any debt without the prior consent of the debtor given
4 directly to the debt collector, or the express
5 permission of a court of competent jurisdiction, at any
6 unusual time or place or a time or place known or which
7 should be known to be inconvenient to the debtor. In
8 the absence of knowledge of circumstances to the
9 contrary, a debt collector shall assume that the
10 convenient time for communicating with a consumer is
11 after 8 o'clock a.m. and before 9 o'clock p.m. local
12 time at the debtor's location.

13 (B) The threat of publication or publication of a
14 list of consumers who allegedly refuse to pay debts,
15 except to a consumer reporting agency.

16 (C) The threat of advertisement or advertisement
17 for sale of any debt to coerce payment of the debt.

18 (D) Causing a telephone to ring or engaging any
19 person in telephone conversation repeatedly or
20 continuously with intent to annoy, abuse, or harass any
21 person at the called number.

22 (16) Using profane, obscene or abusive language in
23 communicating with a debtor, his or her family or others.

24 (17) Disclosing or threatening to disclose information
25 relating to a debtor's indebtedness to any other person
26 except where such other person has a legitimate business
27 need for the information or except where such disclosure is
28 regulated by law.

29 (18) Disclosing or threatening to disclose information
30 concerning the existence of a debt which the debt collector
31 knows to be reasonably disputed by the debtor without
32 disclosing the fact that the debtor disputes the debt.

33 (19) Engaging in any conduct which the Director finds
34 was intended to cause and did cause mental or physical
35 illness to the debtor or his or her family.

36 (20) Attempting or threatening to enforce a right or

1 remedy with knowledge or reason to know that the right or
2 remedy does not exist.

3 (21) Failing to disclose to the debtor or his or her
4 family the corporate, partnership or proprietary name, or
5 other trade or business name, under which the debt
6 collector is engaging in debt collections and which he or
7 she is legally authorized to use.

8 (22) Using any form of communication which simulates
9 legal or judicial process or which gives the appearance of
10 being authorized, issued or approved by a governmental
11 agency or official or by an attorney at law when it is not.

12 (23) Using any badge, uniform, or other indicia of any
13 governmental agency or official except as authorized by
14 law.

15 (24) Conducting business under any name or in any
16 manner which suggests or implies that a debt collector is
17 bonded if such collector is or is a branch of or is
18 affiliated with any governmental agency or court if such
19 collector is not.

20 (25) Failing to disclose, at the time of making any
21 demand for payment, the name of the person to whom the
22 claim is owed and at the request of the debtor, the address
23 where payment is to be made and the address of the person
24 to whom the claim is owed.

25 (26) Misrepresenting the amount of the claim or debt
26 alleged to be owed.

27 (27) Representing that an existing debt may be
28 increased by the addition of attorney's fees,
29 investigation fees or any other fees or charges when such
30 fees or charges may not legally be added to the existing
31 debt.

32 (28) Representing that the debt collector is an
33 attorney at law or an agent for an attorney if he is not.

34 (29) Collecting or attempting to collect any interest
35 or other charge or fee in excess of the actual debt or
36 claim unless such interest or other charge or fee is

1 expressly authorized by the agreement creating the debt or
2 claim unless expressly authorized by law or unless in a
3 commercial transaction such interest or other charge or fee
4 is expressly authorized in a subsequent agreement. If a
5 contingency or hourly fee arrangement (i) is established
6 under an agreement between a collection agency and a
7 creditor to collect a debt and (ii) is paid by a debtor
8 pursuant to a contract between the debtor and the creditor,
9 then that fee arrangement does not violate this Section
10 unless the fee is unreasonable. The Department shall
11 determine what constitutes a reasonable collection fee.

12 (30) Communicating or threatening to communicate with
13 a debtor when the debt collector is informed in writing by
14 an attorney that the attorney represents the debtor
15 concerning the claim, unless authorized by the attorney. If
16 the attorney fails to respond within a reasonable period of
17 time, the collector may communicate with the debtor. The
18 collector may communicate with the debtor when the attorney
19 gives his consent.

20 (31) Engaging in dishonorable, unethical, or
21 unprofessional conduct of a character likely to deceive,
22 defraud, or harm the public.

23 (b) The Department shall deny any license or renewal
24 authorized by this Act to any person who has defaulted on an
25 educational loan guaranteed by the Illinois State Scholarship
26 Commission; however, the Department may issue a license or
27 renewal if the person in default has established a satisfactory
28 repayment record as determined by the Illinois State
29 Scholarship Commission.

30 No debt collector while collecting or attempting to collect
31 a debt shall engage in any of the Acts specified in this
32 Section, each of which shall be unlawful practice.

33 (Source: P.A. 91-768, eff. 1-1-01.)

34 Section 99. Effective date. This Act takes effect December
35 31, 2005.