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Governor

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**IDAHO DEPARTMENT OF FINANCE
Policy Statement 2014-01**

**BILLING SERVICE COMPANIES AND APPLICATION OF
THE IDAHO COLLECTION AGENCY ACT**

I. Background

The Idaho Supreme Court has determined that individuals and entities operating in Idaho solely as a billing service company, as described in *Davis v. Professional Business Services, Inc.* (109 Idaho 810, 712 P.2d 511 (1985)), are not subject to the provisions of the Idaho Collection Agency Act (the Act).

This Policy Statement is intended to provide guidance to the industry, as well as to the public, regarding the Department's interpretation of the *Davis* case in assessing whether an individual or entity is a *Davis*-case-type billing service company falling outside of the requirements of the Act.

II. What is a Billing Service Company?

In the *Davis* case, the Idaho Supreme Court dealt with a true billing service arrangement in which the billing service company, (1) never sent any mailings or billings in its own name, but rather in the original creditor's name, (2) the original creditor never assigned any of its accounts to the billing service company, (3) the billing service company deposited all the money it received for the original creditor into the original creditor's own bank accounts, (4) the original creditor paid the billing service company directly from the original creditor's accounts upon signature of one of the original creditor's personnel, and (5) when the original creditor's accounts were not paid in the regular billing process, the billing service company turned them over to a licensed collection agency for collection. In other words, the billing service company never dealt with delinquent accounts, other than to turn them over for collection to a separate licensed collection agency. The Idaho Supreme Court identified the foregoing factors as compelling elements of a billing service company not subject to the requirements of the Act.

III. How Does the Idaho Department of Finance Apply the *Davis* Case?

Importantly, in the *Davis* case the original creditor's arrangement with the billing service company created in practice a seamless appearance to debtors, such that the billing service company appeared in all respects to debtors to be the original creditor.

The Department applies the *Davis* case by considering the following factors:

1. Are mailings and billings sent to debtors in the original creditor's name?
2. Has the purported billing service company taken an assignment of accounts from the original creditor?
3. Does the purported billing service company deposit funds received for the original creditor in its bank account, or in the bank account of the original creditor?
4. Is the purported billing service company paid for its services directly by the original creditor, from the original creditor's account?
5. Does the purported billing service company deal with delinquent accounts on behalf of the original creditor? Or, when an account is not paid in the regular billing process is that account turned over to a licensed collection agency for collection?

IV. Summary

Upon written inquiry, the Department will continue to provide its interpretation of the application of *Davis* on a case-by-case basis. However, the Department's position is that individuals or entities that engage in the business of collecting or receiving payments for others of any account, bill, claim or other indebtedness in Idaho, **and who operate outside of the *Davis* factors described above**, are collection agencies subject to the Act and jurisdiction of the Department.

Dated this 28th day of January, 2014.

/s/
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