

SB2464



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

SB2464

Introduced 1/15/2020, by Sen. Rachelle Crowe

SYNOPSIS AS INTRODUCED:

225 ILCS 425/9

from Ch. 111, par. 2012

Amends the Collection Agency Act. Provides that the Department of Financial and Professional Regulation may discipline a licensee if a finding is made by the Consumer Financial Protection Bureau or Bureau of Consumer Financial Protection that a licensee violated the federal Fair Debt Collection Practices Act or its rules.

LRB101 16220 SPS 65783 b

A BILL FOR

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 Collection Agency Act is amended by changing
5 Section 9 as follows:

6 (225 ILCS 425/9) (from Ch. 111, par. 2012)

7 (Section scheduled to be repealed on January 1, 2026)

8 Sec. 9. Disciplinary actions.

9 (a) The Department may refuse to issue or renew, or may
10 revoke, suspend, place on probation, reprimand or take other
11 disciplinary or non-disciplinary action as the Department may
12 deem proper, including fines not to exceed \$10,000 per
13 violation, for any one or any combination of the following
14 causes:

15 (1) Material misstatement in furnishing information to
16 the Department.

17 (2) Violations of this Act or of the rules promulgated
18 hereunder.

19 (3) Conviction by plea of guilty or nolo contendere,
20 finding of guilt, jury verdict, or entry of judgment or by
21 sentencing of any crime, including, but not limited to,
22 convictions, preceding sentences of supervision,
23 conditional discharge, or first offender probation of the

1 collection agency or any of the officers or owners of more
2 than 10% interest of the agency of any crime under the laws
3 of any U.S. jurisdiction that (i) is a felony, (ii) is a
4 misdemeanor, an essential element of which is dishonesty,
5 or (iii) is directly related to the practice of a
6 collection agency.

7 (4) Fraud or misrepresentation in applying for, or
8 procuring, a license under this Act or in connection with
9 applying for renewal of a license under this Act.

10 (5) Aiding or assisting another person in violating any
11 provision of this Act or rules adopted under this Act.

12 (6) Failing, within 60 days, to provide information in
13 response to a written request made by the Department.

14 (7) Habitual or excessive use or addiction to alcohol,
15 narcotics, stimulants or any other chemical agent or drug
16 which results in the inability to practice with reasonable
17 judgment, skill, or safety by any of the officers or owners
18 of 10% or more interest of a collection agency.

19 (8) Discipline by another state, the District of
20 Columbia, a territory of the United States, or a foreign
21 nation, if at least one of the grounds for the discipline
22 is the same or substantially equivalent to those set forth
23 in this Act.

24 (9) A finding by the Department that the licensee,
25 after having his license placed on probationary status, has
26 violated the terms of probation.

1 (10) Willfully making or filing false records or
2 reports in his or her practice, including, but not limited
3 to, false records filed with State agencies or departments.

4 (11) Practicing or attempting to practice under a false
5 or, except as provided by law, an assumed name.

6 (12) A finding by the Federal Trade Commission,
7 Consumer Financial Protection Bureau, or Bureau of
8 Consumer Financial Protection that a licensee violated the
9 federal Fair Debt Collection Practices Act or its rules.

10 (13) Failure to file a return, or to pay the tax,
11 penalty or interest shown in a filed return, or to pay any
12 final assessment of tax, penalty or interest, as required
13 by any tax Act administered by the Illinois Department of
14 Revenue until such time as the requirements of any such tax
15 Act are satisfied.

16 (14) Using or threatening to use force or violence to
17 cause physical harm to a debtor, his or her family or his
18 or her property.

19 (15) Threatening to instigate an arrest or criminal
20 prosecution where no basis for a criminal complaint
21 lawfully exists.

22 (16) Threatening the seizure, attachment or sale of a
23 debtor's property where such action can only be taken
24 pursuant to court order without disclosing that prior court
25 proceedings are required.

26 (17) Disclosing or threatening to disclose information

1 adversely affecting a debtor's reputation for credit
2 worthiness with knowledge the information is false.

3 (18) Initiating or threatening to initiate
4 communication with a debtor's employer unless there has
5 been a default of the payment of the obligation for at
6 least 30 days and at least 5 days prior written notice, to
7 the last known address of the debtor, of the intention to
8 communicate with the employer has been given to the
9 employee, except as expressly permitted by law or court
10 order.

11 (19) Communicating with the debtor or any member of
12 the debtor's family at such a time of day or night and with
13 such frequency as to constitute harassment of the debtor or
14 any member of the debtor's family. For purposes of this
15 Section the following conduct shall constitute harassment:

16 (A) Communicating with the debtor or any member of
17 his or her family in connection with the collection of
18 any debt without the prior consent of the debtor given
19 directly to the debt collector, or the express
20 permission of a court of competent jurisdiction, at any
21 unusual time or place or a time or place known or which
22 should be known to be inconvenient to the debtor. In
23 the absence of knowledge of circumstances to the
24 contrary, a debt collector shall assume that the
25 convenient time for communicating with a consumer is
26 after 8 o'clock a.m. and before 9 o'clock p.m. local

1 time at the debtor's location.

2 (B) The threat of publication or publication of a
3 list of consumers who allegedly refuse to pay debts,
4 except to a consumer reporting agency.

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

7 (D) Causing a telephone to ring or engaging any
8 person in telephone conversation repeatedly or
9 continuously with intent to annoy, abuse, or harass any
10 person at the called number.

11 (20) Using profane, obscene or abusive language in
12 communicating with a debtor, his or her family or others.

13 (21) Disclosing or threatening to disclose information
14 relating to a debtor's debt to any other person except
15 where such other person has a legitimate business need for
16 the information or except where such disclosure is
17 permitted by law.

18 (22) Disclosing or threatening to disclose information
19 concerning the existence of a debt which the collection
20 agency knows to be disputed by the debtor without
21 disclosing the fact that the debtor disputes the debt.

22 (23) Engaging in any conduct that is intended to cause
23 and did cause mental or physical illness to the debtor or
24 his or her family.

25 (24) Attempting or threatening to enforce a right or
26 remedy with knowledge or reason to know that the right or

1 remedy does not exist.

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

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

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

14 (28) Conducting business under any name or in any
15 manner which suggests or implies that the collection agency
16 is a branch of or is affiliated in any way with a
17 governmental agency or court if such collection agency is
18 not.

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

24 (30) Misrepresenting the amount of the debt alleged to
25 be owed.

26 (31) Representing that an existing debt may be

1 increased by the addition of attorney's fees,
2 investigation fees or any other fees or charges when such
3 fees or charges may not legally be added to the existing
4 debt.

5 (32) Representing that the collection agency is an
6 attorney at law or an agent for an attorney if he or she is
7 not.

8 (33) Collecting or attempting to collect any interest
9 or other charge or fee in excess of the actual debt unless
10 such interest or other charge or fee is expressly
11 authorized by the agreement creating the debt unless
12 expressly authorized by law or unless in a commercial
13 transaction such interest or other charge or fee is
14 expressly authorized in a subsequent agreement. If a
15 contingency or hourly fee arrangement (i) is established
16 under an agreement between a collection agency and a
17 creditor to collect a debt and (ii) is paid by a debtor
18 pursuant to a contract between the debtor and the creditor,
19 then that fee arrangement does not violate this Section
20 unless the fee is unreasonable. The Department shall
21 determine what constitutes a reasonable collection fee.

22 (34) Communicating or threatening to communicate with
23 a debtor when the collection agency is informed in writing
24 by an attorney that the attorney represents the debtor
25 concerning the debt. If the attorney fails to respond
26 within a reasonable period of time, the collector may

1 communicate with the debtor. The collector may communicate
2 with the debtor when the attorney gives his or her consent.

3 (35) Engaging in dishonorable, unethical, or
4 unprofessional conduct of a character likely to deceive,
5 defraud, or harm the public.

6 (b) No collection agency while collecting or attempting to
7 collect a debt shall engage in any of the Acts specified in
8 this Section, each of which shall be unlawful practice.

9 (Source: P.A. 99-227, eff. 8-3-15; 100-872, eff. 8-14-18.)