

HB2491



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB2491

Introduced 2/15/2023, by Rep. Robert "Bob" Rita

SYNOPSIS AS INTRODUCED:

205 ILCS 740/9

was 225 ILCS 425/9

Amends the Collection Agency Act. In provisions concerning disciplinary actions by the Department of Financial and Professional Regulation, provides that nothing shall prevent a debtor from choosing to make a payment that includes a transaction fee paid by the debtor if the transaction complies with specified conditions.

LRB103 28451 BMS 54831 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
5 changing Section 9 as follows:

6 (205 ILCS 740/9) (was 225 ILCS 425/9)

7 (Section scheduled to be repealed on January 1, 2026)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
11 any 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
18 owners 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 or her license placed on probationary
26 status, has 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
4 departments.

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

7 (12) An adjudicated finding by the Federal Trade
8 Commission or other federal or State agency that a
9 licensee violated the federal Fair Debt Collection
10 Practices Act or its rules.

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

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

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

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

1 (17) Disclosing or threatening to disclose information
2 adversely affecting a debtor's reputation for credit
3 worthiness with knowledge the information is false.

4 (18) Threatening to initiate communication with a
5 debtor's employer unless there has been a default of the
6 payment of the obligation for at least 30 days and the
7 licensee has given at least 5 days prior written notice of
8 the intention to communicate with the employer to the
9 employee to the last known address of the debtor.

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

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

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

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

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

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

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

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

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

24 (24) Attempting or threatening to enforce a right or
25 remedy with knowledge or reason to know that the right or
26 remedy does not exist.

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

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

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

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

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

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

25 (31) Representing that an existing debt may be
26 increased by the addition of attorney's fees,

1 investigation fees or any other fees or charges when such
2 fees or charges may not legally be added to the existing
3 debt.

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

7 (33) Collecting or attempting to collect any interest
8 or other charge or fee in excess of the actual debt unless
9 such interest or other charge or fee is expressly
10 authorized by the agreement creating the debt unless
11 expressly authorized by law or unless in a commercial
12 transaction such interest or other charge or fee is
13 expressly authorized in a subsequent agreement. Nothing in
14 this paragraph (33) shall prevent a debtor from choosing
15 to make a payment that includes a transaction fee paid by
16 the debtor if (i) the transaction fee does not exceed 3% of
17 the amount of the payment or \$4.95 for the transaction,
18 whichever is less, (ii) an option to make the payment at no
19 cost to the debtor is disclosed and offered to the debtor,
20 (iii) the transaction fee is paid on a credit card or debit
21 card transaction and the fee is processed by an entity
22 that is independent and not affiliated with the collection
23 agency, and (iv) the transaction fee paid by the debtor is
24 remitted to the entity that processes the debtor's payment
25 and not to the collection agency. If a contingency or
26 hourly fee arrangement (i) is established under an

1 agreement between a collection agency and a creditor to
2 collect a debt and (ii) is paid by a debtor pursuant to a
3 contract between the debtor and the creditor, then that
4 fee arrangement does not violate this Section unless the
5 fee is unreasonable. The Department shall determine what
6 constitutes a reasonable collection fee.

7 (34) Communicating or threatening to communicate with
8 a debtor when the collection agency is informed in writing
9 by an attorney that the attorney represents the debtor
10 concerning the debt. If the attorney fails to respond
11 within a reasonable period of time, the collector may
12 communicate with the debtor. The collector may communicate
13 with the debtor when the attorney gives his or her
14 consent.

15 (35) Engaging in dishonorable, unethical, or
16 unprofessional conduct of a character likely to deceive,
17 defraud, or harm the public.

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

21 (Source: P.A. 102-975, eff. 1-1-23.)