

IN THE SENATE

SENATE BILL NO. 1195

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO COLLECTION AGENCIES; AMENDING SECTION 26-2229A, IDAHO CODE, AS AMENDED IN SECTION 4 OF SENATE BILL NO. 1007, AS AMENDED, AS ENACTED BY THE FIRST REGULAR SESSION OF THE SIXTY-FIFTH IDAHO LEGISLATURE, TO PROVIDE FOR ATTORNEY'S FEES AND LITIGATION COSTS IN CERTAIN INSTANCES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 26-2229A, Idaho Code, as amended in Section 4 of Senate Bill No. 1007, as amended, as enacted by the First Regular Session of the Sixty-fifth Idaho Legislature, be, and the same is hereby amended to read as follows:

26-2229A. REQUIREMENT OF FAIR, OPEN AND HONEST DEALING -- PROHIBITED PRACTICES. (1) Every licensee or person required to be licensed under this act and its agents shall deal openly, fairly, and honestly without deception in the conduct of its business activities in this state under this act.

(2) When not inconsistent with the statutes of this state, the provisions of the federal fair debt collection practices act, 15 U.S.C. 1692 et seq., as amended, may be enforced by the director against collection agencies licensed or required to be licensed under the provisions of this act.

(3) In every instance where a collection agency licensee has a managerial or financial interest in a creditor client, or where a creditor client has a managerial or financial interest in a collection agency licensee, disclosure of such interest must be made on each and every contact with a debtor in seeking to make a collection of any account, claim, or other indebtedness.

(4) No collection agency licensee, or collection agency required to be licensed under this act, or agent of such collection agency shall collect or attempt to collect any interest or other charges, fees, or expenses incidental to the principal obligation unless such interest or incidental fees, charges, or expenses:

(a) Are expressly authorized by statute;

(b) Are allowed by court ruling against the debtor;

(c) Are expressly authorized by the agreement creating the debt, except as otherwise prohibited by law; provided however, that attorney's fees shall be limited to a reasonable fee and litigation costs shall be as prescribed by court rule;

(d) Have been judicially determined;

(e) Are provided for in a written form agreement, signed by both the debtor and the licensee, and which has the prior approval of the director with respect to the terms of the agreement and amounts of the fees, interest, charges and expenses; or

(f) Reasonably relate to the actual cost associated with processing a demand draft or other form of electronic payment on behalf of a debtor for a debt payment, provided that the debtor has preauthorized the

1 method of payment and has been notified in advance that such payment may  
2 be made by reasonable alternative means that will not result in addi-  
3 tional charges, fees or expenses to the debtor.

4 (5) No person shall sell, distribute or make use of solicitations, col-  
5 lection letters, demand forms or other printed matter that are made similar  
6 to or resemble governmental forms or documents, or legal forms used in civil  
7 or criminal proceedings.

8 (6) No person shall use any trade name, address, insignia, picture, em-  
9 blem or any other means that creates any impression that such person is con-  
10 nected with or is an agency of government.

11 (7) No person licensed, or required to be licensed under this act, shall  
12 misappropriate, transfer, or convert to his own use or benefit, funds be-  
13 longing to or held for another person in connection with business activities  
14 authorized under this act.

15 (8) No credit repair organization licensed, or required to be licensed  
16 under this act, shall charge or receive money or other valuable considera-  
17 tion for the performance of any service, which the credit repair organiza-  
18 tion has agreed to perform for any consumer, before such service is fully  
19 performed.

20 (9) No person licensed or required to be licensed under this act shall  
21 make a representation or statement of material fact, or omit to state a mate-  
22 rial fact, in connection with the offer, sale or performance of any service  
23 authorized under this act, if the representation, statement or omission is  
24 false or misleading or has the tendency or capacity to be misleading.