



STATE OF ARIZONA  
OFFICE OF THE  
AUDITOR GENERAL

A PERFORMANCE AUDIT  
of

**THE COLLECTION AGENCY ADVISORY COMMITTEE  
AND  
THE REGULATION OF THE  
COLLECTION INDUSTRY IN ARIZONA**

JUNE 1979

THE COLLECTION AGENCY ADVISORY COMMITTEE IS DUPLICATIVE OF OTHER SOURCES OF INPUT TO THE RULE-MAKING PROCESS AND HAS NOT MADE A SIGNIFICANT CONTRIBUTION TO THE REGULATION OF COLLECTION AGENCIES. AS SUCH, THE COLLECTION AGENCY ADVISORY COMMITTEE CONSTITUTES AN UNNECESSARY IMPEDIMENT IN THE RULE-MAKING PROCESS.

A REPORT TO THE  
ARIZONA STATE LEGISLATURE

REPORT 79-3

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June 11, 1979

The Honorable Bruce Babbitt, Governor  
Members of the Arizona Legislature  
Members of the Collection Agency Advisory Committee  
Walter C. Madsen, Superintendent of Banks

Transmitted herewith is a report of the Auditor General, A Performance Audit of the Collection Agency Advisory Committee and the Regulation of the Collection Industry in Arizona. This report is in response to a September 19, 1978, resolution of the Joint Legislative Budget Committee and a January 18, 1979, resolution of the Joint Legislative Oversight Committee.

A summary of this report is found on the blue pages at the front of the report. Responses to this report from members of the Collection Agency Advisory Committee and the Superintendent of Banks are found on the yellow pages preceding the appendices of the report.

My staff and I will be happy to meet with the appropriate legislative committees, individual legislators or other state officials to discuss or clarify any items in this report or to facilitate the implementation of the recommendations.

Respectfully submitted,

A handwritten signature in cursive script that reads "Douglas R. Norton".

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TABLE OF CONTENTS

	<u>Page</u>
SUMMARY	1
INTRODUCTION AND BACKGROUND	3
SUNSET FACTORS	4
FINDING	8
<p>The Collection Agency Advisory Committee is duplicative of other sources of input to the rule-making process and has not made a significant contribution to the regulation of collection agencies. As such, the Collection Agency Advisory Committee constitutes an unnecessary impediment in the rule-making process.</p>	
CONCLUSION	12
RECOMMENDATION	12
<p>The Superintendent of Banks needs additional regulatory authority to adequately police the collection industry.</p>	
CONCLUSION	13
CONCLUSION	18
RECOMMENDATION	19
<p>The State Banking Department needs to expand its regulatory authority over collection activity.</p>	
CONCLUSION	20
CONCLUSION	25
RECOMMENDATION	25
<p>Financial information submitted by collection agencies is not a valid indication of financial responsibility</p>	
CONCLUSION	26
CONCLUSION	27
RECOMMENDATION	27
<p>Changes needed to enhance the Superintendent of Banks' ability to regulate the collection industry.</p>	
CONCLUSION	28
CONCLUSION	34
RECOMMENDATION	34
WRITTEN RESPONSE TO THE AUDITOR GENERAL'S REPORT	35

APPENDICES

- APPENDIX I - Results of Office of the Auditor General's Survey
- APPENDIX II - ARS Sections 32-1001 to 32-1057
- APPENDIX III - Administrative Rules and Regulations
- APPENDIX IV - Legislative Council Opinion 0-79-6
- APPENDIX V - Nebraska Financial Statement Format for Collection  
Agencies

## SUMMARY

The Collection Agency Advisory Committee (CAAC) was created in 1953 by the Arizona Legislature to assist the Secretary of State in making rules and regulations to enforce the laws dealing with collection agencies. On September 6, 1978, these responsibilities were transferred to the State Banking Department, which is administered by the Superintendent of Banks. There are five members of the CAAC, each appointed by the Superintendent of Banks to serve a five-year term. Committee members serve on a voluntary basis, receiving no travel or per diem reimbursements from the State General Fund.

The Superintendent of Banks has the duty of enforcing the provisions of ARS 32-1001 to 32-1057, and issuing initial and renewal licenses to collection agencies. He may order investigations of complaints and may revoke or suspend the licenses of collection agencies that violate the law. As of March 31, 1979, there were 112 licensed collection agencies in Arizona.

Our review of the Collection Agency Advisory Committee revealed that the Committee is duplicative of other sources of input to the rule-making process and that the Committee has not made a significant contribution to the regulation of collection agencies. As such, the Collection Agency Advisory Committee constitutes an unnecessary impediment in the rule-making process. (page 8)

Our review also revealed that the Superintendent of Banks needs additional regulatory authority to adequately police the collection industry. (page 13)

In addition, our review has shown that the State Banking Department needs to expand its regulatory authority over collection activity. (page 20)

Further, we have determined that the financial information submitted by collection agencies to the State Banking Department is not a valid indication of financial responsibility. (page 26)



Finally, our review has identified several changes which are needed to enhance the Superintendent of Banks' ability to regulate the collection industry. (page 28)

It is recommended that:

- 1) The Collection Agency Advisory Committee be allowed to terminate July 1, 1980. (page 12)
- 2) ARS 32-1001 through 32-1057 be amended to give the Superintendent of Banks adequate regulatory authority over the collection industry. (page 19)
- 3) ARS 32-1001 through 32-1057 be amended to provide the Superintendent of Banks with the authority to license collectors. (page 25)
- 4) The State Banking Department adopt a financial statement form similar to the Nebraska Collection Agency Board's financial statement form. (page 27)
- 5) ARS 32-1001 through 32-1057 be amended to incorporate specific provisions of the Federal Consumer Credit Protection Act. (page 34)
- 6) ARS 32-1025 be amended to include a \$5 per day penalty fee for renewal applications received after January 1 of each year. (page 34)
- 7) ARS 32-1052.A should be amended to authorize the Superintendent of Banks to utilize Bank Examiners for the routine review of licensee financial records. If this review exposes any potential violations of ARS 32-1055.D, the Superintendent should appoint a certified public accountant or licensed public accountant to make a detailed examination of the licensee's records. ARS 32-1052.D should be amended to require licensees to pay for such examinations. (page 34)
- 8) The Superintendent of Banks should contact the Federal Trade Commission and Better Business Bureau and establish liaison with these agencies. (page 34)
- 9) The Superintendent of Banks should contact Arizona's media and arrange for a series of public service announcements. (page 34)

## INTRODUCTION AND BACKGROUND

In response to a September 19, 1978, resolution of the Joint Legislative Budget Committee and a January 18, 1979, resolution of the Joint Legislative Oversight Committee, we have conducted a performance audit as a part of the sunset review of the Collection Agency Advisory Committee, and the regulation of collection agencies as administered by the State Banking Department, in accordance with ARS 41-2351 through 41-2374.

The Collection Agency Advisory Committee (CAAC) was created in 1953 by the Arizona Legislature to assist the Secretary of State in making rules and regulations to enforce the laws dealing with collection agencies. On September 6, 1978, these responsibilities, and the CAAC, were transferred to the State Banking Department, which is administered by the Superintendent of Banks.

The Superintendent of Banks selects the five members of the CAAC, all of whom are owner/operators of licensed collection agencies. The CAAC's authority is limited to advising the Superintendent of Banks on proposed rules and regulations.

There is no specific budget appropriation for the CAAC. Committee membership is voluntary and committee members receive no per diem or travel allowance. The State Banking Department received a special budget appropriation of \$15,000 for fiscal year 1978-79, when the regulation of collection agencies was transferred to it from the Office of the Secretary of State. The Superintendent of Banks has the duty of enforcing the provisions of ARS 32-1001 through 32-1057, and issuing initial and renewal licenses to collection agencies. The Superintendent may order investigations of complaints and may revoke or suspend the licenses of collection agencies that violate the law. As of March 31, 1979, there were 112 licensed collection agencies in Arizona.



## SUNSET FACTORS

### SUNSET FACTOR: THE OBJECTIVE AND PURPOSE IN ESTABLISHING THE COLLECTION AGENCY ADVISORY COMMITTEE AND THE REGULATION OF COLLECTION AGENCIES

The Collection Agency Advisory Committee was established in 1953 (ARS 32-1001 through ARS 32-1057)\* to advise the Secretary of State in the preparation or revision of rules and regulations which may be adopted under the provisions of that chapter.

There was no explicit legislative statement of objective or purpose when the regulation of collection agencies was assigned to the Secretary of State in 1953.

### SUNSET FACTOR: THE DEGREE TO WHICH THE AGENCY HAS BEEN ABLE TO RESPOND TO THE NEEDS OF THE PUBLIC AND THE EFFICIENCY WITH WHICH IT HAS OPERATED

The State Banking Department has not been able to adequately respond to the needs of the public because the Superintendent of Banks does not have sufficient statutory authority to regulate collection agencies and the Attorney General does not have sufficient statutory authority to prosecute collection agencies. All courses of action against collection agencies, other than license revocation or suspension, must go through the County Attorney. (pages 16, 18)

The State Banking Department appears to be handling complaints against collection agencies efficiently. The Department has significantly reduced the elapsed time between the receipt and resolution of a complaint since it assumed that responsibility from the Secretary of State on September 6, 1978. According to records maintained by the Secretary of State it took approximately eleven working days to resolve a complaint against a collection agency, whereas the State Banking Department is resolving these complaints in approximately six working days.

\* See Appendix II for a complete text of ARS 32-1001 through 32-1057.

SUNSET FACTOR: THE EXTENT TO WHICH THE AGENCY  
HAS OPERATED WITHIN THE PUBLIC INTEREST

From September 6, 1978, to March 31, 1979, the Banking Department held one disciplinary hearing, revoked two licenses and handled 100 complaints. In reviewing the nature of the complaints involved, it was determined that the decisions were consistent and disciplinary actions were reasonable.

The Banking Department held one public hearing regarding collection industry rules and regulations during the period September 6, 1978, to March 31, 1979.

The Collection Agency Advisory Committee held one meeting during the period September 6, 1978, to March 31, 1979, to discuss changes in the rules and regulations proposed by the Superintendent of Banks. The CAAC submitted suggested changes in the proposed rules and regulations. For an analysis of these recommendations and their subsequent acceptance or rejection by the Superintendent of Banks see page 11.

SUNSET FACTOR: THE EXTENT TO WHICH RULES AND  
REGULATIONS PROMULGATED BY THE AGENCY ARE CONSISTENT  
WITH THE LEGISLATIVE MANDATE

After reviewing the rules and regulations pertaining to collection agencies that have been promulgated by the Superintendent of Banks and the Secretary of State, it appears that these rules and regulations are consistent with ARS 32-1001 through 32-1057.

SUNSET FACTOR: THE EXTENT TO WHICH THE AGENCY HAS ENCOURAGED INPUT FROM THE PUBLIC BEFORE PROMULGATING ITS RULES AND REGULATIONS AND THE EXTENT TO WHICH IT HAS INFORMED THE PUBLIC AS TO ITS ACTIONS AND THEIR EXPECTED IMPACT ON THE PUBLIC

Public meetings are held to hear all proposed rules and regulations pertaining to collection agencies prior to their adoption. Notices of meetings are posted in the Commerce building and circulated to licensees through direct mailings. A review of the minutes of these public meetings revealed that the opportunity for public input is adequate. (page 8)

Our review has shown that the State Banking Department adequately informs the public as to its actions, such as revocations and suspensions of licenses, by placing announcements in the newspaper.

SUNSET FACTOR: THE EXTENT TO WHICH THE AGENCY HAS BEEN ABLE TO INVESTIGATE AND RESOLVE COMPLAINTS THAT ARE WITHIN ITS JURISDICTION

The Banking Department has investigated all complaints received which are within its jurisdiction. The Department is limited to issuing warnings and revoking or suspending licenses. (page 14)

SUNSET FACTOR: THE EXTENT TO WHICH THE ATTORNEY GENERAL OR ANY OTHER APPLICABLE AGENCY OF STATE GOVERNMENT HAS THE AUTHORITY TO PROSECUTE UNDER THE ENABLING LEGISLATION

The Attorney General's authority is limited to advising the Superintendent of Banks on statute violations by collection agencies. Neither the Attorney General nor any other State Agency has the statutory authority to prosecute collection agencies for criminal actions. The County Attorneys are responsible for prosecuting all collection agency statute violations. (pages 16, 18)

SUNSET FACTOR: THE EXTENT TO WHICH AGENCIES HAVE ADDRESSED DEFICIENCIES IN THEIR ENABLING STATUTES WHICH PREVENT THEM FROM FULFILLING THEIR STATUTORY MANDATE

The Superintendent of Banks has proposed new legislation which would provide the Banking Department with additional statutory authority to regulate collection agencies.

SUNSET FACTOR: THE EXTENT TO WHICH CHANGES ARE NECESSARY  
IN THE LAWS OF THE AGENCY TO ADEQUATELY COMPLY WITH THE  
FACTORS LISTED IN THIS SUBSECTION

1. ARS 32-1002.B.1 should be deleted from the statutes. This section requires that the Superintendent shall appoint a Collection Agency Advisory Committee. (page 12)
2. ARS 32-1001 through 32-1057 should be revised to give the Superintendent of Banks adequate regulatory authority over the collection industry. (page 19) These changes include:
  - 1) Giving the Superintendent of Banks statutory authority to issue cease and desist orders to individuals who violate the statutes; and,
  - 2) Authorize the Attorney General to appeal to the Superior Court for enforcement of those orders.
3. ARS 32-1001 through 32-1057 should be revised to provide the Superintendent of Banks with the authority to license collectors. Such licenses should be subject to revocation or suspension for unethical or criminal acts. (page 25)
4. ARS 32-1001 through 32-1057 should be amended to incorporate the following provisions of the Federal Consumer Credit Protection Act: (page 34)
  - 1) Collector may not use abusive language or harass the consumer (Section 806);
  - 2) Collector must provide the consumer with a written notice containing the amount of the debt and the name of the creditor to whom the debt is owed (Section 809);
  - 3) Collector may only contact the consumer during "reasonable hours" (8 A.M. to 9 P.M.) (Section 805); and,
  - 4) Collector may not inform any third parties of any debt or obligation of the consumer (Section 804).
5. ARS 32-1025 should be amended to provide for a \$5.00 per day penalty fee for renewal applications received after January 1 of each year. (page 34)
6. ARS 32-1052.A should be amended to authorize the Superintendent of Banks to utilize bank examiners for the routine review of the licensee's financial records. If this review exposes any potential violations of ARS 32-1055.D, the Superintendent should appoint a certified public accountant or licensed public accountant to make a detailed examination of the licensee's financial records. ARS 32-1052.D should be amended to require licensees to pay for such detailed examinations (page 34)

## FINDING

THE COLLECTION AGENCY ADVISORY COMMITTEE IS DUPLICATIVE OF OTHER SOURCES OF INPUT TO THE RULE-MAKING PROCESS AND HAS NOT MADE A SIGNIFICANT CONTRIBUTION TO THE REGULATION OF COLLECTION AGENCIES. AS SUCH, THE COLLECTION AGENCY ADVISORY COMMITTEE CONSTITUTES AN UNNECESSARY IMPEDIMENT IN THE RULE-MAKING PROCESS.

Since its inception in 1953, the Collection Agency Advisory Committee (CAAC) has held 12 meetings to fulfill its responsibilities to assist the Secretary of State and the Superintendent of Banks in the promulgation of rules and regulations for collection agencies. Our review of the CAAC revealed that it:

- 1) is duplicative of other sources of input to the rule-making process; and,
- 2) has not made a significant contribution to the regulation of collection agencies.

As a result, the CAAC represents an unnecessary step in the rule-making process.

### Duplicative of Other Sources of Input

Effective September 6, 1978, the Superintendent of Banks became the rule-making authority for the collection industry in Arizona. The rule and regulation making process for the collection industry currently involves four entities; the State Banking Department, the Attorney General, the CAAC and the public at large. The role each of these entities performs in the rule and regulation making process for the collection industry is shown in Table 1.

Table 1 illustrates that the function of the CAAC in the rule and regulation making process is duplicative of that performed by the public at large at the public meetings in that:

- 1) neither entity has any rule or regulation making authority; and,
- 2) both entities are limited to offering suggestions and recommending changes to proposed rules and regulations.

The Superintendent of Banks may accept or reject these suggestions and recommended changes as he deems appropriate.

TABLE I

THE ROLE PERFORMED BY THE STATE BANKING DEPARTMENT,  
ATTORNEY GENERAL, CAAC AND THE PUBLIC AT LARGE IN THE  
RULE AND REGULATION PROCESS FOR THE COLLECTION INDUSTRY.

SUPERINTENDENT OF BANKS	ATTORNEY GENERAL	CAAC	PUBLIC-AT-LARGE
1. Superintendent of Banks initiates updating or revising of rules and regulations.			
2. Assistant Superintendent of Banks prepares proposed amendments to rules and regulations.			
	3. Attorney General reviews proposed amendments to rules and regulations for legality.		
		4. Superintendent of Banks, presents proposed amendments to rules and regulations to the CAAC for review and comment.	
		5. CAAC prepares suggestions and recommends changes to proposed amendments to rules and regulations.	
6. Superintendent of Banks receives CAAC suggestions and recommended changes to proposed amendments to rules and regulations which the Superintendent may accept or reject.			
7. Proposed rules and regulations are drafted.			
			8. A public hearing is held on proposed rules and regulations.
			9. Suggestions and recommended changes to proposed rules and regulations are solicited from those in attendance.
10. Input from the public meeting is considered and a final draft of the rules and regulations is proposed.			
	11. Attorney General reviews final draft of the rules and regulations for legality.		
12. Superintendent of Banks adopts new rules and regulations.			



The duplication of function between the CAAC and the public at large at the public meetings, as shown in Table I, is compounded by the high degree of participation by CAAC members at these public meetings. Our review revealed that at least one CAAC member has been present at, and participated in, every public meeting held to discuss proposed rules and regulations for the collection industry since 1953.

#### Lack of Significant Input from CAAC

Our review of the minutes of CAAC meetings since its inception in 1953 revealed that the CAAC has not made any significant suggestions or recommended changes to proposed rules and regulations. Our review of the minutes of the 12 CAAC meetings over the past 26 years revealed that the CAAC made the suggestions or recommended changes as summarized in Table II.

TABLE II

SUMMARY OF RECOMMENDATIONS MADE BY THE COLLECTION AGENCY  
ADVISORY COMMITTEE SINCE ITS CREATION IN 1953

<u>Date of CAAC Meeting</u>	<u>CAAC Suggestion or Recommended Change to Proposed Rules and Regulations</u>	<u>Disposition of Recommendation</u>	
		<u>Accepted</u>	<u>Rejected</u>
October 3, 1953	None		
November 14, 1953	Agreed with proposed rules and regulations with minor corrections	X	
December 5, 1953	Suggested changes in proposed rules and regulations. Struck one proposed rule	X	
April 2, 1954	Reversed decision of the previous meeting and added back the rule previously stricken	X	
June 12, 1954	Suggested adding a clause for reimbursement of travel expenses for CAAC members.		X
December 11, 1954	None		
July 9, 1955	None		
September 30, 1955	None		
April 5, 1957	Suggested increasing required bond amount		*
June 23, 1965**	None		
October 16, 1970	Suggested adding a section to proposed rules and regulations on the use of other than true names by collectors	X	
	Suggested amending a section of the proposed rules and regulations to clearly state the number of years a collection agency must keep records		X
February 9, 1979***	Suggested several changes in wording of proposed rules and regulations		
	Suggested changing a regulation to specify the provisions which should be included in any contract between collection agency and client creditor		X
	Suggested adopting the provisions of the Federal Consumer Credit Protection Act as a part of the rules and regulations****	X	
	Suggested procedures to be used by the State Banking Department in the complaint review process****		X
	Suggested adding a rule which would require the Superintendent of Banks to hold three meetings of the CAAC each year		X
	Suggested adding regulation on the revocation of assignments by clients of collection agencies and the withdrawal of claims*****		X
	Suggested that regulation be added to require a collection agency to report all assumed names used by their collectors*****	X	

\* The minutes of the April 5, 1957 CAAC meeting do not indicate the specific bond amount recommended by the CAAC. Therefore, it cannot be determined if the CAAC recommendation was accepted or rejected by the Secretary of State.

\*\* There is no record of any CAAC meetings between the April 5, 1957 meeting and the June 23, 1965 meeting.

\*\*\* According to the senior members of the CAAC there were other CAAC meetings between October 16, 1970, and February 9, 1979. However, a review of available information indicates that these meetings were not CAAC meetings per se but were in actuality public meetings to discuss proposed rules and regulations. In addition, the Secretary of State and Superintendent of Banks have no record of any CAAC meetings during that period.

\*\*\*\* This recommendation had previously been discussed at the public hearing held on August 1, 1979.

\*\*\*\*\* This recommendation had previously been proposed, accepted and then subsequently stricken from the rules and regulations by the Secretary of State.

According to the Superintendent of Banks the CAAC constitutes an unnecessary step in the rule and regulation making process in that it serves the same purpose as the public meeting. The Superintendent is of the opinion that it is not necessary to have both the CAAC and the public meeting.

#### CONCLUSION

The Collection Agency Advisory Committee is duplicative of the public meeting in the rule and regulation making process for the collection industry. Further, no significant contributions have been made by the CAAC since its inception in 1953. As a result, the CAAC constitutes an unnecessary step in the promulgation of rules and regulations. Elimination of the CAAC would not adversely affect the ability of the Superintendent of Banks' to promulgate rules and regulations for the collection industry.

#### RECOMMENDATION

The Collection Agency Advisory Committee should be allowed to terminate July 1, 1980.

FINDING

THE SUPERINTENDENT OF BANKS NEEDS  
ADDITIONAL REGULATORY AUTHORITY TO  
ADEQUATELY POLICE THE COLLECTION INDUSTRY

The Superintendent of Banks' regulatory powers, with respect to the collection industry, are substandard when compared to his powers to regulate the other industries under his jurisdiction. As a result, the Superintendent of Banks' ability to adequately regulate unlicensed collection activities is impaired.

Regulatory Authority

The Superintendent of Banks has the authority to revoke or suspend the license of a collection agency which he deems to be in violation of the statutes. When compared to the other financial entities that are within the jurisdiction of the Superintendent of Banks, his statutory authority over the collection industry is decidedly substandard.

As of January 1, 1979, the State Banking Department had 11 separate codes for regulating various financial industries in the State of Arizona. These codes are:

Bank Code	ARS	6- 181	-	6- 395
Collection Agencies Code	ARS	32-1001	-	32-1057
Consumer Finance Code	ARS	6- 601	-	6- 640
Credit Union Code	ARS	6- 501	-	6- 536
Escrow Agents Code	ARS	6- 801	-	6- 860
Mortgage Brokers Code	ARS	6- 901	-	6- 911
Motor Vehicles Time Sales Code	ARS	44- 381	-	44- 295
Safe Deposit & Safe Keeping Code	ARS	6- 291	-	6- 929
Savings and Loan Code	ARS	6- 401	-	6- 449
State Banking Department Code	ARS	6- 101	-	6- 153
Trust Company Code	ARS	6- 851	-	6- 874

The Superintendent of Banks has the greatest regulatory authority over the banking industry. In addition to his responsibility to license the banks in the state, his powers include the authority to:

- 1) Perform routine investigation into financial records and statements of the licensee;
- 2) Issue cease and desist orders for violations of the code;
- 3) Order removal of corporate officers;
- 4) Order temporary restraining orders;
- 5) Apply to superior court for enforcement of his actions;
- 6) Revoke or suspend licenses;
- 7) Issue written warnings;
- 8) Order licensees into receivership if he determines that they are not financially stable; and,
- 9) Request the Attorney General to bring a legal action

By way of contrast, the Superintendent's regulatory authority over the collection industry is limited to 1) revoking or suspending the license of a collection agency or 2) issuing written warnings.

Table III summarizes the regulatory authority of the Superintendent of Banks over various financial institutions as provided by the appropriate sections of the Arizona Revised Statutes. The Codes in Table III are listed in order from those codes that provide the Superintendent with the greatest to the least regulatory authority.

TABLE III

SUMMARY OF REGULATORY POWERS OF SUPERINTENDENT  
OF BANKS OVER THE FINANCIAL INDUSTRIES WHICH ARE  
WITHIN HIS JURISDICTION (1)

	May initiate investigation into financial records of licensee	May issue cease and desist orders	May order removal of corporate officer	May issue temporary restraining order	May apply to Superior Court for enforcement of his actions	May revoke or suspend licenses	May issue written warnings	Attorney General may bring legal action at request of Superintendent of Banks	May assume active control of business (2)
Bank Code	X	X	X	X	X	X	X	X	X
Consumer Finance Code	X	X			X	X		X	X
Trust Company Code	X	X		X	X	X	X		(3)
Escrow Agents Code	X				X	X		X	X
Credit Union Code	X	X				X	X		X
Savings and Loan Code	X	X			X	X			
Safe Deposit Code (4)	X	X				X			
Mortgage Brokers Code	X				X	X			
Motor Vehicles Time Sales Code	X				X	X			
State Banking Department Code					X			X	
Collection Agency Code	(5)					X	X		

- (1) Source - ARS 6-101 through 6-929; 32-1001 through 32-1057; and, 44-281 through 44-295.
- (2) This action may be taken only when the Superintendent of Banks determines that the financial institution is in an unsafe or unsound financial condition.
- (3) The Superintendent of Banks must apply to the superior court to assume active control of a trust company (ARS 6-865).
- (4) ARS 6-291 through 6-929 state the relationship between a renter of a safe deposit box and the institution which provides that service is that of tenant-landlord. ARS 6-921 states that the institution offering safe deposit rentals be licensed under the Bank, Trust Company, Credit Union or Savings and Loan codes. The Superintendent's authority is dependent upon the institution which provides the service.
- (5) ARS 32-1052 states that the Superintendent of Banks shall appoint CPA's or PA's for those investigations. The section also states that the Superintendent of Banks shall provide funding for the investigation. (page 30)



Our review has shown that the Superintendent's ability to control unlicensed collection activity is impaired because the Superintendent lacks the authority to issue cease and desist orders, apply to the Superior Court for enforcement of his actions or use the Attorney General to bring legal actions. Further, such impairment has resulted in members of the public incurring financial losses.

The current practice of licensing collection agencies provides a certain element of protection to the public. For example, in order to be licensed as a collection agency an applicant is initially reviewed by the State Banking Department and, once licensed, is subject to having its license revoked or suspended. In addition, licensed collection agencies are required to post a \$3,000 surety bond. Thus, the licensing of collection agencies affords some state control over collection industry activities and a means of financial indemnification to creditors in the event a collection agency defaults on its fiduciary responsibilities. The following cases illustrate the Superintendent's current inability to control unlicensed collection activity and the resultant financial losses that such activity can generate. These cases were drawn from State Banking Department files.

## Case I

On December 4, 1978, the State Banking Department received a complaint that an unlicensed individual was operating a collection agency and using "unethical collection practices," such as calling consumers before 8 A.M. and contacting the consumers' employers. The Superintendent of Banks sent an investigator out to contact the individual who told the investigator that he was collecting a few accounts for a local jewelry store to see if running a collection agency "might be a business that he might like to get into." The investigator warned the individual that it is illegal to operate a collection agency without a license.

The investigator did a follow-up on the complaint two weeks later and determined that the individual was still collecting accounts. The investigator again warned the individual that it was illegal to operate a collection agency without a license and that he could be prosecuted (as a Class 1 misdemeanor). The Banking Department sent a warning letter to the individual and turned the file over to the County Attorney for possible prosecution.

On December 22, 1978, the Banking Department received another complaint that the same individual was again collecting accounts and using "unethical collection practices." A State Banking Department investigator verified the complaint and again warned the individual that it is illegal to operate a collection agency without a license. The individual subsequently applied to the State Banking Department for licensure as a collection agency. As of March 31, 1979, the Department has not approved the individual's application and the County Attorney has not initiated any action against the individual.

## Case II

In December 1978 the Superintendent of Banks was informed that an individual was operating a collection agency without a license. The Superintendent was informed that a Phoenix businessman had hired the individual to run "skip traces" on several clients and to collect on their accounts. The individual allegedly collected on the accounts but did not forward payment to the businessman. When the businessman attempted to collect on some of the late accounts, several of his debtors told him that they had already paid and had receipts of payment as proof. The businessman subsequently contacted another collection agency and was told that licensed collection agencies must be bonded and that the businessman should file a claim against the individual's bond. When the businessman contacted the Superintendent of Banks to file a claim against the individual's bond he was informed that the individual was not licensed and therefore there was no bond.

The Superintendent turned the case over to the County Attorney for possible prosecution. However, as of April 10, 1979, no action had been taken by the County Attorney.

Currently, the Superintendent's only recourse, when he is made aware of unlicensed collection activity, is to refer the matter to the County Attorney. The authority to issue cease and desist orders, apply to the Superior Court for enforcement of his actions and use the Attorney General to bring legal actions would enhance the Superintendent's ability to control unlicensed collection activity.

## CONCLUSION

The Superintendent of Banks' regulatory powers, with respect to the collection industry, are substandard when compared to his powers to regulate the other financial industries under the jurisdiction of the State Banking Department. As a result, the Superintendent of Banks' ability to regulate unlicensed collection activity is seriously impaired and members of the public have incurred financial losses.

RECOMMENDATION

ARS 32-1001 through 32-1057 should be amended to give the Superintendent of Banks adequate regulatory authority over the collection industry.

These changes should include:

- 1) Giving the Superintendent of Banks statutory authority to issue cease and desist orders to individuals who violate the statutes; and,
- 2) Authorizing the Office of the Attorney General to appeal to the Superior Court for enforcement of these orders.

## FINDING

### THE STATE BANKING DEPARTMENT NEEDS TO EXPAND ITS REGULATORY AUTHORITY OVER COLLECTION ACTIVITY

Currently, the State Banking Department licenses all collection agencies operating within Arizona. Such licensing does not, however, extend to individual collectors. As a result, the Banking Department lacks regulatory authority over a significant, and potentially abusive, segment of the collection industry.

#### Licensing of Agencies

It is unlawful to operate a collection agency in Arizona without first obtaining a license from the State Banking Department. A person desiring to operate a collection agency must apply for a license to the Banking Department. Such application must be accompanied by a financial statement, a \$3,000 surety bond and a fee of \$150. The applicant is fingerprinted and the Banking Department reviews the applicant's credit and criminal history, if any.

The licensing requirements imposed on collection agencies are significant in that the Superintendent of Banks has the authority to revoke or suspend collection agency licenses. This authority provides the Superintendent of Banks with the ability to control entry into and participation in the collection industry by collection agencies.

The Superintendent of Banks cannot, however, similarly control participation in the collection industry by collectors because employees of collection agencies are not required to be licensed. Collectors are particularly important because they make actual verbal and physical contact with debtors in the course of making collection. These collectors are controlled only by the owners of the individual collection agencies. These circumstances can potentially allow for the incongruous situation where a collection agency loses its license because of the collection practices used by its employees and those same employees subsequently obtain employment with another licensed collection agency.

### Need for Licensing Collectors

Our review of the complaints against collection agencies that are on file with the Superintendent of Banks, revealed that 76 percent of these complaints deal with unethical or illegal collection practices used by employees of collection agencies. These practices include:

1. Misrepresentation as to collector's identity;
2. Unauthorized calls to employees or contacting the consumer at work;
3. Contacts made at unreasonable hours;
4. Use of abusive language;
5. Threats of legal action without intent to pursue; and,
6. Mistaken debt or identity of person being contacted.

Many of the complaints on file with the Superintendent of Banks involve multiple illegal debt collection practices.

The following cases illustrate the types of collection practices to which a debtor may be subjected and demonstrate the need to regulate individual collectors. These cases were drawn from the files of the State Banking Department.

#### Case I

On January 26, 1978, a complaint was filed with the Secretary of State. The complaint alleged that on March 17, 1977, at approximately 6:30 A.M. three collectors gained entrance to the property of the complainant despite "no trespassing" signs that were posted and a locked chain across the driveway. According to the complainant, one collector "shoved some sort of badge in my face when I opened the door and said he was a detective, implying he was some sort of law officer." The complainant stated that one of the other collectors said he was an officer of the court and that he had papers from the court for the complainant. The complainant claimed that the collectors never told him that they represented a collection agency. The complainant related that he felt this was "outrageous conduct, causing severe emotional distress and mental anguish, not to mention the fact that it was frightening and terrorizing." According to the complainant, it was not until he insisted upon seeing the "legal" papers that he discovered the papers were mere collection agency forms.



The complainant subsequently learned that the collectors had come to his home to repossess some automobiles. The complainant claimed that he had never received any collection notices. The collection agency, when contacted by the complainant, stated that "they are not responsible for the actions of its representatives." (emphasis added)

On May 23, 1977, the complainant returned home to find one of the three collectors again on his property. According to the filed complaint, the collector started verbally abusing the complainant and, in the words of the complainant, "The next thing I know he pulled something from under his jacket and next thing I knew I'm looking down the barrel of a gun...With the attitude he displayed towards me and pulling the gun and acting vindictive towards me, I am still a little nervous when I come home at night that this character may try to take a shot at me."

On April 6, 1978, the complainant wrote to the Secretary of State inquiring as to why no action had been taken on his case. As of March 31, 1979, this case had not been acted upon.

#### Case II

On December 26, 1978, a couple filed a complaint which stated that the husband, who had a contractor's license, was telephoned at work by a woman he believed to be from the Office of the Registrar of Contractors. The woman told him that his C-37 (plumbing) license had been revoked and that a company to which he and his wife owed money had filed a law suit against them. The next day the complainants discovered that the telephone call was actually from a collector. The couple telephoned the collection agency and a different collector told them that the husband's C-37 license had been revoked because the collection agency had filed a claim against the husband's contractor bond on file with the State Registrar of Contractors. The agent went on to say that: (1) their account was now being handled by the collection agency; (2) they would be served a summons within a few hours; and (3) they now owed an additional \$900 in "attorney's fees." The couple subsequently contacted the creditor company and learned that their account had been turned over to the collection agency by mistake. In addition, the collector had lied in that the husband's contractor's license had

not been revoked and no summons was forthcoming. When the couple contacted the collector again and explained the situation, the collector "got violently angry" and "threatened to get his 'fee' of \$900, no matter what happened!" When contacted by an investigator from the Banking Department the collection agency denied any knowledge of the above incidences. The Banking Department issued a verbal warning to the agency and the case was closed. In their letter of complaint to the Banking Department the couple concluded; "I suspect there are many others, in Arizona, who might be unable to keep up with their financial obligations. I can't really believe that Arizona would knowingly allow a collection agency to harass, threaten and frighten these people."

While other complaints on file with the Superintendent of Banks may not be as dramatic as those shown above, many debtors are subjected to unethical and criminal collection practices which are perpetrated by collectors.

A survey of other states conducted by the Office of the Auditor General revealed there are 31 states that license collection agencies of which 12 also license collectors. Table IV summarizes the 31 states that regulate the collection industry indicating those which license collectors.

TABLE IV

SUMMARY OF THE 31 STATES WHICH REGULATE THE COLLECTION INDUSTRY

<u>State</u>	<u>License Collectors</u>
Alabama	*
Alaska	No
ARIZONA	No
Arkansas	No
California	**
Colorado	***
Connecticut	No
Florida	No
Hawaii	****
Idaho	Yes
Illinois	No
Indiana	No
Louisiana	No
Maine	No
Maryland	No
Massachusetts	No
Michigan	No
Minnesota	No
Nebraska	Yes
Nevada	Yes
New Mexico	Yes
North Carolina	No
North Dakota	Yes
Oregon	Yes
South Carolina	No
Tennessee	Yes
Virginia	No
Washington	No
West Virginia	No
Wisconsin	Yes
Wyoming	No

- \* Requires collection agency operators to report the names of its employees.
- \*\* Requires employees of collection agencies to be registered and pay a fee.
- \*\*\* Collectors are issued a certificate verifying employment by the employer which is filed with the State.
- \*\*\*\* Collectors are issued a "solicitor's card" which is filed with the State.

According to the Superintendent of Banks, collectors should be licensed in order to better regulate the collection industry. The Superintendent stated that one additional Full-Time Equivalent (FTE) would be needed to issue licenses to the approximately 500 collectors in Arizona.

#### CONCLUSION

The licensing of collectors will provide the Superintendent of Banks with needed additional authority over collectors.

#### RECOMMENDATION

ARS 32-1001 through 32-1057 should be amended to provide the Superintendent of Banks with the authority to license collectors. Such licenses should be subject to revocation or suspension for unethical or criminal acts.

FINDING

FINANCIAL INFORMATION SUBMITTED BY COLLECTION AGENCIES  
IS NOT A VALID INDICATION OF FINANCIAL RESPONSIBILITY

ARS 32-1021 and 32-1025 state that a collection agency desiring to obtain or annually renew a collection agency license shall file a financial statement with the State Banking Department, upon forms as prescribed by the Superintendent of Banks. Such financial statements shall show the applicant's assets and liabilities and truly reflect the applicant's net worth. The purpose of these financial statements is to provide the State Banking Department with a means to determine the financial responsibility of the applicant agency. Our review of the requisite financial statements currently being used by the State Banking Department and their associated filing instructions revealed that they are vague and subject to such diverse interpretations as to render them useless for evaluation purposes.\*

A review of the financial statement filed by collection agencies with the State Banking Department revealed that many questionable items are included on these financial statements. For example:

- A collection agency listed a total net worth of \$352,300, of which \$350,000 was attributable to "accounts receivable from clients."
- A collection agency, which did not use the prescribed form for financial statements, listed under liabilities "Payoffs" of \$1,250.
- A collection agency did not file the prescribed financial statement form. Instead, the agency filed a letter from the managing director of the applicant agency which certified that the agency had a cash deposit available at all times "in excess of two times \$2,000." The location of the deposit was not disclosed nor was any other financial information provided.
- A collection agency listed its net worth to be \$75,522 of which \$87,210 was attributable to "Goodwill (amortized)".
- Several collection agencies included the personal assets of the agency proprietors on their financial statements. One such financial statement listed a net worth of \$21,386 of which \$9,786 was attributable to the applicant's "Husband's Salary."
- A collection agency showed a net worth of \$5,500 of which \$2,500 was attributable to cash and the remainder to personal assets. The applicant collection agency subsequently went bankrupt owing its clients an estimated \$30,000.

\* The State Banking Department adopted a new financial statement form on December 6, 1978, for use by collection agencies. This form is an improvement over the financial statement form previously used by the Secretary of State. However, the associated filing instructions are still vague and subject to diverse interpretation.

It should be noted that the above examples are typical of the financial statements filed with the State Banking Department. It should also be noted that the State Banking Department has never denied a license because the applicant failed to show financial responsibility on its application for licensure.

According to the Superintendent of Banks, the financial criteria as currently prescribed in ARS 32-1021 and 32-1022 is too vague to allow the Department to deny a license because of an applicant's failure to demonstrate financial responsibility on its application. The Superintendent further stated that the financial statement form should be improved to provide a more valid indicator of an applicant's financial responsibility.

The Office of the Auditor General contacted the other states that regulate the collection industry to determine the methods used by these states to evaluate the financial responsibility of applicant agencies. The Nebraska Collection Agency Board has developed an outstanding financial statement form.\* The associated instructions for this form are clear and specific. As a result, the filed financial statements are comparable and provide a better means of evaluating the financial responsibility of an applicant agency.

#### CONCLUSION

The financial statements currently being filed by applicant collection agencies with the State Banking Department and their associated instructions are vague and subject to such diverse interpretations as to render them useless for evaluating the financial responsibility of the applicant agency. The use of a financial statement such as used by the State of Nebraska would enhance the State Banking Department's ability to evaluate the financial responsibility of applicant collection agencies.

#### RECOMMENDATION

The State Banking Department should adopt a financial statement form with instructions similar to the Nebraska Collection Agency Board financial statement form.

\* A sample of the Nebraska Collection Agency Board financial statement form, including filing instructions, is included in this report as Appendix V.



CHANGES NEEDED TO ENHANCE THE SUPERINTENDENT OF  
BANKS' ABILITY TO REGULATE THE COLLECTION INDUSTRY

Our review of the State Banking Department has shown that there are several regulatory areas that are inadequate and require statutory or procedural changes. These areas are:

- 1) State Collection Laws are substandard when compared to the Federal Consumer Credit Protection Act (Public Law 95-109);
- 2) The Statutes do not provide for any late fee for renewals which are received after January 1 of each year;
- 3) The Banking Department is not complying with ARS 32-1052; and,
- 4) The general public is not sufficiently informed of the State Banking Department and its role as the complaint review body for the collection industry.

Because of these inadequacies, the Superintendent of Banks' regulatory control over the collection industry needs to be enhanced.

Arizona's Collection Agency Code is Substandard  
When Compared to the Federal Consumer Credit  
Protection Act (Public Law 95-109)

The Federal Consumer Credit Protection Act (Public Law 95-109) was passed by the Congress in 1977. The purpose of this act was to facilitate nation-wide regulation of collection agencies by establishing six basic provisions for fair debt collection practice. These six provisions are:

- 1) The collector may not use false or misleading representation in connection with collection of a debt (Section 807);
- 2) The collector may not use unfair or unconscionable means to collect any debt (Section 808);
- 3) The collector may not use abusive language or harass the consumer (Section 806);
- 4) The collector must provide the consumer with a written notice containing the amount of the debt and the name of the creditor to whom the debt is owed (Section 809);
- 5) The collector may only contact the consumer during "Reasonable hours," defined as 8 A. M. to 9 P. M. (Section 805); and,
- 6) The collector may contact third parties to obtain specific information about the consumer (i.e., telephone number or current address) but may not inform the third party of any debt or obligation of the consumer (Section 804).

Of the six provisions enumerated above, only two, provisions 1 and 2, are codified in the Arizona Revised Statutes (ARS 32-1051.8 and 32-1051.4, respectively). The other points are addressed in the Administrative Rules and Regulations only, R4-4-1501 through R4-4-1530, which were adopted by the State Banking Department on December 6, 1978. At the present time, there are 31 states which have some form of regulation over the collection industry. A survey of these states, conducted by the office of the Auditor General revealed that 16 states have incorporated all six points of the Federal Consumer Credit Protection Act. These states are:

- |                |                |
|----------------|----------------|
| 1) Alaska      | 9) Maryland    |
| 2) California  | 10) Michigan   |
| 3) Colorado    | 11) Minnesota  |
| 4) Connecticut | 12) Nebraska   |
| 5) Hawaii      | 13) Oregon     |
| 6) Illinois    | 14) Virginia   |
| 7) Indiana     | 15) Washington |
| 8) Maine       | 16) Wisconsin  |

The Superintendent of Banks has stated that he would like to see Provisions 3 through 6 added to ARS 32-1001 through 32-1051-4. In the opinion of the Superintendent of Banks, this would provide a clear statement of legislative intent and enhance the State Banking Department's ability to regulate collection activities in Arizona.

The State Banking Department Does Not Have the  
Statutory Authority to Fine Licensees Who Do  
Not Renew Their Licenses on Time.

Arizona Revised Statutes 32-1025 states that:

"A person desiring to secure renewal of a collection agency license shall file a financial statement and make a renewal application to the Department not later than January 1 of each year" (emphasis added).

The current Banking Department practice is to accept license renewal applications up to February 1 which is the expiration for collection agency licenses. The Chief Executor of the Banking Department stated that the Department follows this practice because: (1) there is no provision in the Arizona statutes for charging late filers a penalty; and, (2) the Department can process the renewal applications before the February 1 expiration date.

In a March 21, 1979, opinion\*, the Legislative Council stated that according to Arizona Statutes, the Banking Department's only recourse against applicants who file after January 1, but prior to February 1, is to issue a warning to the collection agency.

Currently, the Department has the statutory authority to assess a penalty of \$5 per day against credit unions, small loan companies and escrow agents for not filing required license renewals or reports on time. The extension of such fining authority to include collection agencies would encourage applicants to file their renewal applications on time, in accordance with ARS 32-1025.

The Banking Department Is Not Complying  
With ARS 32-1052

Arizona Revised Statutes 32-1052A states that:

- A. The superintendent, at any time he determines but not more frequently than once each year, shall appoint a certified public accountant or licensed public accountant to determine the current financial condition of each collection agency licensed under this chapter, and make a spot check of such agency to determine whether the agency is guilty of violating paragraphs 1, 2, 3 or 4 of subsection D of Section 32-1055.\*\*

Section D of ARS 32-1052 states that the Superintendent shall pay the accountant for such services.

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\* See Appendix IV for a full text of this opinion.

\*\* ARS S 32-1055 D states

- D. It is unlawful for a person conducting a collection agency in this state to:
  1. Fail to render an account of and pay to the client, for whom collection has been made, the proceeds collected, less collection charges as agreed to by applicant and client, within thirty days from the last day of the month in which it is collected, except when the amount due the client is less than five dollars, in which event payment may be deferred for an additional thirty days.
  2. Fail to deposit with a local depository all monies collected by him and due and owing clients, and to keep such monies deposited until remitted to such clients.
  3. Fail to maintain an office or place of business in this state for collection of claims.
  4. Fail to keep a record of monies collected and the remittance of such monies.

The Superintendent of Banks has not appointed Certified Public Accountants or Licensed Public Accountants to examine the financial records of licensed collection agencies, even though the Superintendent has, on occasion, determined that such an examination is needed. According to the Superintendent, the Department does not have the funds necessary to pay for such services.

The State Banking Department currently employs bank examiners. The Superintendent is of the opinion that these bank examiners are capable of performing the type of examination stipulated in ARS 32-1052 and 32-1055 without causing the Department to incur additional expenses.

If this review exposes any potential violations of ARS 32-1055.D, the Superintendent should appoint a certified public accountant or licensed public accountant to make a detailed examination of the licensee's financial records. ARS 32-1052.D should be amended to require licensee's to pay for such detailed examinations.\*

The General Public Does Not Appear to be Sufficiently Informed  
of the State Banking Department's Role in the Regulation  
of Collection Agencies

The general public does not appear to be sufficiently informed that the Superintendent of Banks is responsible for regulating the collection industry in Arizona. As a result, a significant portion of complaints against collection agencies are not filed with the Superintendent of Banks.

The Superintendent of Banks assumed responsibility for regulating the collection industry on September 6, 1978. Between September 6, 1978, and March 31, 1979, the Superintendent of Banks received 100 complaints against collection agencies. However, during that same period the Better Business Bureau (BBB) and the Federal Trade Commission (FTC) received 64 complaints against collection agencies, none of which were forwarded to the Superintendent of Banks. Therefore, during the period under review, the Superintendent of Banks did not receive at least 40 percent of the complaints filed in Arizona against collection agencies.

\* Prior to January 1, 1970, licensees were required to pay for detailed financial examinations per ARS 32-1052.D.

The BBB, upon receiving a complaint against a collection agency, will contact the collection agency to discuss the matter. It is the policy of the BBB to attempt to resolve complaints against collection agencies on their own and not to pass such complaints on to governmental agencies. The FTC does not investigate each complaint it receives against collection agencies. Instead, the FTC initiates an investigation only if 1) a number of related complaints have been received against collection agencies, and 2) these complaints represent a clear violation of the Federal Fair Debt Collection Act. The FTC has the authority to: resolve complaints informally, bring civil penalties, or issue cease and desist orders. The FTC always advises the complainant of their rights under the law and encourages the complainant to take further action.

In addition, the Alliance for Information and Referral Service (AIRS) a nonprofit community-based public service organization, also provides a referral service for collection agency complaints. An individual having a problem with any type of consumer collection is referred to a volunteer with specific knowledge of Arizona collection laws. During the period November 22, 1978, to April 6, 1979, an AIRS volunteer received 51 complaints regarding consumer collections of which 13 dealt with collection agencies. Three of these complaints were determined to be violations of the Federal Fair Debt Collection Act and were referred to the State Banking Department. The AIRS volunteer stated that the majority of the individuals who called regarding consumer complaints were unaware of the State Banking Department or its role in the complaint review process.

Since the Superintendent of Banks assumed responsibility from the Secretary of State for regulating the collection industry, the number of complaints per month filed against collection agencies has increased as shown below:

TABLE V  
Number of Complaints Against  
Collection Agencies Since September 6, 1978

	<u>Number of</u> <u>Complaints Received</u>
Average complaints per month during the Period February 1, 1976, to September 6, 1978 (1)	8
September '78 (2)	16
October '78	18
November '78	10
December '78	10
January '79	14
February '79	15
March '79	17

(1) This information was obtained through a review of the complaint files maintained by the Secretary of State's Office. The regulation of collection agencies was under the jurisdiction of the Secretary of State from 1953 to September 6, 1978. Complaint records are not available for the period prior to January 1, 1976.

(2) The period September 6, 1978, to September 30, 1978, is considered to be a complete month for purposes of this table.

The Superintendent of Banks attributes the increase in complaints as shown above to: 1) the publicity surrounding the change of regulatory authority from the Secretary of State to the Superintendent of Banks; and, 2) Federal Trade Commission public service announcements on television and radio regarding debtor rights. The Office of the Auditor General contacted several television and radio stations and determined that these stations were willing to air public service announcements for the Superintendent of Banks, providing:

- (1) The Superintendent prepare a statement explaining the purpose of the message and assuring the station that the message is from a non-profit organization; and,
- (2) That the Superintendent prepare the announcement (that is, type the script of the announcement).

The Office of the Auditor General has discussed this point with the Superintendent of Banks. He has stated that he agrees with our recommendation and will implement it at the earliest possible opportunity.

#### CONCLUSIONS

Our review of the State Banking Department has shown that there are several regulatory areas that are inadequate. The State Collection Laws are substandard when compared to the Federal Consumer Credit Protection Act. Presently, there exists no late filing fee for renewals received after January 1 of each year, the State Banking Department is not complying with ARS 32-1052, and, the general public is not sufficiently informed of the State Banking Department's role in the regulation of collection agencies. Statutory or procedural changes are required to correct these deficiencies.

#### RECOMMENDATIONS

- 1) ARS 32-1001 through 32-1057 should be amended to incorporate these provisions of the Federal Consumer Credit Protection Act:
  - A) Collector may not use abusive language or harass consumer (Section 806);
  - B) Collector must provide the consumer with a written notice containing the amount of the debt and the name of the creditor to whom the debt is owed (Section 809);
  - C) Collector may only contact the consumer during "reasonable hours" (8 A.M. to 9 P.M.) (Section 805); and,
  - D) Collector may not inform any third parties of any debt or obligation of the consumer (Section 804).
- 2) ARS 32-1025 should be amended to include a \$5 per day penalty fee for renewal applications received after January 1 of each year.
- 3) ARS 32-1052.A should be amended to authorize the Superintendent of Banks to utilize bank examiners for the routine review of licensee financial records. If this review exposes any potential violations of ARS 32-1055.D, the Superintendent should appoint a certified public accountant or licensed public accountant to make a detailed examination of the licensee's financial records. ARS 32-1052.D should be amended to require licensees to pay for such examination.
- 4) The Superintendent of Banks should contact the Federal Trade Commission and Better Business Bureau and establish liaison with these agencies.
- 5) The Superintendent of Banks should contact the Arizona media and arrange for a series of public service announcements. These announcements should explain the consumer's rights under the Federal and State Regulations.

RESPONSE TO THE OFFICE OF THE AUDITOR GENERAL  
ON ITS PERFORMANCE AUDIT OF THE COLLECTION AGENCY  
ADVISORY COMMITTEE AND THE REGULATION OF THE  
COLLECTION INDUSTRY IN ARIZONA.

FROM: THE COLLECTION AGENCY ADVISORY COMMITTEE.

DATED: June 4, 1979



In 1949 a group of persons from the collection industry approached the Legislature with proposals for licensing and bonding the agencies then in existence.

This movement resulted in the first law which licensed and bonded collection agencies in Arizona.

In the ensuing years, various members of the Collection Agency Advisory Committee continued, with concentrated efforts to increase the protection of the General Public, by introducing more stringent laws.

Because of the sedulous action of the Advisory Committee, a new law was put into effect in 1969, which substantially increased the \$7.50 license renewal to \$100.00, plus a \$50.00 initial investigation fee.

The CAAC has been directly instrumental in initiating proposals for rules and regulations. The CAAC has been actively engaged in drafting more rigid laws for the collection industry, all of which were directed to the protection of the consumer.

The CAAC therefore believes it has proven itself a necessity in the rule-making process.

Further, the Superintendent of Banks has expressed his preference to meet with a small group such as the CAAC, prior to holding any public hearing.

RESPONSE TO PAGE #2 - RECOMMENDATIONS

1. The Collection Agency Advisory Committee believes it should be allowed to remain active, and not be terminated July 1, 1980.
2. The CAAC concurs
3. The CAAC concurs
4. The CAAC concurs
5. The CAAC Concurs. Further, the most recent proposed rules and regulations by the Advisory Committee did in fact, include additions which should be in compliance with Public Law 95-109.
6. The CAAC concurs
7. The CAAC concurs, with the exception of the last sentence, "ARS32-1052.D should be amended to require licensees to pay for such examinations." Since 1970 when the licensing fee was increased to \$100-\$150, the intent was for the Secretary of State to have sufficient funds available for administering the collection industry. The CAAC feels that during this nine year period, the monies which had been appropriated for that purpose may now be utilized. The CAAC believes that ARS32-1052.D should remain unchanged.
8. The CAAC concurs
9. The CAAC concurs

The Collection Agency Advisory Committee has performed on a totally voluntary basis; and thus the CAAC has borne no expense to the People of the State of Arizona.

The combined years of active collection agency operation by the members of the CAAC has been of great service in the rule-making process. It should continue to function as an invaluable source of expertise to the Superintendent of Banks.

Arizona ranks with other progressive states which have found advisory committees beneficial. Our neighbor, California is among those states which have elected to retain the services of the CAAC.

The Advisory Committee had withheld any recommended changes to 32-1001-32-2105 in the past two legislative sessions, in order to facilitate the transfer of jurisdiction from the Secretary of State to the Superintendent of Banks.

The CAAC is prepared to lend its knowledge and experience to the Superintendent of Banks at any time.

## S U M M A R Y

The Arizona State Legislature has urged representative groups to become actively involved in assisting them in the process of law making and government. Arizona ranks with other progressive states which have found advisory committees highly beneficial and essential.

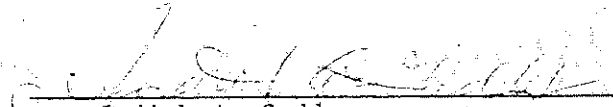
The CAAC believes that it should continue to function so that legislators, the Superintendent of Banks, and the General Public may gain through its existence.

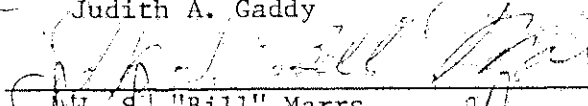
### RESPONSE TO PARAGRAPH THREE OF THE SUMMARY BY THE OFFICE OF AUDITOR GENERAL:


1. That the "source of input" from the CAAC is of inestimable value to the Superintendent of Banks.
2. That the CAAC has in fact contributed a wealth of active effort in the rule making process.
3. That the Collection Agency Advisory Committee constitutes a gainful, productive and practical asset in the rule making process, to the Superintendent of Banks - and ultimately to the People of the Great State of Arizona.

On Friday, June 1st, 1979, between the hours of 10:01 A.M. and 1:07 P.M., four of the five members of the Collection Agency Advisory Committee held a special meeting for the purpose of drafting and presenting a response to the performance audit by the Office of the Auditor General.

Those members who were present were:

  
Judith A. Gaddy

  
W. S. "Bill" Marrs

  
Stephen L. Sandler

  
Robert L. Taylor

A letter from the fifth member, James Serpe, was unable to personally attend the meeting, and has indicated his concurrence with the findings of the other four members of the Collection Agency Advisory Committee. Mr. Serpe's letter is included with this response.



SURETY ACCEPTANCE CORP.  
OF TUCSON, INC.

Licensed & Bonded Collection Agency

5316 E. Pima • Box 12949 • Tucson, AZ 85732

Phone 793-7181

June 4, 1979

OFFICE OF THE AUDITOR GENERAL

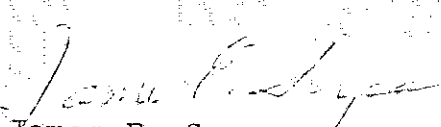
I, JAMES E. SERPE, a member of the Advisory Board on Collections, was unable to attend the meeting in Phoenix on June 1, 1979.

This is to advise you that I was contacted by Stephen Sandler, a member of the committee, who attended the meeting. Mr. Sandler read all the recommendations discussed at the June 1, 1979 meeting over the telephone to me.

I concur with all recommendations discussed at this meeting and with the information supplied me from the Auditor General's office.

I have received the literature regarding the Arizona Revised Statutes, Sections 43-2351 through 43-2374 on May 23, 1979.

Please accept my apology for not being able to attend the above meeting.

  
James E. Serpe  
Member Advisory Board on Collection Agencies



## STATE BANKING DEPARTMENT

ROOM 101 COMMERCE BUILDING  
1601 WEST JEFFERSON  
PHOENIX, ARIZONA 85007

WALTER C. MADSEN  
SUPERINTENDENT OF BANKS

TELEPHONE  
(602) 255-4421

June 6, 1979

Mr. Douglas R. Norton  
Auditor General  
State of Arizona  
Phoenix, Arizona 85007

Dear Mr. Norton:

In accordance with your letter of May 23, 1979 relating to the performance of the Collection Agency Advisory Committee and the Regulation of the Collection Industry in Arizona, I have now completed a review of the draft copy of the audit. As a means of answering the audit report I will address each conclusion and recommendation separately in this letter.

Conclusion 1 indicates that a Collection Agency Advisory Committee is duplicative and of no useful purpose to the State Banking Department, with the recommendation being to allow the Committee to terminate as of July 1, 1980. I am in agreement with this conclusion and recommendation.

Conclusion 2 indicates that regulatory powers, with respect to the collection industry, are substandard and the recommendation is made that A.R.S. 32-1001 through 32-1057 be amended to give the Banking Department appropriate regulatory authority over the collection industry. I am in agreement with both conclusion and recommendation and would point out that appropriate legislation has been introduced in the last two sessions of the legislature and will be introduced again next year.

Conclusion 3 relates to the licensing of individual collectors within the collection industry. I am again in agreement with the recommendation to provide this authority, however, would point out that additional staffing will be needed to carry out this function. Whether or not one additional FTE would be adequate will depend upon the type of licensing undertaken.

Conclusion 4 relates to the financial statements currently being used by the State Banking Department in relation to application for collection agency license. The recommendation is that the Banking Department adopt a form with more clear instructions.

Mr. Douglas R. Norton  
Auditor General  
June 6, 1979

Page 2 -

I would agree with this recommendation that the instructions for use with the financial statement should be made clearer so as to enable the department to more properly evaluate the financial condition of the applicant agency. I believe the present form is adequate and that only the instructions need to be changed.

Conclusion 5 is that there are several regulatory areas that are inadequate. The basis for the conclusion seems to be a comparison with the Federal Consumer Credit Protection Act. I agree there exists no late filing fee for renewals, however, this is a matter of statute and any changes would have to be made by the legislature. The conclusion also indicates the Banking Department is not complying with A.R.S. 32-1052. This statute states in part "The superintendent, at any time he determines but not more frequently than once each year, shall appoint a certified public accountant or licensed public accountant to determine the current financial condition of each collection agency....". The language of 32-1052 appears to be permissive in that the Superintendent is directed by the words "at any time he determines" which indicates to me that the language permits any examination as directed by the Superintendent, however, there is no minimum in the statute only a maximum of one examination per year. I therefore cannot agree with the conclusion to the extent the State Banking Department is not complying with this statute.

I am in agreement with the statement that the general public is not sufficiently informed with the regulation of Collection Agencies. I would point out, however, that the Banking Department now has a working arrangement with the Better Business Bureau.

Recommendation 1 relates to the inclusion of a number of the provisions of the Federal Consumer Credit Protection Act within Arizona law. I would agree with the recommendation but would point out that the majority of these recommendations are covered by either existing or proposed rules and regulations. I am in agreement with the remainder of the recommendations in this subsection.

If you have any questions or require additional information please contact me.

Very truly yours,

*Walter C. Madsen*

Walter C. Madsen *WCM*



## STATE OF ARIZONA

## OFFICE OF THE AUDITOR GENERAL

## SURVEY OF COMPLAINTS AGAINST COLLECTION AGENCIES

1. What agency was the complaint against? (Various)
2. What was the nature of the complaint you filed?  
 Note: Complainants sometimes checked more than one response.
- |           |   |
|-----------|---|
| <u>18</u> | Harassment by the collector   |
| <u>8</u>  | Mistaken debt   |
| <u>3</u>  | Other (please describe) <u>(Included being contacted about the debt of a friend or relative.)</u> |
3. Were you contacted as to the result of your complaint?
- |           |     |
|-----------|-----|
| <u>14</u> | Yes |
| <u>6</u>  | No  |
4. If yes, what was the outcome of your complaint?
- |            |  |
|------------|--|
| <u>-0-</u> | Collection agency's license was revoked                  |
| <u>-0-</u> | Collection agency's license was suspended                |
| <u>1</u>   | Agency was reprimanded                                   |
| <u>12</u>  | Agency was notified of complaint but no action was taken |
| <u>-0-</u> | No result  |
| <u>1</u>   | Other  |
5. Were you satisfied with the results?
- |           |             |
|-----------|-------------|
| <u>5</u>  | Yes         |
| <u>12</u> | No          |
| <u>3</u>  | No response |
6. Do you feel your complaint was handled in a reasonable amount of time?
- |           |             |
|-----------|-------------|
| <u>14</u> | Yes         |
| <u>4</u>  | No          |
| <u>2</u>  | No response |
7. If you have any further comments please include them.

Please return this questionnaire to:

Mary L. Lynn  
 Auditor General's Office  
 112 N. Central Ave.  
 Suite 600  
 Phoenix, Arizona 85004

TITLE 32  
PROFESSIONS AND OCCUPATIONS  
CHAPTER 9  
COLLECTION AGENCIES  
ARTICLE 1. ADMINISTRATION

See.

- 32-1001. Definitions.
- 32-1002. Powers of superintendent of banks; advisory committee.
- 32-1003. Records.

ARTICLE 2. LICENSING

- 32-1021. Original application for license; financial statement; bond; exception.
- 32-1022. Contents of financial statement; bond provisions.
- 32-1023. Qualifications of applicants.
- 32-1024. Licensing out-of-state-collection agents.
- 32-1025. Annual renewal of license.
- 32-1026. Issuance of licenses.
- 32-1027. Issuance of provisional license for limited purposes.
- 32-1028. Fees.

ARTICLE 3. REGULATION

- 32-1051. Duties of licensees.
- 32-1052. Examination of licensee records.
- 32-1053. Revocation or suspension of license.
- 32-1054. Judicial review of revocation or suspension of or refusal to issue license.
- 32-1055. Unlawful acts.
- 32-1056. Penalties.
- 32-1057. Prosecution of violations; individual liability.

### 32-1001. DEFINITIONS.

In this chapter, unless the context otherwise requires:

1. "Claim" means an obligation for the payment of money or its equivalent and a sum or sums owed, due or asserted to be owed or due to another, for which a person is employed to demand payment and collect or enforce such payment, and includes obligations for the payment of money, in the form of conditional sales agreements, notwithstanding the personal property sold thereunder, for which payment is claimed or may be or is repossessed in lieu of payment.

2. "Collection agency" means and includes:

(a) All persons engaged directly or indirectly in soliciting claims for collection or in collection of claims owed, due or asserted to be owed or due another.

(b) Any person who, in the process of collecting debts occurring in the operation of his own business, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts.

3. "Collection agency" does not include the following when engaged in the regular course of their respective businesses:

(a) Attorneys at law.

(b) Persons regularly employed on a regular wage or salary in the capacity of credit men or a similar capacity, except as an independent contractor.

(c) Banks, including trust departments thereof, fiduciaries and financing and lending institutions.

(d) Common carriers.

(e) Title insurers and abstract companies while doing an escrow business.

(f) Licensed real estate brokers.

(g) Employees of licensees under this chapter.

(h) Substation payment offices employed by or serving as independent contractors for public utilities.

4. "Department" means the state banking department.

5. "Person" means an individual, firm, partnership, association or corporation.

6. "Superintendent" means the superintendent of banks.

**32-1002. POWERS OF SUPERINTENDENT OF BANKS;  
ADVISORY COMMITTEE**

A. The superintendent shall enforce the provisions of this chapter and prescribe and enforce rules and regulations, not in conflict with the laws of this state, necessary to enforce this chapter.

B. The superintendent shall:

1. Appoint an advisory committee of five members to advise him in the preparation or revision of rules and regulations which may be adopted under provisions of this chapter. The membership of the committee shall consist of licensees in good standing under this chapter. Members shall serve for a term of five years. Of the members first appointed, one shall serve for a term ending February 1, 1971, and one each for a term ending one, two, three and four years thereafter. No member shall be reappointed for a consecutive term.

2. Appoint and fix the compensation of investigative, clerical, expert, technical, professional and other employees required to administer the provisions of this chapter.

3. Investigate complaints and examine the books, accounts, claims and files of licensees to enforce the provisions of this chapter and the rules and regulations adopted pursuant to this chapter.

4. Take actions necessary to rectify violations of this chapter and to suspend or revoke licenses as provided in this chapter.

**32-1003. RECORDS**

The superintendent shall keep in his office a record of all applications for licenses and all bonds required to be filed, including a statement as to whether a license, renewal license or provisional license has been issued under each application and bond, and, if revoked or suspended, the date of filing the order of revocation or suspension. The superintendent shall maintain a list of all individuals, firms, partnerships, associations or corporations who have had a license revoked or suspended, and a written record of complaints filed against licensees. Each license issued shall be indicated by its serial number and by the name and address of the licensee. The records, except the financial statements of licensees, shall be open to inspection as public records.

**32-1021. ORIGINAL APPLICATION FOR LICENSE;  
FINANCIAL STATEMENT; BOND EXCEPTION**

A. A person desiring to conduct a collection agency shall make an original application to the department upon forms prescribed by the superintendent setting forth verified information to assist the superintendent in determining the applicant's ability to meet the requirements of this chapter.

B. An application for an original or a renewal license shall be accompanied by:

1. A financial statement in the form provided in section 32-1022, showing the applicant's assets and liabilities and truly reflecting his net worth in cash or its equivalent, available for the use of applicant's business for each office he proposes to operate in this state.

2. A bond in the form provided in section 32-1022, in the amount of three thousand dollars for each office he proposes to operate in this state.

C. The superintendent may require from all applicants additional information he deems necessary in determining whether the applicant is entitled to the license sought.

#### **32-1022. CONTENTS OF FINANCIAL STATEMENT; BOND PROVISIONS**

A. The financial statement required by section 32-1021 shall be sworn to by applicant, if he is an individual, or a partner, director, manager or treasurer in its behalf if applicant is a partnership, corporation or incorporated association. The information in the financial statement shall be confidential and not a public record.

B. The bond shall run to the people of the state and shall be executed and acknowledged by the applicant as principal and by a corporation, licensed by this state to transact fidelity and surety insurance business, as surety. The bond shall be continuous in form and shall remain in full force and effect and run concurrently with the license period and any renewal thereof. The bond shall be conditioned that the applicant, within thirty days from the last day of the month in which a collection is made, shall make an account of and pay to the client the proceeds collected for him by the applicant, less charges for collection in accordance with the agreement between the applicant and client, but when the amount due the client is less than five dollars, payment may be deferred for an additional thirty days.

C. Any surety company intending to withdraw as surety of any licensee shall give sixty days' notice of such intention to the superintendent, which notice shall be by registered mail and shall also give sixty days' notice by registered mail to the licensee addressed to his last known address. When a surety shall for any cause cancel the bond of any licensee, the superintendent shall immediately notify such licensee by registered mail addressed to his last known address as shown by the files of the department. The license of any licensee shall be void unless, prior to the termination, a new bond has been filed with the department. A licensee changing his surety shall file a new bond with the department with a surety on the new bond meeting the qualifications of this section.

#### **32-1023. QUALIFICATIONS OF APPLICANTS**

A. An applicant for a license issued under this chapter shall:

1. Be a citizen of the United States, of good moral character.
2. Have been a resident of this state for one year next preceding the date of filing his application.
3. Not have been convicted of a crime involving moral turpitude.
4. Not have defaulted on payment of money collected or received for another.
5. Not have been a former licensee under the provisions of this chapter whose license was suspended or revoked and not subsequently reinstated.

B. If the applicant for a license is a firm, partnership, association or corporation, the qualifications required by subsection A of this section shall be required of the individual in active management of such firm, partnership, association or corporation.

C. When a licensed agency ceases to be under the active management of a qualified person, as shall be defined in the rules and regulations, notice of such fact shall be given to the superintendent within ten days. The licensee shall have ninety days next succeeding the termination of the services of the acting manager within which to replace such qualified person and notify the superintendent of the qualified replacement. If the agency is not placed under the active management of a new qualified person and notice thereof given to the superintendent within such ninety-day period, the license of the agency thereupon shall expire unless a provisional license has been granted under the provisions of section 32-1027.

#### 32-1024. LICENSING OUT-OF-STATE COLLECTION AGENTS

The superintendent shall issue a license to operate a collection agency to a person who holds and presents with his application a valid and subsisting license to operate a collection agency issued by another state or an agency thereof, if:

1. Requirements for securing the license were, at the time of issuance, substantially the same or equal to requirements imposed by this chapter.
2. The state concerned extends reciprocity under similar circumstances to licensed collection agents of this state.
3. The application is accompanied by the fees and financial and bonding requirements as set forth in this chapter.
4. The applicant agrees to maintain an office in this state for collection of claims.

#### 32-1025. ANNUAL RENEWAL OF LICENSE

A. A person desiring to secure renewal of a collection agency license shall file a financial statement and make a renewal appli-

cation to the department not later than January 1 of each year upon forms prescribed by the superintendent setting forth verified information to assist the superintendent in determining whether or not the applicant is in default of or in violation of the terms of this chapter and whether the applicant is still meeting the requirements of this chapter. If the renewal applicant is unable to make a financial statement at the time of filing the application the applicant may make a written request for an extension of time to file such financial report, and if extension is granted the applicant shall file a financial statement within thirty days after the issuance of a renewal license.

B. A renewal license shall be issued February 1 each year upon application as provided in subsection A of this section.

#### 32-1026. ISSUANCE OF LICENSES

A. Within one hundred twenty days after receipt of an original application, and within thirty days after receipt of a renewal application, accompanied by the fees, financial statement and bond, required by this chapter, the superintendent shall investigate the qualifications of the applicant and, if he meets the qualifications of this chapter, shall approve the application. If the application is approved, the license shall be promptly issued to the applicant. If it is disapproved, the fees submitted shall be retained by the superintendent.

#### 32-1027. ISSUANCE OF PROVISIONAL LICENSE FOR LIMITED PURPOSES

In the event of the death of an individual licensee, dissolution of a licensee partnership by death or operation of law, or termination of employment of the active manager if the licensee is a firm, partnership, association or corporation, if it is shown that the financial and bonding requirements of this chapter have been met, the superintendent shall issue without fee a provisional license to the personal representative of the deceased or his appointee, to the surviving partners, or to the firm, association or corporation, as the case may be, which shall be valid for the following purposes only and expire at the following times:

1. A provisional license issued to a personal representative or his appointee shall expire one year from the date of issuance and shall not be subject to renewal. Authority of the provisional licensee shall not be limited to those activities deemed necessary to wind up the business of the former licensee.

2. Other provisional licenses shall expire three months from the date of issuance unless the provisional licensee within such period can qualify for a full license.

### 32-1028. FEES

Every original application filed on or before June 30 of each year shall be accompanied by a nonrefundable investigation fee of fifty dollars and a yearly license fee of one hundred dollars. Every original application filed after June 30 each year shall be accompanied by a nonrefundable investigation fee of fifty dollars and a license fee of one hundred dollars. Every renewal application shall be accompanied by a fee of one hundred dollars.

### 32-1051. DUTIES OF LICENSEES

An individual, firm, partnership, association or corporation to whom a license is to be issued under this chapter shall:

1. Meet the financial responsibility and bonding requirements of this chapter.
2. Agree to maintain an office in this state for collection of claims.
3. Not have been a former licensee under the provisions of this chapter whose license was suspended or revoked and not subsequently reinstated.
4. Deal openly, fairly and honestly in the conduct of the collection agency business.
5. Not attempt to collect any collection fee, attorney's fee, court cost or expenses unless such fees, charges or expenses are justly due from and legally chargeable against the debtor, or have been judicially determined, nor shall any licensee engage in any unfair or misleading practices or resort to any oppressive, vindictive or illegal means or methods of collection.
6. Not give or send to any debtor, or cause to be given or sent to any debtor, any notice, letter, message or form which:
  - (a) Simulates any legal process.
  - (b) Is ambiguous as to or misrepresents the character, extent or amount of the obligation of the debtor.
  - (c) Represents or infers that the existing obligation of the debtor may be increased by the addition of attorneys' fees, investigation fees, service fees, or any other fees or charges when in fact such fees or charges may not legally be added to the existing obligation of such debtor.
  - (d) Threatens to sell the obligation of the debtor to any person, firm or group.
  - (e) Uses or sets forth the name of or purports to be from any attorney at law or legal firm.
7. Not use any letterhead, or literature bearing any heading, slogan or statement representing or inferring that the licensee prac-



tices law, renders legal services or advice, or maintains a legal department.

S. Not 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 an instrumentality of the state, or a political subdivision of the state, or of the department.

### 32-1052. EXAMINATION OF LICENSEE RECORDS

A. The superintendent, at any time he determines but not more frequently than once each year, shall appoint a certified public accountant or licensed public accountant to determine the current financial condition of each collection agency licensed under this chapter, and make a spot check of such agency to determine whether the agency is guilty of violating paragraphs 1, 2, 3 or 4 of subsection D of section 32-1055.

B. The accountant so appointed shall have free access to all books, records and files of the licensee. The superintendent shall require each licensee to keep its book, records and files in such condition that the spot check may be readily and easily made.

C. The licensee may appoint a certified public accountant or a licensed public accountant to audit the books of the licensee at least once in each year. The superintendent may prescribe certain minimum requirements of such audit and shall require the filing of a copy of the report covering such audit in his office. Such audit may at the option of the superintendent be accepted as a substitute for or in lieu of an audit by the superintendent.

D. An accountant appointed under the provisions of subsection A of this section shall be paid such fees as shall be fixed by the superintendent at prevailing rates for such services and shall be paid by the licensee to the accountant for all services performed prior to January 1, 1970 and thereafter shall be paid by the superintendent.

### 32-1053. REVOCATION OR SUSPENSION OF LICENSE

A. Upon the filing of a verified written complaint with the department by an interested person charging a licensee under this chapter with having violated any of the terms of this chapter, the superintendent shall immediately have the alleged violation investigated.

B. If the superintendent finds that such violations or misconduct do not warrant the suspension or revocation of the license, he may order that such licensee be warned concerning such violations or misconduct, and for a fixed period such licensee's operation shall be subject to inspection as set forth in the order. Any repetition as described in such order occurring within the time specified in such order shall be sufficient cause to institute and impose disciplinary

action. Written notice of any such order of warning, including the period and terms of warning, shall be promptly given to the subject licensee by prepaid registered mail with return receipt requested, addressed to the last known business address of such licensee as disclosed by the records of the department, and copies of all such warning orders shall be placed in the records of the department.

C. If the investigation shows probable cause for revocation or suspension of the license, the superintendent shall immediately issue summons to the licensee, to be served in the same manner as in a civil action, stating the alleged grounds for revocation or suspension and fixing the time and place for a hearing, which shall be not more than twenty days from the time of service of the summons. The superintendent may subpoena witnesses, books and records and administer oaths. The licensee may appear in person, or by or with counsel to defend himself against the charges.

D. If, upon hearing, the superintendent finds the charges true, he shall revoke or suspend the license. Suspension of the license shall be for a definite time, but not longer than one year. A person whose license has been revoked after such hearing shall not be permitted to again become a licensee under this chapter for two years.

E. The revocation of any license shall revoke any and all other licenses issued to the same person, partnership, association or corporation in all cases where such revocation results from the commission of fraud or misrepresentation or any offense involving moral turpitude or any willful violation of the provisions of this chapter or the rules and regulations adopted pursuant to this chapter, except in those instances where any revocation results merely from failure to do any act within the time specified in this chapter or such rules and regulations.

F. Reapplication for a license after revocation as provided in this section, shall be made in the same manner as for an original application.

#### 32-1054. JUDICIAL REVIEW OF REVOCATION OR SUSPENSION OF OR REFUSAL TO ISSUE LICENSE

A decision of the superintendent revoking, suspending or refusing to issue a license may be appealed to the superior court of the county in which the licensee resides for trial de novo, and a judgment of such court may be appealed to the supreme court, as in other civil actions, by either party to the action.

#### 32-1055. UNLAWFUL ACTS

A. It is unlawful for a person to conduct a collection agency in this state without having first applied for and obtained a license under this chapter.

B. A collection agency licensed under this chapter shall not directly or indirectly aid, abet or receive compensation from an unlicensed person, but nothing in this chapter shall prevent a licensed agency from accepting, as forwarder, claims for collection from a collection agency or attorney whose place of business is outside the state.

C. A licensee shall not advertise a claim for sale, or threaten to so advertise a claim, as a means of endeavoring to enforce such payment, nor shall he agree to do so for the purpose of soliciting claims, but this subsection shall not be deemed to affect a licensee acting as assignee for the benefit of a creditor, or acting under court order.

D. It is unlawful for a person conducting a collection agency in this state to:

1. Fail to render an account of and pay to the client, for whom collection has been made, the proceeds collected, less collection charges as agreed to by applicant and client, within thirty days from the last day of the month in which it is collected, except when the amount due the client is less than five dollars, in which event payment may be deferred for an additional thirty days.

2. Fail to deposit with a local depository all monies collected by him and due and owing clients, and to keep such monies deposited until remitted to such clients.

3. Fail to maintain an office or place of business in this state for collection of claims.

4. Fail to keep a record of monies collected and the remittance of such monies.

5. Fail to notify the department within ten days of any change of name under which the person does business as a collection agency or address at which the business is conducted.

6. Aid or abet, directly or indirectly, any person, persons or organizations in evading or violating any of the provisions of this chapter.

E. The violation of any of the provisions of this chapter or the rules and regulations adopted pursuant to this chapter shall constitute grounds for a warning, the suspension or the revocation of a license after a hearing as provided in this chapter. Upon the suspension or revocation of a license, the department shall immediately give notice by registered mail of such action.

#### 32-1056. PENALTIES

A. A person operating a collection agency without a license shall be guilty of a misdemeanor and shall be punished as follows:

1. If the violation is by an individual, by a fine of not to exceed

five hundred dollars, by imprisonment for not to exceed one year, or both.

2. If the violation is by a corporation, by a fine of not to exceed one thousand dollars.

B. A licensee violating the provisions of section 32-1055 or the rules and regulations adopted pursuant to this chapter shall be subject to revocation of license and shall be guilty of a misdemeanor punishable as provided in subsection A of this section.

**32-1057. PROSECUTION OF VIOLATIONS; INDIVIDUAL LIABILITY**

A. The prosecuting officer of a county or city shall prosecute all violations of this chapter occurring within his jurisdiction.

B. An officer or agent of a corporation or association participating in a violation of this chapter by such corporation or association shall be subject to the penalties prescribed by section 32-1056 for an individual.

## SUPERINTENDENT OF BANKS

Pursuant to A.R.S. §§ 6-123 and 32-1002, the Superintendent of Banks adopts the following rules and regulations:

Part 1. Article 15, Chapter 4, Title 4, A.C.R.R., adopted as an emergency measure on September 6, 1978, is repealed.

Part 2. Chapter 4, Title 4, A.C.R.R., is amended by adding a new article 15 to read as follows:

## ARTICLE 15. COLLECTION AGENCIES

R4-4-1501. Definitions.

In this article, unless the context otherwise requires:

1. "Client" means any person who has contracted with a collection agency with regard to the collection by the collection agency of any debt for such person.

2. "Collection agency" means all persons required to obtain a collection agency license under Chapter 9, Title 32, Arizona Revised Statutes.

3. "Credit bureau" and "credit reporting agency" means any person engaged exclusively in gathering, recording, and disseminating favorable, as well as unfavorable, information 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. "Creditor" means any person who offers or extends credit creating a debt, or to whom a debt is owed, but such term does not include any person to the extent that he receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another.

5. "Debt" means any obligation, or alleged obligation, of a debtor to pay money, whether or not such obligation has been reduced to judgment.

6. "Debtor" means any person obligated, or allegedly obligated, to pay a debt.

7. "Licensee" means the person to whom a license has been issued pursuant to A.R.S. § 32-1026.

8. "Manager" means the active manager who is actually in charge of the conducting of the office and business of any licensee as defined herein, and who meets the qualifications set forth in A.R.S. § 32-1023(A).

9. "Superintendent" means the State Superintendent of Banks, or his authorized agent.

R4-4-1502. Applications.

A. Application for a collection agency license shall be made by completing and filing with the Superintendent an application on the form prescribed in R4-4-1530.A. The application filed with the Superintendent shall be accompanied by the following:

1. The bond required by A.R.S. § 32-1022;

2. The nonrefundable investigation fee and original license fee prescribed by A.R.S. § 32-1028;
  3. A current financial statement on the form prescribed in R4-4-1530.B;
  4. A certified copy of the current articles of incorporation, by-laws, partnership agreement, or other governing documents under which the applicant proposes to conduct business; and
  5. A Statement of Personal History for each principal officer, partner and manager of the applicant on the form prescribed in R4-4-1410.
- B. An out-of-state collection agency applying for a license under A.R.S. § 32-1024 shall file an application as provided in subsection A, and shall file with said application a signed statement declaring that:
1. The requirements for securing the license upon which reciprocity is sought were, at the time of issuance, substantially the same or equal to the requirements imposed under Chapter 9, Title 32, Arizona Revised Statutes, together with a complete description of what those requirements were;
  2. The state issuing the license upon which reciprocity is sought extends reciprocity under similar circumstances to licensed collection agents of this state, together with a complete description of the conditions upon which said state extends reciprocity;

3. The applicant agrees, as a condition of licensure, to maintain an office in this state for the collection of claims.

C. Application for renewal of a license shall be made by completing and filing with the Superintendent, prior to January 1 of each year, an application for renewal on the form prescribed in R4-4-1530.C. Each application for renewal shall be accompanied by the renewal fee prescribed in A.R.S. § 32-1028, and a current financial statement on the form prescribed in R4-4-1530.B.

D. Application for a provisional license under A.R.S. § 32-1027 shall be made by completing and filing with the Superintendent within thirty days from the occurrence of the event warranting the license as prescribed in A.R.S. § 32-1027, an application on the form prescribed in R4-4-1530.C. The application shall be completed in all respects except that in the case of the death of an individual licensee the applicant shall be said licensee's personal representative or his appointee; in the case of the dissolution of a partnership licensee, the applicant shall be the surviving partners; and in the case of the termination of employment of the active manager, the applicant shall be the existing licensee and questions regarding the active manager need not be completed. The application shall be clearly identified at the top of the first page with the inscription "APPLICATION FOR PROVISIONAL LICENSE PURSUANT TO A.R.S. § 32-1027" and shall be accompanied by the following:



a. The bond required by A.R.S. § 32-1022 executed and acknowledged by the applicant as principal.

b. A current financial statement on the form prescribed in R4-4-1530.B.

c. A detailed description of the facts justifying the issuance of a provisional license.

d. In the case of termination of the employment of the active manager, evidence that the Superintendent was notified of such termination within ten days as required by A.R.S. § 32-1023.

E. The Superintendent may require additional information he considers necessary in connection with any application under this rule.

R4-4-1503. Reserved.

R4-4-1504. Records.

A. All collection agencies shall keep and maintain books, accounts and records adequate to provide a clear and readily understandable record of all business conducted by the collection agency, including without limitation:

1. Records or books of account setting forth the account of each client in numerical order, or in alphabetical order according to the names of the clients. If the collection agency's books of accounting are kept in numerical order, the collection agency shall maintain an alphabetical cross-index of each client corresponding with the number of the account. Each such account shall reflect the true condition of each client's account at the end of each calendar month, and shall include:

- a. The name and address of the client;
- b. Name of the debtor or debtors from whom collection was or is being made;
- c. Amount and description of each debit and each credit, and date thereof;
- d. Balance due to, or owing from, client; and

2. A record and history of each debt for collection which shall clearly show:

- a. Name of the debtor;
- b. Principal amount of the debt;
- c. Any interest charged or collected;
- d. Any other charges, with a description thereof;
- e. Each payment received or collected, and the date thereof;
- f. The current balance due on the debt.

3. An original of all written contracts and amendments thereto which are entered into between the collection agency and its clients.

B. In addition to the foregoing, all receipts issued by the collection agency shall be signed by and with the name of the person issuing the receipt, and shall show the name of the collection agency thereon.

R4-4-1505. Reserved.

R4-4-1506. Reserved.

R4-4-1507. Representations of identity of licensee.

Each collection agency shall at all times in its contacts with 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.

R4-4-1508. Representations of the law.

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

R4-4-1509. Representations as to fees, costs and legal proceedings.

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.

R4-4-1510.        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.

R4-4-1511.        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 of the unlawful acts of its agents, employees, representatives or officers as provided for under A.R.S. § 32-1056.B.

R4-4-1512. 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, or any writ of garnishment obtained after judgment has been rendered against the debtor for the debt being collected.

R4-4-1513. Cessation of contact with debtor.

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.

R4-4-1514. 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.

R4-4-1515. Aiding and Abetting.

No person shall 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.

R4-4-1516. 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 any agency or instrumentality of the State of Arizona, or that it is authorized to practice law.

R4-4-1517. Holder in due course.

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.

R4-4-1518 through R4-4-1529. Reserved.

R4-4-1530. Forms.

# ARIZONA LEGISLATIVE COUNCIL

## MEMO

March 21, 1979

TO: Douglas R. Norton, Auditor General  
FROM: Legislative Council  
RE: Request for Research and Statutory Interpretation  
(0-79-6)

This is in response to a request made on your behalf on March 6, 1979 by Gerald A. Silva.

### QUESTION PRESENTED:

What should the Banking Department do when it receives a renewal application for a collection agency license after the January 1 deadline but prior to February 1 when the old license expires?

Section 32-1025, Arizona Revised Statutes, requires a person desiring to renew a collection agency license to make a renewal application to the state banking department not later than January 1 of each year. Upon proper application and approval, a renewal license is issued by the department on February 1.

No specific penalty for filing a late application for license renewal is provided in section 32-1025, Arizona Revised Statutes, or in the rules and regulations (A.C.R.R. R-4-8) promulgated by the superintendent of banks to enforce the provisions of Title 32, chapter 9, Arizona Revised Statutes, relating to the administration, licensing and regulation of collection agencies.

However, within the chapter, section 32-1055, subsection E, Arizona Revised Statutes, provides:

E. The violation of any of the provisions of this chapter or the rules and regulations adopted pursuant to this chapter shall constitute grounds for a warning, the suspension or the revocation of a license after a hearing as provided in this chapter. Upon the suspension or revocation of a license, the department shall immediately give notice by registered mail of such action.

In addition, section 32-1002, subsection B, paragraph 4, Arizona Revised Statutes, states that the superintendent of banks "shall take actions necessary to rectify violations of this chapter and to suspend or revoke licenses as provided in this chapter."

These provisions thus require the superintendent to deal with the collection agency submitting the late renewal application either by taking "actions necessary to rectify" the violation or by following the procedures for revocation and suspension of a collection agency license specified in section 32-1053, Arizona Revised Statutes. These procedures include:



1. Immediate investigation by the superintendent of the alleged violation.

2. A warning to the licensee concerning the violation if the superintendent finds that the violation does not warrant suspension or revocation of the license.

3. A summons, hearing and revocation or suspension for up to one year of the license if the investigation indicates probable cause for revocation or suspension of the license and the superintendent finds the charges to be true.

#### Conclusion

When the appropriate official of the state banking department receives a late renewal application for a collection agency license, the official should notify the superintendent of banks of the violation of section 32-1025, Arizona Revised Statutes, and the superintendent should take appropriate action under section 32-1002, subsection B, paragraph 4 or section 32-1053 and section 32-1055, subsection E, Arizona Revised Statutes.

If the renewal application is filed prior to the expiration of the existing license it would seem that at least a warning would be in order. Arizona Revised Statutes section 32-1025, subsection A requires license renewal applications to be filed not later than January 1 of each year and subsection B provides for renewal licenses to be issued on February 1 upon application as provided in subsection A. In the suggested case, however, the facts involve a failure to comply with the application filing date by the applicant which would release the superintendent from the requirement of complying with the specified renewal license issuance date of February 1 since section 32-1026, Arizona Revised Statutes, allows the superintendent a period of thirty days from receipt of a renewal application, accompanied by the fees, financial statement and bond to investigate to determine if an applicant seeking a renewal license is qualified. Hence it seems that such cases would properly result in a warning to the applicant indicating the following:

1. The applicant violated Arizona Revised Statutes section 32-1025, subsection A by failure to make a timely application for license renewal.

2. That the superintendent, because of the applicant's delayed compliance with the license renewal requirements, was authorized to utilize a period of time, not to exceed thirty days, to investigate the applicant to determine whether the applicant meets prescribed licensure qualifications.

3. That the applicant would violate Title 32, chapter 9, Arizona Revised Statutes by conducting a collection agency without having obtained a license by engaging in the regulated activities of collection agencies for the time period between February 1 of the current year and the date of the actual license renewal issuance.

NEBRASKA COLLECTION AGENCY BOARD  
 STATEMENT OF FINANCIAL CONDITION  
 INSTRUCTIONS

The purpose of this statement is to provide evidence that the applicant is financially responsible. The date of the statement should precede the date of this application by not more than 60 days. Assets should be listed at the lower of cost or market except depreciable assets which should be listed at cost less allowance for depreciation. In the case of real estate, the current market value of which substantially exceeds cost, the market value may be entered as a footnote to the statement of financial condition.

The equity portion of the statement should disclose the proprietorship, partnership or shareholders' equity in a single amount which would include the investment account adjusted for retained earnings or losses as of the date of the statement.

Please answer the following questions:

1. Name and address of bank(s) with which the applicant has had an account during the past five years.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

2. Name and address of each principal shareholder, showing number of shares of stock held by each.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

3. Are any of the assets of the applicant pledged for any purpose including personal loans? \_\_\_\_\_

4. Our Financial Statements as of \_\_\_\_\_ have/have not  
 date of statement  
 been examined by an independent auditor. \_\_\_\_\_

I, the undersigned \_\_\_\_\_, do hereby  
 owner, partner or principal officer  
 affirm that I have prepared and/or examined this statement of Financial  
 Condition and that the information contained herein is true and correct  
 to the best of my knowledge and belief.

Date \_\_\_\_\_

\_\_\_\_\_

Name

\_\_\_\_\_

Title

STATEMENT OF FINANCIAL CONDITION AS OF: \_\_\_\_\_

NAME \_\_\_\_\_

TRADE NAME CORP.  SOLE PROPRIETORSHIP  PARTNERSHIP

BUSINESS ADDRESS \_\_\_\_\_ Street \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ zip \_\_\_\_\_

ASSETS:

Current Assets:

Cash on Hand - operating account \_\_\_\_\_  
trust account \_\_\_\_\_  
Demand checking accounts \_\_\_\_\_  
Savings accounts including \_\_\_\_\_  
Certificates of Deposit \_\_\_\_\_  
Notes receivable \_\_\_\_\_  
Accounts receivable \_\_\_\_\_  
Merchandise inventory \_\_\_\_\_  
Other, specify \_\_\_\_\_  
\_\_\_\_\_

Total Current Assets \_\_\_\_\_

Fixed Assets:

Corporate shares \_\_\_\_\_  
Corporate bonds \_\_\_\_\_  
Real estate \_\_\_\_\_  
Furniture, fixtures and equipment \_\_\_\_\_  
Other, specify \_\_\_\_\_  
\_\_\_\_\_

Total Fixed Assets \_\_\_\_\_

TOTAL ASSETS \_\_\_\_\_

LIABILITIES:

Current Liabilities

Accounts payable \_\_\_\_\_  
Notes payable \_\_\_\_\_  
Taxes payable \_\_\_\_\_  
Other, specify \_\_\_\_\_  
\_\_\_\_\_

Total Current Liabilities \_\_\_\_\_

Long Term Liabilities:

Notes payable, unsecured \_\_\_\_\_  
Notes payable, secured \_\_\_\_\_  
Other, specify \_\_\_\_\_  
\_\_\_\_\_

Total Long Term Liabilities \_\_\_\_\_

TOTAL LIABILITIES \_\_\_\_\_

EQUITY:

TOTAL LIABILITIES and EQUITY \_\_\_\_\_