

**Title 17. Professions, Occupations, and Businesses**

**Chapter XLVIII. State Board of Collection Agencies, Department of Labor and Licensing**

**Subchapter A. Generally**

**Part 280. State Board of Collection Agencies Rules**

**Codification Notes.** This part as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

"RULES

rev. 10/16/97

rev.12/09/2021"

**Subpart 1. General**

**17 CAR § 280-101. Definitions.**

The following definitions shall apply:

(1) "Act" means Arkansas Code § 17-24-101 et seq., unless noted otherwise;

(2) "Agency" means a collection agency as defined in the Act;

(3) "Board" means the State Board of Collection Agencies;

(4)(A) "Collector" means any person who uses any instrumentality of interstate commerce, including but not limited to the mails or other mode of contact, in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another.

(B) The terms "collector" and "debt collector" shall be used interchangeably;

(5) "Licensee" means a collection agency duly licensed by the State Board of Collection Agencies;

(6) "Manager" means any person who regularly supervises the activities of other collectors and/or solicitors in an agency;

(7) "Rules" means any rule promulgated and duly enacted by the State Board of Collection Agencies; and

(8) "Solicitor" means any person who, for compensation, undertakes to secure business for an agency.

**Authority.** Arkansas Code § 17-24-203.

### **17 CAR § 280-102. Organization.**

#### **(a) Meetings.**

(1) The State Board of Collection Agencies established pursuant to Arkansas Code § 17-24-101 et seq., will generally meet quarterly, but may meet less often as necessary, or more often at the written call of the chair or written request of any two (2) members.

(2) The board shall not meet fewer than two (2) times in a calendar year or state fiscal year.

(3) Meetings shall be conducted pursuant to the Freedom of Information Act of 1967, Arkansas Code § 25-19-101 et seq.

(4) A majority of the board's full membership shall:

(A) Constitute a quorum for conducting business; and

(B) Be required for the passage of any motion.

#### **(b) Officers.**

(1) The board shall select a chair, vice chair, and secretary at the last regular meeting of each calendar year.

(2) Officers' terms shall be for one (1) calendar year, beginning on January 1.

(3) No member may hold more than one (1) office concurrently.

#### **(c) Staff.**

(1) By Acts 2019, No. 910, the board became a division of the Department of Labor and Licensing.

(2) The department shall, in consultation with the board, designate a director to provide executive support to the board.

(3) The director may hire additional administrative staff as necessary, subject to department approval.

**Authority.** Arkansas Code § 17-24-203.

### **17 CAR § 280-103. Variances.**

#### **(a) Procedural.**

(1) The director may grant procedural variances from this part in individual cases where he or she finds that:

(A) The provision from which the variance is granted is not statutorily mandated;

(B) No party will be injured by granting the variance; and

(C) The rule from which the variance is granted would not, in the particular case, be unreasonable or unnecessarily burdensome.

(2) The director shall notify the State Board of Collection Agencies at its next meeting of the granting of such variances and the reasons therefore.

(b)(1) Substantive proposed variances, waivers, or other exceptions to this part, not consistent with the above description of a procedural variance, shall be deemed substantive.

(2) The board may hear requests for substantive variances on a case-by-case basis pursuant to the Arkansas Administrative Procedure Act, Arkansas Code § 25-15-201 et seq.

**Authority.** Arkansas Code § 17-24-203.

## **Subpart 2. Licensure**

### **17 CAR § 280-201. Licensure requirements.**

(a) **Application.** All applications for licensure as a collection agency shall be submitted on forms provided by the director, pursuant to Arkansas Code § 17-24-303(a), along with:

(1)(A) The name and address of all officers of the collection agency.

(B) The address shall:

(i) Be an actual street address; and

(ii) Include the city, state, and zip or postal code.

(C) A post office box number alone is not acceptable as an address;

(2) A surety bond payable to the State Board of Collection Agencies, pursuant to Arkansas Code § 17-24-306, in the amounts as set forth below:

(A) Ten thousand dollars (\$10,000) for agencies with up to five (5) collectors;

(B) Twenty thousand dollars (\$20,000) for agencies with six (6) to twelve (12) collectors;

(C) Twenty-five thousand dollars (\$25,000) for agencies with more than twelve (12) collectors;

(3) The required fee of one hundred twenty-five dollars (\$125) set forth in Arkansas Code § 17-24-305(a); and

(4) Any other information as required by the board.

(b) **Agency managers.**

(1) Each licensee or applicant shall register with the board at least one (1) manager.

(2)(A) The proposed manager or managers of each agency must:

(i) Have an acceptable credit reputation; and

(ii) Maintain said reputation after licensing.

(B) An agency shall provide the necessary information and authorization for the board to obtain a credit report.

(C) A credit record which includes any of the following will be deemed unacceptable:

(i) Judgments, foreclosures, or tax liens within the past five (5) years;

(ii) Accounts charged to profit and loss, unpaid claims for collection or repossessions within the last five (5) years;

(iii) A payment history of accounts paid sixty (60) days late more than three (3) times within the past five (5) years; or

(iv) Other unfavorable economic or financial deficiency that may negatively affect future financial responsibility or invoke public welfare concerns.

(3)(A) Pursuant to Arkansas Code § 17-1-108(c), the credit report requirement, above, may be waived if the agency holds a substantially similar license in another state or territory of the United States.

(B) Another United States state or territory's license is substantially similar to Arkansas's if it requires familiarity with the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq.

(C) An agency seeking such a waiver shall:

(i) Provide the board with evidence of such licensure in good standing;

(ii) Not have had a license revoked for an act of bad faith or a violation of:

(a) Law;

(b) Rule; or

(c) Ethics; and

(iii) Not hold a suspended or probationary license in any United States jurisdiction.

(c) **Additional locations.** Collection agencies operating at more than one (1) office or location must obtain and maintain a separate license and surety bond for each location.

(d) **Change of ownership.**

(1) Licenses issued by the board are not transferable.

(2) When fifty percent (50%) or more of the assets, stock, or equity of a collection agency is transferred and/or sold, the agency shall promptly give written notice to the board.

**(e) Registration of employees.**

(1) Licensees shall report to the board the names, aliases, and dates of hire of all employees involved in debt collection activities, including collectors, solicitors, and managers, and remit the twenty-dollar registration fee for each, as set forth in Arkansas Code § 17-24-305(a), within ninety (90) days of such hires.

(2)(A) An agency shall maintain a listing of all pseudonyms (aliases) used by an office or employee of the collection agency in relation to collection activities.

(B) This listing shall be submitted to the board upon application or renewal of its license.

(C) A listing of pseudonyms shall be maintained by the collection agency one (1) year after termination of employment.

(3) Licensees shall register their collectors, solicitors, and managers (and their aliases) for each licensing period (July 1 – June 30).

**(f) Change of address.**

(1) It is the responsibility of each licensee to notify the board in a timely fashion of any changes to its physical and/or mailing address.

(2) All surety bonds must bear the agency's current physical address.

**Authority.** Arkansas Code §§ 17-24-203, 17-24-305.

**17 CAR § 280-202. Retroactive licenses.**

(a) Pursuant to Arkansas Code § 17-24-103(a)(3), an agency operating without a license may:

(1) Pay a civil penalty of ten thousand dollars (\$10,000) to the State Board of Collection Agencies; and

(2) Be licensed retroactively after meeting all other requirements for obtaining a license (see 17 CAR § 280-201).

(b) A retroactive license shall:

(1) Have an effective start date corresponding to an agency's initial debt collection activity in Arkansas; and

(2) End on the date the retroactive license is issued.

(c) Any subsequent debt collection activities shall require regular licensure in accordance with 17 CAR § 280-201.

**Authority.** Arkansas Code § 17-24-203.

**17 CAR § 280-203. License termination.**

(a) **No fault.** An agency's license shall automatically terminate:

(1) When the agency ceases operation;

(2) When the agency's ownership is transferred or conveyed (see 17 CAR § 280-201(d));

(3) When the surety bond (see 17 CAR § 280-201(a)(2)) is not renewed or is cancelled;

(4) When the license is surrendered; or

(5) When the license has not been renewed in a timely fashion (See 17 CAR § 280-204).

(b) **Disciplinary.** Additionally, the State Board of Collection Agencies has the authority to revoke, suspend, or refuse a license for violations of state and/or federal debt collection laws when appropriate evidence is presented (see 17 CAR § 280-402).

**Authority.** Arkansas Code § 17-24-203.

**17 CAR § 280-204. License renewal.**

(a) **Expiration date.**

(1) Licenses issued between March 1 and December 31 shall expire on June 30 of the year following their issuance.

(2) Licenses issued in January and February shall expire on June 30 of the same year.

(b) **Renewal application.** Applications for license renewal shall consist of:

(1) An application form provided by the director;

(2) The same fees for licensure and for registering employees as required for a new license; and

(3) The same documentation as required for a new license, including but not be limited to, documents pertaining to a change in agency managers, changes in ownership, current surety bond, and information regarding an agency's collectors.

**(c) Failure to renew.**

(1) Failure to complete the renewal process by June 30 shall be construed as an agency having knowingly and willingly allowed its license to expire.

(2) An agency that continues or continued to operate or practice debt collection activities in Arkansas after its license has expired may be subject to a civil penalty, at the State Board of Collection Agencies discretion.

(3) Failure to receive a renewal notice or reminder from the board is not justification for failure to renew an agency's license on time.

(4) Should a later request for licensing be made by the holder of an expired license, it shall be treated as a new application.

**Authority.** Arkansas Code §§ 17-24-203, 17-24-305.

**17 CAR § 280-205. License denial.**

(a) **Administrative.** If the director determines an application for a new license (17 CAR § 280-201) or for license renewal (17 CAR § 280-204) is deficient in such a manner that cannot or should not be remedied by a procedural variance (see 17 CAR § 280-103(a)), he or she shall deny the application and provide to the applicant in writing the reasons therefore within ten (10) business days.

**(b) Appeal.**

(1)(A) An applicant aggrieved by such a denial may appeal in writing to the State Board of Collection Agencies within thirty (30) days of receipt of the denial.

(B) Such an appeal may also constitute a request for a substantive variance (see 17 CAR § 280-103(b)).

(2)(A) The director will schedule such an appeal for a hearing at an upcoming meeting of the board.

(B) Hearings shall be conducted in accordance with Arkansas Code § 17-24-308 and with the Arkansas Administrative Procedure Act, Arkansas Code § 25-15-201 et seq.

(c) **Refund.** Should an applicant choose not to appeal a denial by the director, or should the board uphold such a denial, any funds remitted to the board may be returned to the applicant upon written request within thirty (30) days of notice of the denial or of the board's decision.

**Authority.** Arkansas Code § 17-24-203.

### **Subpart 3. Agency Conduct**

#### **17 CAR § 280-301. Accounting.**

(a) **Posting payments.** All funds collected by an agency on behalf of its clients shall be posted and credited to the debtor's account and to the account of the client for whom it was collected.

(b) **Remitting payments.** Pursuant to Arkansas Code § 17-24-104, any funds collected by an agency on behalf of a client shall be remitted to the client no later than the last day of the calendar month following the month in which the funds were collected.

(1)(A) An agency that fails to remit such funds to a client by the last day of the calendar month following the month they were collected shall not be entitled to a collection fee and shall remit to the client the total funds collected.

(B) An agency that fails to remit the total funds collected for the client within sixty-one (61) days of the date of collection shall be subject to disciplinary action by the State Board of Collection Agencies (see 17 CAR § 280-402(b)).

(2)(A) An agency shall, within the month of April each year, give written notice to each of its clients, pursuant to Arkansas Code § 17-24-310, that collected funds must be rendered to clients by the end of the calendar month following the date of collection.

(B) This notice is not required for clients who are also Arkansas licensees.

(c) **Collection fees.** Pursuant to Arkansas Code § 17-24-309, an agency shall not charge its client or clients a:

(1) Fee greater than fifty percent (50%) of the total amount collected for any one (1) client;

(2) Fee greater than fifty percent (50%) of the total amount collected on any one (1) account; or

(3) Minimum fee greater than one dollar (\$1.00) on any partially or totally collected account.

**Authority.** Arkansas Code § 17-24-203.

### **17 CAR § 280-302. Communication by agency.**

(a) **Agency name.** A collection agency shall use only its name or trade style exactly as it appears on its license when attempting to collect a debt.

(b) **Debtor workplaces.** Pursuant to Arkansas Code § 17-24-307, no licensee shall address a letter to or telephone any debtor at his or her place of employment unless:

(1) A good faith attempt has been made to contact the debtor by mail at his or her home; and

(2) The mail has not been returned and no answer has been received.

(c) **Disclosure.** Pursuant to Arkansas Code § 17-24-508, when an agency communicates with a debtor, the agency must disclose:

(1) In a written or telephone communication, the:

(A) Specific reason for the communication;

(B) Name of the creditor;

(C) Licensed name of the agency;

(D) Date of communication in written communication; and

(2) In oral communication, the identity of the collector making the contact.

(d) **Prohibited activities.** A licensee shall not engage in any of the practices or activities prohibited by Arkansas Code § 17-24-101 et seq., including but not limited to:

(1) Harassment or abuse;

(2) False or misleading statements;

(3) Unfair practices;

(4) Improper communication with a consumer/debtor; and/or

(5) Other prohibited behavior or actions such as those set forth in Arkansas Code §§ 17-24-307 and 17-24-503 et seq.

**Authority.** Arkansas Code § 17-24-203.

#### **Subpart 4. Enforcement**

##### **17 CAR § 280-401. Investigations.**

(a) The director and/or his or her designee may verify any and all information received on a:

(1) License application;

(2) License renewal; or

(3) Complaint.

(b) The director may require that anyone being investigated pursuant to a license application, renewal, or complaint respond in writing to answer questions and concerns related to the above.

(c) The director may:

(1) Require such authorizations, financial statements, and/or references of all applicants for a license or licenses as it deems necessary; and

(2) Make an investigation or cause an independent investigation to be made concerning the agency's reputation, integrity, and/or business practices pursuant to Arkansas Code § 17-24-303.

(d) The director may investigate the collection records of a licensee, and for that purpose the director shall have free access to the books and/or papers of a licensee relating thereto.

**Authority.** Arkansas Code § 17-24-203.

**17 CAR § 280-402. Disciplinary action.**

**(a) Lack of license.**

(1) If the State Board of Collection Agencies determines an agency has failed to obtain or maintain a license, it may assess a civil penalty of between fifty dollars (\$50.00) and five hundred dollars (\$500) for each day the agency operated while unlicensed.

(2) Such penalties do not preclude private causes of action by debtors and/or creditors relating to debt collection activities conducted while an agency was unlicensed.

(3) The board may also seek injunctive relief pursuant to Arkansas Code § 17-24-105.

(4) See also 17 CAR § 280-202 regarding retroactive licensure.

**(b) Other violations.**

(1) The board may refuse to issue or renew a license, or may revoke or suspend a license, or place on probation, reprimand, or take other disciplinary action as the board may deem proper, including fines not to exceed five hundred dollars (\$500) per day per complaint, for any one (1) or any combination of violations of Arkansas Code § 17-24-101 et seq., and/or this part which regulate the activities of collection agencies.

(2) Such violations shall be considered and treated as engaging in unethical practices or resorting to illegal means or methods of collection.

**(c) Notice and hearing.**

(1) Pursuant to Arkansas Code §§ 17-24-103(b)(2) and 17-24-308 and to the Arkansas Administrative Procedure Act, Arkansas Code § 25-15-201 et seq., none of disciplinary actions described herein shall be ordered without proper notice and hearing.

(2) Nothing in this section shall preclude the disposition of disputes by consent, agreement, or other informal means.

**Authority.** Arkansas Code § 17-24-203.

**17 CAR § 280-403. Collection of surety bond.**

(a) The State Board of Collection Agencies, upon finding a licensee has failed to pay its client or clients shall make a claim on the licensee's surety bond.

(b) The board shall proceed as follows:

(1) **Notice.**

(A) The board and/or director shall notify interested parties of the noncompliance.

(B) This notice shall contain the name and address of the licensee whose bond has been collected and how to file a proper claim.

(C) The notice may be served by certified mail and/or by publishing once a week for two (2) consecutive weeks in a newspaper that has a statewide circulation;

(2) **Claims.**

(A) Claims must be filed within ninety (90) days following the notice date.

(B) Claims must include the name and address of the claiming party, an itemized list of the amounts claimed, and any information or documentation required by the board; and

(3) **Awards.**

(A)(i) At the expiration of ninety (90) days, the board shall hold a hearing to determine the amount, if any, to be awarded on the claims.

(ii) Notice of the hearing shall be given to all who filed timely claims.

(iii) At the hearing, the board:

(a) May hear evidence to determine the validity of any or all claims; and

(b) Shall either approve or deny the claims.

(B) In the event that the bond is insufficient to pay all the approved claims, disbursement shall be made on a pro rata basis.

(C) In the event that a bond surplus arises, the funds may be returned to the bonding company, at the discretion of the board.

**Authority.** Arkansas Code § 17-24-203.