

## NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* first as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council or the Attorney General. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Register* after the final rules have been submitted for filing and publication.

### NOTICE OF FINAL RULEMAKING

#### TITLE 17. TRANSPORTATION

#### CHAPTER 4. DEPARTMENT OF TRANSPORTATION TITLE, REGISTRATION, AND DRIVER LICENSES

[R06-109]

#### PREAMBLE

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|---|--|
| <b>1. <u>Sections Affected</u></b><br>R17-4-410 | <b><u>Rulemaking Action</u></b><br>Amend |
|---|--|
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**  
Authorizing statute: A.R.S. § 28-366  
Implementing statute: A.R.S. §§ 28-101, 16-112
- 3. The effective date of the rules:**  
June 4, 2006
- 4. A list of all previous notices appearing in the *Register* addressing the final rule:**  
Notice of Rulemaking Docket Opening: 11 A.A.R. 5548, December 30, 2005  
Notice of Proposed Rulemaking: 11 A.A.R. 5449, December 30, 2005
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

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Please visit the ADOT web site to track progress of this rule and any other agency rulemaking matters at [www.azdot.gov/mvd/mvdrules/rules.asp](http://www.azdot.gov/mvd/mvdrules/rules.asp).
- 6. An explanation of the rule, including the agency's reason for initiating the rule:**  
The Arizona Department of Transportation, Motor Vehicle Division (MVD) amends this Section to reflect current terminology used regarding voter registration through MVD. This Section provides for voter registration through MVD's ServiceArizona program or through MVD's driver license system in accordance with A.R.S. § 28-112. Additionally, grammatical and technical changes will be made to make the rule more clear, concise, and understandable.
- 7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**  
The agency did not review any study for this rulemaking.

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- 8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**  
Not applicable
- 9. The summary of the economic, small business, and consumer impact:**  
The economic impact of this rulemaking is negligible. There are no costs to businesses resulting from this rulemaking. Private consumers will potentially benefit minimally in saved time and possibly also in mailing costs if opting for hardcopy voter registration. The rule merely makes changes to reflect the current terminology used and to make the rule more clear, concise, and understandable.
- 10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**  
Minor technical and grammatical changes were made for clarity.
- 11. A summary of the comments made regarding the rule and the agency response to them:**  
None
- 12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**  
Not applicable
- 13. Incorporations by reference and their location in the rules:**  
None
- 14. Was this rule previously made as an emergency rule?**  
No.
- 15. The full text of the rules follows:**

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION  
TITLE, REGISTRATION, AND DRIVER LICENSES

ARTICLE 4. DRIVER LICENSES

Section

R17-4-410. ~~License Application linked Easy-Voter Registration~~ through the Motor Vehicle Division

ARTICLE 4. DRIVER LICENSES

**R17-4-410. ~~License Application linked Easy-Voter Registration~~ through the Motor Vehicle Division**

- A.** For purposes of this Section:
- ~~1. "license"~~ "License" has the same meaning as "~~Driver's License~~" "driver's license" under A.R.S. § 16-111(2).
  - ~~2. "MVD" means the Arizona Department of Transportation, Motor Vehicle Division.~~
- B.** To register to vote in Arizona through the ~~Arizona Department of Transportation, Motor Vehicle Division~~ "MVD," MVD as provided for in A.R.S. § 16-112, a person who completes a transaction listed in subsection (C) shall complete and return to MVD:
- A Secretary of State-approved hardcopy voter registration form for the county of the person's residence, or
  - ~~An Easy-Voter Registration form on MVD's Service Arizona web site at: [www.servicearizona.ihost.com](http://www.servicearizona.ihost.com); and elec-~~ tronic voter registration form through MVD's ServiceArizona web site or through MVD's driver license system along with an electronic verification that the person meets voter eligibility criteria under A.R.S. § 16-101.
  - ~~An electronic verification of voter eligibility according to criteria prescribed under A.R.S. § 16-101.~~
- C.** Subsection (B)(~~2~~) applies to the following license transactions:
- Initial licensee application;
  - License renewal; ~~or~~
  - Duplicate driver license; or
  - ~~4~~ Licensee personal information update.
- D.** MVD shall transfer the voter registration forms and the data collected under this Section by:
- Mailing the completed hardcopy forms to the appropriate county recorder; and

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- 2. Transmitting the data from completed ~~Easy Voter Registration~~ electronic voter registration forms and licensee personal information updates to the Secretary of State as prescribed under A.A.C. R2-12-605 for further distribution to the appropriate county recorder.
- E. MVD shall maintain ~~the confidential~~ confidentiality of applicant information as required under A.R.S. Title 16, Chapter 1.

**NOTICE OF FINAL RULEMAKING**

**TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE**

**CHAPTER 4. DEPARTMENT OF FINANCIAL INSTITUTIONS**

[R06-111]

**PREAMBLE**

**1. Sections Affected**

R20-4-1501  
R20-4-1503  
R20-4-1506  
R20-4-1507  
R20-4-1508  
R20-4-1509  
R20-4-1510  
R20-4-1511  
R20-4-1512  
R20-4-1513  
R20-4-1514  
R20-4-1515  
R20-4-1516  
R20-4-1517  
R20-4-1518  
R20-4-1519  
R20-4-1520  
R20-4-1521

**Rulemaking Action**

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**2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute(s): A.R.S. § 6-123(2)

Implementing statute(s): A.R.S. §§ 6-123(1), 32-1021, 32-1023, 32-1051, 32-1055

**3. The effective date of the rules:**

June 4, 2006

**4. A list of all previous notices appearing in the Register addressing the final rule:**

Notice of Rulemaking Docket Opening: 8 A.A.R. 2177, May 17, 2002

Notice of Rulemaking Docket Opening: 10 A.A.R. 3193, August 13, 2004

Notice of Proposed Rulemaking: 10 A.A.R. 3181, August 13, 2004

Notice of Rulemaking Docket Opening: 11 A.A.R. 5131, December 2, 2005

Notice of Proposed Rulemaking: 11 A.A.R. 5088, December 2, 2005

**5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

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E-mail: [jhudock@azdfi.com](mailto:jhudock@azdfi.com)

**6. An explanation of the rule, including the agency's reason for initiating the rule:**

**General explanation and reasoning:** These Sections control the conduct of the collection agency business in Arizona. On November 7, 2000, the Council approved the Department's then current five-year review report. In the approved report the Department promised to revise or repeal several Sections of Article 15. This rulemaking is to fulfill that promise.

In particular, all but one of these Sections will be amended to streamline the writing style and enhance the clarity of each Section's language.

This rulemaking also repeals one Section. It repeals R20-4-1517 for several reasons. First, the rule is not enforced. Second, the agency lacks statutory authority to make the rule. Third, the rule is an unconstitutional violation of the Separation of Powers Doctrine. Fourth, the issue of whether a collection agency is a "holder in due course" in a given factual situation is not likely to be a matter the courts would decide by reliance on an administrative pronouncement. The status of "holder in due course" is a question of fact to be determined from an analysis of the facts rather than from a weighing of an agency's quasi-legislative acts.

Finally, under the authority of A.R.S. § 6-110, originally enacted as Laws 2004, Chapter 188, this Department changed its name effective January 1, 2006. The new name is the Department of Financial Institutions.

**Specific Reasons for publishing a second Notice of Proposed Rulemaking;**

Internal review by Department staff has determined that appropriate, enforceable language for these Sections requires substantial changes to the language published in the original Notice of Proposed Rulemaking, in August 2004. During the internal review process, the original Notice lapsed due to the passage of time. This Notice is published to revive the rulemaking and to implement necessary changes in language. The Department proposes the following additional changes to the language of the following Sections or subsections, as they are numbered in the proposed rules:

**R20-4-1507(2).** The additional change in this subsection adds the words "directly or indirectly" so that the new proposed language reads:

"2. A collection agency shall not directly or indirectly claim to be a credit reporting agency or credit bureau if it is not."

The Department determined that the original change in this language, by omitting reference to a collection agency's direct or indirect claims, implicitly permitted indirect claims that the Department intends to prohibit.

**R20-4-1507(3).** The additional change in this subsection adds the words "directly or indirectly" so that the new proposed language reads:

"3. A collection agency shall not directly or indirectly claim to be a law enforcement agency."

The Department determined that the original change in this language, by omitting reference to a collection agency's direct or indirect claims, implicitly permitted indirect claims that the Department intends to prohibit.

**R20-4-1507(4).** The additional change in this subsection adds the words "directly or indirectly" so that the new proposed language reads:

"4. A collection agency shall not directly or indirectly claim to be a law firm."

The Department determined that the original change in this language, by omitting reference to a collection agency's direct or indirect claims, implicitly permitted indirect claims that the Department intends to prohibit.

**R20-4-1510(A).** The additional change in this subsection substitutes the word "inform" for the originally proposed word "tell" so that the new proposed language reads:

"A. A collection agency shall not inform a debtor that the debtor waives any legal right or legal defense by a failure to contact the collection agency."

The Department determined that the word "inform" correctly implies all means of communication while the word "tell" incorrectly implies that the collection agency is only prohibited to make oral statements about the waiver of rights or defenses.

**R20-4-1510(B).** The additional change in this subsection substitutes the word "inform" for the originally proposed word "tell" so that the new proposed language reads:

"B. A collection agency shall not inform a debtor that the collection agency has the power or right to bypass the legal process."

The Department determined that the word "inform" correctly implies all means of communication while the word "tell" incorrectly implies that the collection agency is only prohibited to make oral statements about the collection agency's ability to bypass the legal process.

**R20-4-1511(A).** The additional change in this subsection reinstates references to "unauthorized" tactics and to tactics "designed to" harass so that the newly proposed language prohibits the same conduct proscribed by the existing rule. The new subsection reads:

"A. A collection agency shall not use unauthorized or oppressive tactics designed to harass any person to pay a debt."

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The Department determined that the broader prohibition implicit in this language was properly included in the existing rule and should be continued in the revised subsection.

**R20-4-1511(B).** The additional change in this subsection broadens the prohibition of the originally proposed language to include, as does the existing rule, not only communications that ridicule, disgrace, or humiliate but also those that tend to ridicule, disgrace, or humiliate. The new subsection reads:

“B. A collection agency shall not use written or oral communications that either ridicule, disgrace, or humiliate any person or tend to ridicule, disgrace, or humiliate any person.”

The Department determined that the broader prohibition implicit in this language was properly included in the existing rule and should be continued in the revised subsection.

**R20-4-1511(C).** The additional change in this subsection broadens the prohibitions of the originally proposed language by reinstating language contained in the existing rule that proscribes statements “tending to imply” that a debtor is guilty of fraud. The new subsection reads:

“C. A collection agency shall not state, imply, or tend to imply, in written or oral communications that any person is guilty of fraud or any other crime.”

The Department determined that the broader prohibition implicit in this language was properly included in the existing rule and should be continued in the revised subsection.

**R20-4-1513(A).** The additional change in the first sentence of this subsection reinstates references, contained in the existing rule, to “direct or indirect” contact with the debtor. The new first sentence reads:

“A. A collection agency shall stop contacting a debtor, directly or indirectly, if the debtor tells the collection agency that the debtor is represented by a lawyer and wants the collection agency to communicate with the debtor through that lawyer.”

The Department determined that the broader prohibition implicit in this language was properly included in the existing rule and should be continued in the revised subsection.

**R20-4-1513(B).** The additional change in the first clause of this subsection reinstates references, contained in the existing rule, to “direct or indirect” contact with the debtor. The newly proposed first clause reads

“A collection agency shall stop contacting a debtor, directly or indirectly, if the debtor gives the collection agency written notice that the debtor:”

The Department determined that the broader prohibition implicit in this language was properly included in the existing rule and should be continued in the revised subsection.

**R20-1514(A).** The additional change in the first sentence of this Section revises the time within which a Collection Agency must obtain and provide certain information to a debtor. The originally proposed language was unduly burdensome on certain members of the regulated community who brought the problem to the Department’s attention. The new language parallels the requirements of the federal Fair Debt Collection Practices Act, preserves the duty to inform, and relieves the burden of the earlier statement of the Collection Agency’s duty to inform.

The new sentence reads:

“A. Within five days after the initial communication with the debtor, a collection agency shall obtain, and be able to tell the debtor:”

**R20-4-1514(A)(2).** The additional change in this subsection reinstates reference to the “creation of a debt” using language that was deleted in the originally proposed revision of this Section. The originally proposed revision changed that reference to a time and place when the debtor “agreed to pay” a debt. The new subsection reads:

“2. The time and place of the creation of the debt.”

The Department recognizes that collection agencies are frequently called upon to collect debts, such as judgments, that are not created by a debtor’s agreement to pay, but those collection efforts are still regulated by this Section.

**R20-4-1515.** The additional change in this subsection reinstates reference in the existing rule to direct or indirect aiding or abetting. The first clause of the new subsection reads:

“A collection agency shall not help or encourage, directly or indirectly, any other person to evade or violate any provision of:”

The Department determined that the broader prohibition implicit in this language was properly included in the existing rule and should be continued in the revised subsection.

**R20-4-1519(A)(1).** The additional change in this subsection removes “deceptively,” the first word of the clause. That adverb is redundant and extraneous given that R20-4-1519(A)(4) makes clear that a name may not be deceptive. The new clause reads:

“Similar to, or that may be confused with, any federal, state, county, or municipal government function or agency;”

The Department does not believe the changes to this subsection are substantial but includes them in this Notice to bring them to the attention of the regulated community.

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**R20-4-1520(A).** There are three additional changes in this subsection. All three reinstate provisions of the existing rule. First, the change to R20-4-1520(A)(2) inserts language prohibiting an implication that a person is a lawyer. Second, the change to R20-4-1520(A)(3) inserts language prohibiting an implication that a person is a public employee. Finally, in new language numbered R20-4-1520(A)(4), this notice reinstates language found in the existing rule prohibiting claims, or implications, that a person is any other third party other than a collector. The new subsections, R20-4-1520(A)(2) through (4), read:

“(2) Claim to be, or imply that the person is, an attorney unless the person is licensed to practice law, or

(3) Claim to be, or imply that the person is, a public official, peace officer, or any other type of public employee,  
or

(4) claim to be, or imply that the person is, any other third party.”

The Department determined that the broader prohibition implicit in this language was properly included in the existing rule and should be continued in the revised subsection.

**7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

The Department did not rely on any study as an evaluator or justification for the rules.

**8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

**9. The summary of the economic, small business, and consumer impact:**

**A. The Banking Department**

The Department will incur the costs of completing this rulemaking and of putting the revised Sections into effect. It expects to receive the offsetting benefits of a more modern set of regulations, accurately describing current best practices, and a resultant ease of communication with all licensees.

**B. Other Public Agencies**

The state will incur normal publishing costs incident to rulemaking.

**C. Private Persons and Businesses Directly Affected**

Costs of services will not increase to any measurable degree; nor should these revisions increase any collection agency's cost of doing business in compliance with these rules.

**D. Consumers**

No measurable effect on consumers is expected.

**E. Private and Public Employment**

There is no measurable effect on private and public employment

**F. State Revenues**

This rulemaking will not change state revenues.

**10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**

The Council's staff has recommended editorial and stylistic changes to the originally proposed text of these Sections. The changes, which required some rewriting of these Sections, improved the precision and clarity of the text and have been implemented.

**11. A summary of the comments made regarding the rule and the agency response to them:**

The Department received four comments from the regulated community. Each of the commentators responded to proposed language posted on the Department's web site before publication of the latest Notice of Proposed Rulemaking.

First, the Arizona Collectors Association wrote regarding the necessity of recording the debtor's name under R20-4-1518. The originally proposed language required a collection agent to have a written agreement with each creditor client that specified, among other things, the identity of each person legally obligated to pay each debt. The Association felt that requirement was unduly burdensome as it required a level of detail in the agreement that would be administratively difficult to obtain in all cases. The Department removed this requirement from R20-4-1518, because the provisions of R20-4-1504(B)(2) require the collection agent to retain debtors' names in the records regardless of the content of the agreement with a client creditor.

Second, as described above in item 10, members of the regulated community expressed misgivings that the originally proposed revision of R20-4-1507(1) stating that "A collection agency shall always represent itself solely as a collection agency" was unduly restrictive. In response to these suggestions, the Department modified R20-4-1507(1) to the language in these final rules: "A collection agency shall represent itself as a collection agency."

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Third, an out-of-state collection agency told the Department that an earlier proposed revision to the language of R20-4-1514(A) was unduly burdensome to it and similarly conducted operations because of the form and timing of receipt from creditor clients of information describing the details of debts. In response, the Department revised its proposal to preserve the duty to fully inform debtors, but in a way that parallels the federal Fair Debt Collection Practices Act without unduly burdening collection agencies.

Finally, a local lawyer inquired whether an in-house lawyer could represent a collection agency in collection litigation. His particular concern arose because he was to become in-house counsel to a collection agency and would be expected to conduct litigation for his new employer. In response to his inquiry, the Department rewrote the caption of R20-4-1509 and considered revising the last sentence of Section R20-4-1509 to clarify its requirement that a collection agency be represented in court by a disinterested Arizona lawyer. The Department decided not to revise Section R20-4-1509's last sentence in order to avoid the appearance of a policy change.

**12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

Not applicable

**13. Incorporations by reference and their location in the rules:**

There is no material incorporated by reference in these final rules.

**14. Was this rule previously made as an emergency rule?**

No.

**15. The full text of the rules follows:**

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 4. DEPARTMENT OF FINANCIAL INSTITUTIONS

ARTICLE 15. COLLECTION AGENCIES

Section

- R20-4-1501. Definitions
- R20-4-1503. Reports
- R20-4-1506. Articles of Incorporation; Bylaws ~~Governing~~; Organizing Documents
- R20-4-1507. Representations of Collection Agency's Identity of Licensee
- R20-4-1508. ~~Representation~~ Representations of the Law
- R20-4-1509. Representations as to Fees, Costs, and Legal Proceedings; Disinterested Counsel Required
- R20-4-1510. Representations as to Rights Waived or Remedies Available
- R20-4-1511. Prohibition of Harassment
- R20-4-1512. Contacts with Debtors and Others
- R20-4-1513. Cessation of ~~Contact~~ Communication with the Debtor
- R20-4-1514. Disclosure of Information to Debtor
- R20-4-1515. Aiding and Abetting
- R20-4-1516. Advertising
- R20-4-1517. ~~Holder in Due Course~~ Repealed
- R20-4-1518. Agreements with Clients
- R20-4-1519. Licensee Names and Control
- R20-4-1520. Representations of Collection Agency Employees' Identity or Position of Employees
- R20-4-1521. Duty of Investigation

ARTICLE 15. COLLECTION AGENCIES

**R20-4-1501. Definitions**

In this Article, unless the context otherwise requires:

1. "Account" means a contractual arrangement between a client and a collection agency that obligates the collection agency to attempt to collect one or more debts on the client's behalf.
- ~~8-2.~~ "Active Manager" means the active manager person who is actually in charge active management of the conducting conduct of the office and collection agency's business of any licensee as defined herein, and who meets the qualifications set forth listed in A.R.S. § 32-1023(A).
- ~~1-3.~~ "Client" means any a person who has contracted with hired a collection agency with regard to the collection by the collection agency of collect any a debt for such person.
- ~~2-4.~~ "Collection agency" means all persons required to obtain a collection agency license under Chapter 9, Title 32, Ari-

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~~Arizona Revised Statutes has the meaning in A.R.S. § 32-1001(A)(2).~~

5. “Contact” means to communicate with, and includes attempted communications.
- ~~3-6. “Credit bureau” or and “credit reporting agency” means any person engaged exclusively in the business of gathering, recording, and disseminating favorable, as well as unfavorable, information about relative to the credit-worthiness, financial responsibility, paying habits, and character of persons being considered for credit extension, so that a prospective creditor may be able to make a sound decision in the extension of credit.~~
- ~~4-7. “Creditor” means any a person who offers or extends credit creating a debt, or to whom a debt is owed, but such . The term does not include any a person to the extent that he that receives an assignment or transfer of a defaulted debt in default solely for the purpose of facilitating collection of such use in collecting the debt for another someone else.~~
- 5-8. “Debt” means any a debtor’s actual or claimed obligation or alleged obligation, of a debtor to pay money, whether or not such the obligation has been reduced to judgment.
- ~~6-9. “Debtor” means any a person obligated, or allegedly obligated, to pay a debt. The term also means a person claimed to be obligated to pay a debt.~~
7. ~~“Licensee” means the person to whom a license has been issued pursuant to A.R.S. § 32-1026.~~
- ~~9-10. “Superintendent” means the State Superintendent of Banks, or his authorized agent has the meaning in A.R.S. § 6-101.~~

**R20-4-1503. Reports**

- A. A licensee collection agency shall notify the Superintendent in writing of any change in the officers, directors, partners, or active manager of the licensee collection agency within not more than ten days of such after the change. With the notice, the collection agency shall provide the Superintendent with and shall at the same time file a Statement of Personal History for each such new officer, director, partner, or active manager on the a form prescribed in R20-4-1410 obtained from the Department.
- B. A licensee collection agency shall notify the Superintendent in writing of any change in its place of business within ten not more than 10 days of such after the change.

**R20-4-1506. Articles of Incorporation; Bylaws ~~Governing; Organizing Documents~~**

- ~~A. Each corporate licensee shall file with the Superintendent one copy, certified by an officer of the licensee, of each amendment to the articles of incorporation and bylaws if any of the licensee, within ten days after the amendment has been adopted.~~
- ~~B. Each noncorporate licensee shall file with the Superintendent one copy, certified by the licensee or a partner or manager thereof, of each amendment to the partnership agreement or other governing documents under which the licensee conducts business, within ten days after the amendment has been adopted.~~
- A. A collection agency organized as a corporation shall file with the Superintendent a copy of each amendment to its articles of incorporation within 30 days after the amendment is adopted. Before filing with the Superintendent, an officer of the collection agency shall:
  1. Certify the copy filed in compliance with this Section, in writing, signed by the certifying officer, attesting to the completeness, accuracy, and authenticity of the certified copy; and
  2. Ensure the copy bears a stamp affixed by the Arizona Corporation Commission to evidence filing with the Commission.
- B. A collection agency organized as a corporation shall file with the Superintendent a copy of each amendment to its bylaws within 10 days after the amendment is adopted. An officer of the collection agency shall certify the copy filed in compliance with this Section, in writing, attesting to the completeness, accuracy, and authenticity of the certified copy.
- C. A collection agency not organized as a corporation shall file with the Superintendent a copy of each amendment to its organizing documents within 10 days after the amendment is adopted. A partner, active manager, or agent of the collection agency shall certify the copy filed in compliance with this Section, in writing, attesting to the completeness, accuracy, and authenticity of the certified copy.

**R20-4-1507. Representations of Collection Agency’s Identity of Licensee**

~~Each collection agency shall at all times in its contacts with its debtors, whether such contacts are written or oral, represent itself as a collection agency, but it shall not represent, either directly or indirectly, that it is a credit reporting agency or credit bureau when it is not such an entity, nor shall it represent, either directly or indirectly, that it is a law enforcement agency or that it is a law firm.~~

~~In all communications with debtors, either orally or in writing, all the following rules apply:~~

1. A collection agency shall represent itself as a collection agency.
2. A collection agency shall not directly or indirectly claim to be a credit reporting agency or credit bureau if it is not.
3. A collection agency shall not directly or indirectly claim to be a law enforcement agency.
4. A collection agency shall not directly or indirectly claim to be a law firm.

**R20-4-1508. ~~Representation~~ Representations of the Law**

~~A collection agency shall not misrepresent to a debtor the state of the law, shall not send to any debtor any written material~~



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~~simulating legal process, and shall not represent or imply that the debtor is or may be subject to criminal prosecution or arrest as a result of his failure to pay the debt.~~

~~A collection agency shall not:~~

- ~~1. Misrepresent the state of the law to a debtor.~~
- ~~2. Send a debtor written material that simulates legal process, or~~
- ~~3. Represent or imply that a debtor is, or may be, subject to criminal prosecution or arrest because of a failure to pay the debt.~~

**R20-4-1509. Representations as to Fees, Costs, and Legal Proceedings; Disinterested Counsel Required**

~~A collection agency shall not threaten to collect or attempt to collect any attorney's fee, collection cost or other fee not provided for in the contract establishing the debt between the debtor and his creditor, and a collection agency shall neither inform a debtor that legal proceedings against him have been initiated in court when, in fact, they have not, nor shall a collection agency threaten to institute legal proceedings or threaten to turn the account over to a lawyer when, in fact, such action is not then intended. A collection agency shall not file a lawsuit against a debtor unless such a lawsuit is filed by an attorney who has no personal or financial interest in that collection agency.~~

- ~~A. A collection agency shall neither threaten to collect, nor attempt to collect, an attorney's fee, collection cost, or other fee that the debtor is not obliged to pay under the debtor's contract with the collection agency's creditor client.~~
- ~~B. A collection agency shall not inform a debtor that legal proceedings have been started unless, in fact, a lawsuit has been filed against the debtor.~~
- ~~C. A collection agency shall not threaten to start legal proceedings against a debtor unless the collection agency actually intends, at the time of the threat, to sue.~~
- ~~D. A collection agency shall not threaten to turn an account over to a lawyer unless the collection agency actually intends to do so at the time of the threat.~~
- ~~E. A collection agency shall not file a lawsuit against a debtor unless the lawsuit is filed by an attorney who has no personal or financial interest in that collection agency.~~

**R20-4-1510. Representations as to Rights Waived or Remedies Available**

~~A collection agency shall not inform a debtor that, as a result of his failure to contact the collection agency, the debtor has waived, or will have waived, any right or defense legally due him, or that the collection agency may, by any process, circumvent the legal process, or otherwise misrepresent to the debtor any remedies available to the collection agency.~~

- ~~A. A collection agency shall not inform a debtor that the debtor waives any legal right or legal defense by a failure to contact the collection agency.~~
- ~~B. A collection agency shall not inform a debtor that the collection agency has the power or right to bypass the legal process.~~
- ~~C. A collection agency shall not misrepresent the remedies available to the collection agency.~~

**R20-4-1511. Prohibition of Harassment**

~~A collection agency shall not engage in unauthorized or oppressive tactics designed to harass the debtor or others to pay any debt, including the use of any language, written or oral, tending to ridicule, disgrace or humiliate, or tending to imply, or actually implying, that the debtor is guilty of fraud or other crime. A collection agency shall not permit its agents, employees, representatives, or officers to employ obscene or abusive language against a debtor in connection with the attempt to collect any debt. A collection agency shall be liable for all the unlawful acts of its agents, employees, representatives or officers as provided for under A.R.S. § 32-1056(B).~~

- ~~A. A collection agency shall not use unauthorized or oppressive tactics designed to harass any person to pay a debt.~~
- ~~B. A collection agency shall not use written or oral communications that either ridicule, disgrace, or humiliate any person or tend to ridicule, disgrace, or humiliate any person.~~
- ~~C. A collection agency shall not state, imply, or tend to imply, in written or oral communications that any person is guilty of fraud or any other crime.~~
- ~~D. A collection agency shall not permit its agents, employees, representatives, debt collectors, or officers to use obscene or abusive language in efforts to collect a debt.~~
- ~~E. A collection agency or its agents, employees, representatives or officers are subject to penalties listed in A.R.S. § 32-1056(B) for any violation of this Article, as well as other liabilities imposed under any other provision of law.~~

**R20-4-1512. Contacts with Debtors and Others**

~~If a collection agency contacts, or attempts to contact, a debtor by telephone in connection with the collection of a debt, such contact or attempt shall be made during reasonable hours only. A collection agency shall not threaten to contact, or contact, a debtor's neighbors, friends, relatives, employers, or other third parties to inform them of the debt, to ask them to pressure or coerce the debtor into paying the debt, or to ask that they, themselves, pay the debt where they are not legally obligated to pay the debt. A collection agency shall not contact a debtor at his place of employment unless a reasonable attempt has been made to first contact the debtor at his place of residence, and such attempt has failed. This rule shall not be construed, however, to prevent the lawful service upon third parties, including employers, of any writ of garnishment obtained after judgment has been rendered against the debtor for the debt being collected.~~

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- A. A collection agency shall contact a debtor by telephone only during reasonable hours. A collection agency shall make a reasonable attempt to contact a debtor at the debtor's residence. A collection agency may contact a debtor at the debtor's place of employment if a reasonable attempt to contact the debtor at the debtor's residence has failed.
- B. A collection agency shall not contact a third party, including a debtor's friend, relative, neighbor, or employer and:
  1. Inform the third party of the debt;
  2. Ask the third party to pressure the debtor into paying the debt, or;
  3. Ask the third party to pay the debt, unless the third party is legally obligated to pay the debt.
- C. A collection agency shall not threaten to contact a third party listed in subsection (B) for any purpose listed in subsection (B).
- D. Despite the other provisions of this Section, a collection agency may make lawful service on third parties, including employers, of a writ of garnishment or other writ in aid of execution after judgment has been entered against a debtor.

**R20-4-1513. Cessation of ~~Contact~~ Communication with the Debtor**

- ~~A. A collection agency shall cease all contacts, direct or indirect, with the debtor if and when the debtor informs the collection agency that he is represented by an attorney and that further communications relative to the debt should be directed to such attorney. If, upon contacting such attorney, it is discovered that no bona fide attorney-client relationship exists, the collection agency may resume lawful contacts with the debtor.~~
- B. If a debtor notifies a debt collector in writing that the debtor refuses to pay a debt or that the debtor wishes the debt collector to cease further communication with the debtor, the debt collector shall not communicate further with the debtor with respect to such debt, except:
  1. To advise the debtor that the debt collector's further efforts are being terminated;
  2. To notify the debtor that the debt collector or creditor may invoke special remedies which are ordinarily invoked by such debt collector or creditor; or
  3. Where applicable, to notify the debtor that the debt collector or creditor intends to invoke a specified remedy. If such notice from the debtor is made by mail, notification shall be complete upon receipt.
- A. A collection agency shall stop contacting a debtor, directly or indirectly, if the debtor tells the collection agency that the debtor is represented by a lawyer and wants the collection agency to communicate with the debtor through that lawyer. The collection agency may later contact the debtor if the collection agency contacts the lawyer named by the debtor and learns that the lawyer does not represent the debtor.
- B. A collection agency shall stop contacting a debtor, directly or indirectly, if the debtor gives the collection agency written notice that the debtor:
  1. Refuses to pay the debt, or;
  2. Wants the collection agency to stop all further communication with the debtor.
- C. Despite the provisions of subsection (B), a collection agency may contact a debtor to inform the debtor that:
  1. The collection agency has stopped trying to collect the debt, or
  2. The collection agency or the creditor may invoke specific remedies that are customarily used by the collection agency or the creditor.
- D. The debtor's written notice under subsection (B) is effective upon receipt by the collection agency if delivered by mail.

**R20-4-1514. Disclosure of Information to Debtor**

A collection agency must disclose to the debtor from whom it is attempting to collect the debt the name of the creditor, the time and place of the creation of the debt, the merchandise, services or other things of value underlying the debt, and the date when the account was turned over to the collection agency by the creditor. A debtor shall have the right of access to a collection agency's books and records concerning the debtor or the debt. Upon request, the collection agency shall provide to the debtor without cost, copies of any document relevant to the debt or its collection.

- A. Within five days after the initial communication with the debtor, a collection agency shall obtain, and be able to inform the debtor of:
  1. The name of the creditor;
  2. The time and place of the creation of the debt;
  3. The merchandise, services, or other value provided in exchange for the debt; and
  4. The date when the account was turned over to the collection agency by the creditor.
- B. A collection agency shall give the debtor access to any of the collection agency's records that contain the information listed in subsection (A).
- C. At the debtor's request, the collection agency shall give the debtor, free of charge, a copy of any document from its records that contains the information listed in subsection (A).

**R20-4-1515. Aiding and Abetting**

~~No person aid or abet, directly or indirectly, any other person in evading or violating any of the provisions of this Article or any of the provisions of Title 32, Arizona Revised Statutes.~~

- A collection agency shall not help or encourage, directly or indirectly, any other person to evade or violate any provision of:
  1. This Article, or

2. A.R.S. Title 32, Chapter 9.

**R20-4-1516. Advertising**

No collection agency shall, by the use of any letterhead, advertisement, agreement, form, circular or other printed matter, or otherwise, convey the impression that it is vouched for or is the Superintendent of an agency or instrumentality of the state of Arizona, or that it is authorized to practice law.

A collection agency shall not use any form of communication to state or imply that it is:

1. Approved, bonded by, or affiliated with the state of Arizona;
2. A state agency;
3. The director of any state agency; or
4. Authorized to practice law.

**R20-4-1517. Holder in Due Course Repealed**

A licensee shall not be deemed a holder in due course even if he is an assignee for value, or otherwise gives value for the debt.

**R20-4-1518. Agreements with Clients**

All accounts whereby one or more claims for a debt or debts are placed for collection with a collection agency by a client, shall be set forth in a written agreement between client and collection agency, or shall be set forth in the form of a written acknowledgment of every account assigned, whether there be one or more claims. The written agreement or written acknowledgment shall be specific, intelligible, and unambiguous and shall set forth in full the parties, terms, rates and/or conditions upon which the collection is undertaken. The terms of the written agreement or written acknowledgment shall not violate the laws governing the unauthorized practice of law.

A collection agency's records shall document each client's account in writing. The records for an account shall include either a written agreement between the client creditor and the collection agency, or a written direction from the creditor to the collection agency concerning a specific debt placed for collection. The collection agency shall keep records that are specific, easily understood, and unambiguous. A provision of a written agreement or written direction that suggests the collection agency has authority to represent the client in court or to practice law in any other way is void and prohibited by this Section. The records for an account shall separately state:

1. The names of the parties to the agreement or written direction.
2. The terms or rate of compensation paid to the collection agency.
3. The length of time the agreement or written direction is intended to be in effect, and
4. Any conditions regarding collection of a particular debt.

**R20-4-1519. Licensee Names and Control**

No license shall be issued in any name which may be confused with, or which is similar to, any federal, state, county or municipal governmental function or agency, or in any name which may tend to describe any business function or enterprise not actually engaged in by the applicant, or in any name which is the same as, or similar to, that of any existing licensee as would otherwise tend to be deceptive or misleading. The foregoing shall not necessarily preclude the use of a name which may be followed by a geographically descriptive title which would distinguish it from a similar name licensed but operating in a different geographical area. No licensee shall do business under more than one name, under the same license.

A. The Department shall not issue a license with a name that is:

1. Similar to, or that may be confused with, any federal, state, county, or municipal government function or agency;
2. Descriptive of any business activity that the applicant does not actually conduct;
3. The same as, or similar to, the name of any existing collection agency, or;
4. Otherwise deceptive or misleading.

B. The Department may permit the use of a name otherwise prohibited under subsection (A)(3) based on its analysis of whether the name includes geographic or other information that distinguishes it from the other collection agency.

C. A collection agency shall not use a collection agency license to do business under more than one name. Each collection agency shall apply for and obtain a separate license for each business name it intends to use in Arizona.

**R20-4-1520. Representations of Collection Agency Employees' Identity or Position of Employees**

**A.** A collection agency or licensee shall not allow its agent, representative, employees or officers to represent other than their true position with the collection agency, or to claim or imply that they are attorneys if in fact they are not or to claim that they are public officials, peace officers or any other third party other than their true position, debt collector.

**B.** Before using a name other than his true name while engaged in the collection of a claim, a licensee shall set forth in a separate record of the agency the following:

1. True name of debt collector.
2. Name used other than true name and inclusive dates the name is used.
3. True physical home address and true mailing address.
4. A copy of the record of fictitious names shall be filed with the state Banking Department on a semi-annual basis on July 1 and December 31 of each year. After the initial report is filed only changes need be reported to the Department.

**A.** A collection agency shall not allow its debt collector, agent, representative, employee, or officer to:

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1. Misrepresent the person's true position with the collection agency.
  2. Claim to be, or imply that the person is, an attorney unless the person is licensed to practice law, or
  3. Claim to be, or imply that the person is, a public official, peace officer, or any other type of public employee, or
  4. Claim to be, or imply that the person is, any other third party.
- B.** In any communication with a debtor, a person working for a collection agency shall indicate that the person is a debt collector.
- C.** A collection agency shall keep a record of all fictitious names used by its debt collectors during their employment. The collection agency shall record the information required by this subsection before permitting the use of a fictitious name. The collection agency shall file a copy of the record of fictitious names with the Department on July 1 and December 31 of each year. After filing the initial report, a collection agency shall identify all changes to the record on July 1 and December 31 of each year. The collection agency's record of fictitious names shall include:
1. The true name of each debt collector that uses a fictitious name.
  2. Each fictitious name used by the debt collector, together with the dates when the name is used, and
  3. The residential street address and residential mailing address of each debt collector that uses a fictitious name.

**R20-4-1521. Duty of Investigation**

~~A collection agency shall, prior to continuing its collection efforts against the debtor, investigate any claim made by the debtor or his attorney that he is the wrong party, that the debt has been paid, that the debt has been discharged in bankruptcy, or any other reasonable claim that the debt is not owing. A collection agency shall furnish evidence of the debt to the debtor or his attorney if and when so requested.~~

A collection agency shall give copies of its evidence of the debt to the debtor or the debtor's attorney on request. After providing the evidence, but before continuing its collection efforts against the debtor, the collection agency shall investigate any claim by the debtor or the debtor's attorney that:

1. The debtor has been misidentified.
2. The debt has been paid.
3. The debt has been discharged in bankruptcy, or
4. Based on any other reasonable claim, the debt is not owed.