

AN ACT concerning regulation.

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

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

(5 ILCS 80/4.16)

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 Acts repealed January 1, 2006. The following Acts are repealed January 1, 2006:

The Respiratory Care Practice Act.

The Hearing Instrument Consumer Protection Act.

The Illinois Dental Practice Act.

The Professional Geologist Licensing Act.

The Illinois Athletic Trainers Practice Act.

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

~~The Collection Agency Act.~~

The Illinois Roofing Industry Licensing Act.

The Illinois Physical Therapy Act.

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

(5 ILCS 80/4.26 new)

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 Act repealed on January 1, 2016. The following Act is repealed on January 1, 2016:

The Collection Agency Act.

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

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

(Section scheduled to be repealed on January 1, 2006)

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

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

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

(Section scheduled to be repealed on January 1, 2006)

Sec. 2.04. Child support indebtedness.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(225 ILCS 425/4.5)

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

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

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

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

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

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

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

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

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

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

(1) The applicant's name and address;

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

corporation, the names and addresses of all persons owning 10% or more of the stock of such corporation, if the collection agency is a partnership, the names and addresses of all partners of the partnership holding a 10% or more interest in the partnership, and, if the collection agency is a limited liability company, the names and addresses of all members holding 10% or more interest in the limited liability company; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

other legally authorized name.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(20) Attempting or threatening to enforce a right or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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