



Proposition 209: A Creditor's Guide to Arizona's Predatory Debt Collection Act

By Larry O. Folks

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Introduction

In the November 2022 General Election, Arizona voters approved, by a margin of 72% to 28%, the "Healthcare Debt Interest Rate Limit and Debt Collection Exemptions Initiative" (Proposition 209).

The resulting law, the Predatory Debt Collection Act (PDCA), increases the dollar amount of several important statutory exemptions that apply to post-judgment debt collection actions in Arizona. The increased exemptions concern:

- the personal residence homestead exemption;
- the household furniture, furnishings and appliances exemption;
- the motor vehicle exemption;
- the non-wage garnishment exemption; and
- the wage garnishment exemption.

Collectively, the bulleted items above constitute the "Arizona Statutory Exemptions."

The PDCA also establishes caps on the amount of interest that can be charged upon (a) medical and non-medical debts and (b) judgments based upon such debts.

Pursuant to the Arizona Constitution¹, the Governor has 30 days after the November 8 election date to issue a proclamation declaring that the Proposition 209 ballot measure received a majority vote and is law. Upon that proclamation, the law

becomes effective immediately. At the time of this writing, it was anticipated that the Governor would do this on the 30th day, making December 8, 2022, the effective date.

Following are questions and answers related to the increases to the Arizona Statutory Exemptions and a discussion of the new interest rates that may be charged on medical and non-medical debts and judgments related to such debts that shall apply pursuant the PDCA.

1. What is the new homestead exemption amount under the PDCA?

As of the effective date, the Arizona homestead exemption is \$400,000, increased from \$250,000.²

Note: The homestead exemption shall also increase annually going forward, based upon the increase in the cost of living. Specifically, the \$400,000 homestead exemption amount will be adjusted annually – starting on January 1, 2024, and repeating on January 1 of each successive year – by the increase in the cost of living. The cost-of-living increase will be measured by the percentage increase, as of August of the immediately preceding year, in the U.S. Department of Labor's consumer price index ("Annual CPI Increase").

¹ Arizona Constitution, Article IV, Part 1, Section 1, at ¶13.

² A.R.S. § 33-1101(A) and (D).

2. What is the exemption amount for household furniture, furnishings and appliances under the PDCA?

The Arizona household furniture, furnishings and appliances exemption is increased to \$15,000 from \$6,000.³

Note: The Arizona household furniture, furnishings and appliances exemption will also increase annually, beginning on January 1, 2024, based upon the increase in the cost of living calculated by the Annual CPI Increase.

3. What is the exemption amount for a motor vehicle under the PDCA?

The Arizona motor vehicle standard exemption is increased to \$15,000 from \$6,000, and the disability exemption is increased to \$25,000, from \$12,000.⁴

Note: Both of the motor vehicle exemptions will also increase annually, beginning on January 1, 2024, based upon the increase in the cost of living calculated by the Annual CPI Increase.

4. What is the exemption amount applicable to bank account, or non-wage, garnishments under the PDCA?

Up to \$5,000 held in a single account at any one financial institution is exempt from collection.

Bank account, or non-wage, garnishments are authorized and controlled by an application process set forth by A.R.S. §§ 12-1570 *et seq.*

One major limitation is that a writ of non-earnings garnishment is valid only on the date the writ is served on the financial institution. The financial institution only has to freeze any funds on deposit in the account garnished on the date the writ is served by a process server on the financial institution.

Additionally, only non-exempt funds may be garnished. The Arizona bank account, non-wage, exemption significantly increases to \$5,000, from \$300,

of funds held in a single account in any one financial institution.⁵

Based upon the increase of the non-wage garnishment exemption, a total of \$5,000 held in a single account in any one financial institution is *exempt from garnishment* and must be withheld by the financial institution that responds to the writ of non-earnings garnishment.

Note: The bank account, or non-wage, exemption will also increase annually, beginning on January 1, 2024, based upon the increase in the cost of living calculated by the Annual CPI Increase.

5. What is the exemption amount applicable to wage, or earnings, garnishments under the PDCA?

The percentage of wages subject to garnishment is reduced. The percentage of wages subject to garnishment is calculated as 10% (previously 25%) of the garnishee’s disposable earnings for the subject work week, or the disposable earnings for that week, which exceed 60 times (previously 30 times) the applicable minimum hourly wage in effect at the time the earnings are payable, whichever amount is less. The applicable minimum wage is the minimum wage required by federal, state or local law, whichever is highest.

Wage, or earnings, garnishments are authorized and controlled by an application process set forth by A.R.S. §§ 12-1598 *et seq.*

The wage, or earnings, garnishment statute and Arizona exemptions limit the dollar amount of a judgment debtor’s wages that may be garnished.⁶

The garnishee/employer shall immediately pay over to the judgment creditor 10% (or the lesser sum calculated as described above) of all nonexempt earnings withheld from the wages of the judgment debtor.⁷

³ A.R.S. § 33-1123 (A) and (B).

⁴ A.R.S. § 33-1125(A)(8).

⁵ A.R.S. § 33-1126(A)(9).

⁶ A.R.S. § 12-1598.10.

⁷ A.R.S. § 33-1131(B).

Note: The wage, earnings exemption, does not automatically increase annually.

6. Does the PDCA limit the interest rate to be charged on medical and non-medical debts and money judgments related to such debts?

Yes. The PDCA provides that the interest rate that may be charged on *medical debt*, and judgments based upon *medical debt*, shall be the weekly average one-year constant maturity Treasury Yield, as published by the Board of Governors of the Federal Reserve system, for the calendar week preceding the date when the consumer was provided with a bill, but capped at an interest rate that shall not exceed 3% per annum.⁸

The PDCA also provides that *interest on any loan, indebtedness or obligation other than medical debt* shall be charged at the rate of 10% per annum, *unless a different rate is contracted for in writing, in which event any rate of interest may be agreed to.* Furthermore, *judgments based upon non-medical debt* shall bear interest at the rate provided for in the written agreement upon which the judgment is based, as long as the rate does not exceed the maximum rate of interest provided by applicable law.

The PDCA further provides that, unless specifically provided for in statute or a different rate is contracted for in writing, interest on any judgment other than judgments on medical debt shall be at the lesser of 10% per annum or at a rate per annum that is equal to the prime rate of interest plus 1.0%.

7. Does the PDCA apply retroactively to all pending collection actions?

No, the PDCA applies prospectively.

Section 9 of the PDCA includes the following Saving clause:

This act applies *prospectively only*. Accordingly, it does not affect rights and duties that matured before the effective date of this act, contracts entered into before the effective date of this act, or the interest rate on

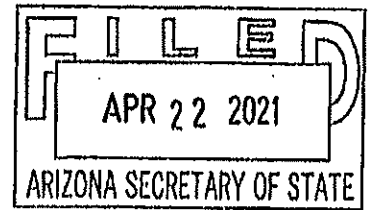
judgments that are based on a written agreement entered into before the effective date of this act.

It is anticipated that the scope and application of this Savings clause of the PDCA will be litigated.

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⁸ A.R.S. § 44-1201(A).



AN INITIATIVE MEASURE

AMENDING TITLE 33, CHAPTER 8, ARTICLE 1, SECTION 33-1101, ARIZONA REVISED STATUTES; AMENDING TITLE 33, CHAPTER 8, ARTICLE 2, SECTIONS 33-1123, 33-1125, 33-1126, AND 33-1131, ARIZONA REVISED STATUTES; AMENDING TITLE 44, CHAPTER 9, ARTICLE 1, SECTION 44-1201, ARIZONA REVISED STATUTES.

Be it enacted by the People of the State of Arizona:

Section 1. Section 33-1101, Arizona Revised Statutes, is amended to read:

33-1101. Homestead exemptions; persons entitled to hold homesteads

A. Any person the age of eighteen or over, married or single, who resides within the state may hold as a homestead exempt from attachment, execution and forced sale, not exceeding ~~one hundred fifty thousand dollars~~ \$400,000 in value, any one of the following:

1. The person's interest in real property in one compact body upon which exists a dwelling house in which the person resides.
2. The person's interest in one condominium or cooperative in which the person resides.
3. A mobile home in which the person resides.
4. A mobile home in which the person resides plus the land upon which that mobile home is located.

B. Only one homestead exemption may be held by a married couple or a single person under this section. The value as specified in this section refers to the equity of a single person or married couple. If a married couple lived together in a dwelling house, a condominium or cooperative, a mobile home or a mobile home plus land on which the mobile home is located and are then divorced, the total exemption allowed for that residence to either or both persons shall not exceed ~~one hundred fifty thousand dollars~~ \$400,000.

C. The homestead exemption, not exceeding the value provided for in subsection A, automatically attaches to the person's interest in identifiable cash proceeds from the voluntary or involuntary sale of the property. The homestead exemption in identifiable cash proceeds continues for eighteen months after the date of the sale of the property or until the person establishes a new homestead with the proceeds, whichever period is shorter. Only one homestead exemption at a time may be held by a person under this section.

D. THE HOMESTEAD EXEMPTION PROVIDED BY THIS SECTION SHALL BE ADJUSTED ANNUALLY ON JANUARY 1, 2024, AND ON JANUARY 1 OF EACH SUCCESSIVE YEAR, BY THE INCREASE IN THE COST OF LIVING. THE INCREASE IN THE COST OF LIVING SHALL BE MEASURED BY THE PERCENTAGE INCREASE AS OF AUGUST OF THE IMMEDIATELY PRECEDING YEAR OVER THE LEVEL AS OF AUGUST OF THE PREVIOUS YEAR OF THE CONSUMER PRICE INDEX (ALL URBAN CONSUMERS, UNITED STATES CITY AVERAGE FOR ALL ITEMS) OR ITS SUCCESSOR INDEX AS PUBLISHED BY THE UNITED STATES DEPARTMENT OF LABOR OR ITS SUCCESSOR AGENCY, WITH THE AMOUNT OF THE EXEMPTION ROUNDED TO THE NEAREST ONE HUNDRED DOLLARS.

Sec. 2. Section 33-1123, Arizona Revised Statutes, is amended to read:

33-1123. Household furniture; furnishings and appliances

A. Household furniture and furnishings, household goods, including consumer electronic devices, and household appliances personally used by the debtor or a dependent of the debtor and not otherwise specifically prescribed in this chapter are exempt from process provided their aggregate fair market value does not exceed ~~six thousand dollars~~ \$15,000.

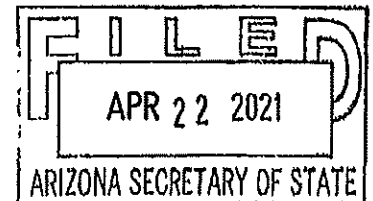
B. THE EXEMPTION PROVIDED BY THIS SECTION SHALL BE ADJUSTED ANNUALLY ON JANUARY 1, 2024, AND ON JANUARY 1 OF EACH SUCCESSIVE YEAR, BY THE INCREASE IN THE COST OF LIVING. THE INCREASE IN THE COST OF LIVING SHALL BE MEASURED BY THE PERCENTAGE INCREASE AS OF AUGUST OF THE IMMEDIATELY PRECEDING YEAR OVER THE LEVEL AS OF AUGUST OF THE PREVIOUS YEAR OF THE CONSUMER PRICE INDEX (ALL URBAN CONSUMERS, UNITED STATES CITY AVERAGE FOR ALL ITEMS) OR ITS SUCCESSOR INDEX AS PUBLISHED BY THE UNITED STATES DEPARTMENT OF LABOR OR ITS SUCCESSOR AGENCY, WITH THE AMOUNT OF THE EXEMPTION ROUNDED TO THE NEAREST ONE HUNDRED DOLLARS.

Sec. 3. Section 33-1125, Arizona Revised Statutes, is amended to read:

33-1125. Personal Items

A. The following property of a debtor used primarily for personal, family or household purposes is exempt from process:

1. All wearing apparel of not more than a fair market value of five hundred dollars.
2. All musical instruments provided for the debtor's individual or family use of not more than an aggregate fair market value of four hundred dollars.
3. Horses, milk cows and poultry of not more than an aggregate fair market value of one thousand dollars.
4. All engagement and wedding rings of not more than an aggregate fair market value of two thousand dollars.
5. The library of a debtor, including books, manuals, published materials and personal documents of not more than an aggregate fair market value of two hundred fifty dollars.
6. One watch of not more than a fair market value of two hundred fifty dollars.
7. One typewriter, one computer, one bicycle, one sewing machine, a family bible or a lot in any burial ground of not more than an aggregate fair market value of two thousand dollars.
8. Equity in one motor vehicle of not more than ~~six thousand dollars~~ \$15,000. If the debtor or debtor's dependent has a physical disability, the equity in the motor vehicle shall not exceed ~~twelve thousand dollars~~ \$25,000. THESE EXEMPTIONS SHALL BE ADJUSTED ANNUALLY ON JANUARY 1, 2024, AND ON JANUARY 1 OF EACH SUCCESSIVE YEAR, BY THE INCREASE IN THE COST OF LIVING. THE INCREASE IN THE COST OF LIVING SHALL BE MEASURED BY THE PERCENTAGE INCREASE AS OF AUGUST OF THE IMMEDIATELY PRECEDING YEAR OVER THE LEVEL AS OF AUGUST OF THE PREVIOUS YEAR OF THE CONSUMER PRICE INDEX (ALL URBAN CONSUMERS, UNITED STATES CITY AVERAGE FOR ALL ITEMS) OR ITS SUCCESSOR INDEX AS PUBLISHED BY THE UNITED STATES DEPARTMENT OF LABOR OR ITS SUCCESSOR AGENCY, WITH THE AMOUNT OF THE EXEMPTION ROUNDED TO THE NEAREST ONE HUNDRED DOLLARS.



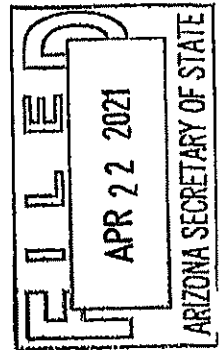
9. Professionally prescribed prostheses for the debtor or a dependent of the debtor, including a wheelchair or motorized mobility device.
10. All firearms of not more than an aggregate fair market value of two thousand dollars.
11. All domestic animals or household pets.

Sec. 4. Section 33-1126, Arizona Revised Statutes, is amended to read:

33-1126. Money benefits or proceeds; exception

A. The following property of a debtor is exempt from execution, attachment or sale on any process issued from any court:

1. All money received by or payable to a surviving spouse or child on the life of a deceased spouse, parent or legal guardian, not exceeding twenty thousand dollars.
2. The earnings of the minor child of a debtor or the proceeds of these earnings by reason of any liability of the debtor not contracted for the special benefit of the minor child.
3. All monies received by or payable to a person entitled to receive child support or spousal maintenance pursuant to a court order.
4. All money, proceeds or benefits of any kind to be paid in a lump sum or to be rendered on a periodic or installment basis to the insured or any beneficiary under any policy of health, accident or disability insurance or any similar plan or program of benefits in use by any employer, except for premiums payable on the policy or debt of the insured secured by a pledge, and except for collection of any debt or obligation for which the insured or beneficiary has been paid under the plan or policy and except for payment of amounts ordered for support of a person from proceeds and benefits furnished in lieu of earnings that would have been subject to that order and subject to any exemption applicable to earnings so replaced.
5. All money arising from any claim for the destruction of, or damage to, exempt property and all proceeds or benefits of any kind arising from fire or other insurance on any property exempt under this article.
6. The cash surrender value of life insurance policies where for a continuous unexpired period of two years the policies have been owned by a debtor. The policy shall have named as beneficiary the debtor's surviving spouse, child, parent, brother or sister. The policy may have named as beneficiary any other family member who is a dependent, in the proportion that the policy names any such beneficiary, except that, subject to the statute of limitations, the amount of any premium that is recoverable or avoidable by a creditor pursuant to title 44, chapter 8, article 1, with interest thereon, is not exempt. The exemption provided by this paragraph does not apply to a claim for the payment of a debt of the insured or beneficiary that is secured by a pledge or assignment of the cash value of the insurance policy or the proceeds of the policy. For the purposes of this paragraph, "dependent" means a family member who is dependent on the insured debtor for not less than half support.
7. An annuity contract where for a continuous unexpired period of two years that contract has been owned by a debtor and has named as beneficiary the debtor, the debtor's surviving spouse, child, parent, brother or sister, or any other dependent family member, except that, subject to the statute of limitations, the amount of any premium, payment or deposit with respect to that contract is recoverable or avoidable by a creditor pursuant to title 44, chapter 8, article 1 is not exempt. The exemption provided by this paragraph does not apply to a claim for a payment of a debt of the annuitant or beneficiary that is



secured by a pledge or assignment of the contract or its proceeds. For the purposes of this paragraph, "dependent" means a family member who is dependent on the debtor for not less than half support.

8. Any claim for damages recoverable by any person by reason of any levy on or sale under execution of that person's exempt personal property or by reason of the wrongful taking or detention of that property by any person, and the judgment recovered for damages.

9. A total of ~~three hundred dollars~~ \$5,000 held in a single account in any one financial institution as defined by § 6-101. The property declared exempt by this paragraph is not exempt from normal service charges assessed against the account by the financial institution at which the account is carried. THIS EXEMPTION SHALL BE ADJUSTED ANNUALLY ON JANUARY 1, 2024, AND ON JANUARY 1 OF EACH SUCCESSIVE YEAR, BY THE INCREASE IN THE COST OF LIVING. THE INCREASE IN THE COST OF LIVING SHALL BE MEASURED BY THE PERCENTAGE INCREASE AS OF AUGUST OF THE IMMEDIATELY PRECEDING YEAR OVER THE LEVEL AS OF AUGUST OF THE PREVIOUS YEAR OF THE CONSUMER PRICE INDEX (ALL URBAN CONSUMERS, UNITED STATES CITY AVERAGE FOR ALL ITEMS) OR ITS SUCCESSOR INDEX AS PUBLISHED BY THE UNITED STATES DEPARTMENT OF LABOR OR ITS SUCCESSOR AGENCY, WITH THE AMOUNT OF THE EXEMPTION ROUNDED TO THE NEAREST ONE HUNDRED DOLLARS.

10. An interest in a college savings plan under § 529 of the internal revenue code of 1986, either as the owner or as the beneficiary. This does not include money contributed to the plan within two years before a debtor files for bankruptcy.

B. Any money or other assets payable to a participant in or beneficiary of, or any interest of any participant or beneficiary in, a retirement plan under § 401(a), 403(a), 403(b), 408, 408A or 409 or a deferred compensation plan under § 457 of the United States internal revenue code of 1986, as amended, whether the beneficiary's interest arises by inheritance, designation, appointment or otherwise, is exempt from all claims of creditors of the beneficiary or participant. This subsection does not apply to any of the following:

1. An alternate payee under a qualified domestic relations order, as defined in § 414(p) of the United States internal revenue code of 1986, as amended. The interest of any and all alternate payees is exempt from any and all claims of any creditor of the alternate payee.
2. Amounts contributed within one hundred twenty days before a debtor files for bankruptcy.
3. The assets of bankruptcy proceedings filed before July 1, 1987.

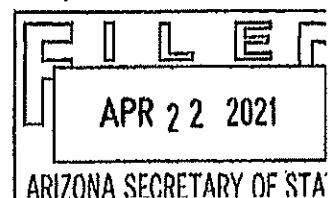
C. Any person eighteen years of age or over, married or single, who resides within this state and who does not exercise the homestead exemption under article 1 of this chapter may claim as a personal property homestead exempt from all process prepaid rent, including security deposits as provided in § 33-1321, subsection A, for the claimant's residence, not exceeding two thousand dollars.

D. This section does not exempt property from orders that are the result of a judgment for arrearages of child support or for a child support debt.

Sec. 5. Section 33-1131, Arizona Revised Statutes, is amended to read:

33-1131. Definition; wages; salary; compensation

- A. For the purposes of this section, "disposable earnings" means that remaining portion of a debtor's wages, salary or compensation for his personal services, including bonuses and commissions, or



otherwise, and includes payments pursuant to a pension or retirement program or deferred compensation plan, after deducting from such earnings those amounts required by law to be withheld.

B. Except as provided in subsection C, the maximum part of the disposable earnings of a debtor for any workweek ~~which~~ THAT is subject to process may not exceed ~~twenty-five per cent~~ TEN PERCENT of disposable earnings for that week or the amount by which disposable earnings for that week exceed ~~thirty~~ SIXTY times the APPLICABLE minimum hourly wage ~~prescribed by federal law~~ in effect at the time the earnings are payable, whichever is less. THE APPLICABLE MINIMUM WAGE IS THE MINIMUM WAGE REQUIRED BY FEDERAL, STATE, OR LOCAL LAW, WHICHEVER IS HIGHEST.

C. The exemptions provided in subsection B do not apply in the case of any order for the support of any person. In such case, one-half of the disposable earnings of a debtor for any pay period is exempt from process.

D. The exemptions provided in this section do not apply in the case of any order of any court of bankruptcy under chapter XIII of the federal bankruptcy act or any debt due for any state or federal tax.

Sec. 6. Section 44-1201, Arizona Revised Statutes, is amended to read:

44-1201. Rate of interest for loan or indebtedness; interest on judgments; DEFINITION

A. Interest on any loan, indebtedness or other obligation shall be AS FOLLOWS:

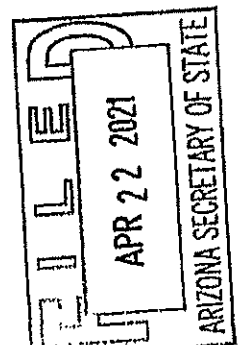
1. INTEREST ON MEDICAL DEBT SHALL BE LIMITED TO THE RATE OF INTEREST EQUAL TO THE WEEKLY AVERAGE 1-YEAR CONSTANT MATURITY TREASURY YIELD, AS PUBLISHED BY THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, FOR THE CALENDAR WEEK PRECEDING THE DATE WHEN THE CONSUMER WAS FIRST PROVIDED WITH A BILL, BUT SHALL NOT BE MORE THAN THREE PERCENT PER ANNUM. THE MAXIMUM RATE OF INTEREST PROVIDED HERE SHALL ALSO APPLY TO ANY JUDGMENTS ON MEDICAL DEBT.

2. INTEREST ON ANY LOAN, INDEBTEDNESS OR OBLIGATION OTHER THAN MEDICAL DEBT SHALL BE at the rate of ten per cent per annum, unless a different rate is contracted for in writing, in which event any rate of interest may be agreed to. Interest on any judgment, OTHER THAN JUDGMENTS ON MEDICAL DEBT, that is based on a written agreement evidencing a loan, indebtedness or obligation that bears a rate of interest not in excess of the maximum permitted by law shall be at the rate of interest provided in the agreement and shall be specified in the judgment.

B. Unless specifically provided for in statute or a different rate is contracted for in writing, interest on any judgment OTHER THAN JUDGMENTS ON MEDICAL DEBT shall be at the lesser of ten per cent per annum or at a rate per annum that is equal to one per cent plus the prime rate as published by the board of governors of the federal reserve system in statistical release H.15 or any publication that may supersede it on the date that the judgment is entered. The judgment shall state the applicable interest rate and it shall not change after it is entered.

C. Interest on a judgment on a condemnation proceeding, including interest that is payable pursuant to § 12-1123, subsection B, shall be payable as follows:

1. If instituted by a city or town, at the rate prescribed by § 9-409.
2. If instituted by a county, at the rate prescribed by § 11-269.04.
3. If instituted by the department of transportation, at the rate prescribed by § 28-7101.



4. If instituted by a county flood control district, a power district or an agricultural improvement district, at the rate prescribed by § 48-3628.

D. A court shall not award either of the following:

1. Prejudgment interest for any unliquidated, future, punitive or exemplary damages that are found by the trier of fact.

2. Interest for any future, punitive or exemplary damages that are found by the trier of fact.

E. For the purposes of subsection D of this section, "future damages" means damages that will be incurred after the date of the judgment and includes the costs of any injunctive or equitable relief that will be provided after the date of the judgment.

F. If awarded, prejudgment interest shall be at the rate described in subsection A or B of this section.

G. FOR THE PURPOSES OF THIS SECTION:

1. "MEDICAL DEBT" MEANS A LOAN, INDEBTEDNESS OR OTHER OBLIGATION ARISING DIRECTLY FROM THE RECEIPT OF HEALTH CARE SERVICES OR OF MEDICAL PRODUCTS OR DEVICES.

2. "HEALTH CARE SERVICES" MEANS SERVICES PROVIDED AT OR BY ANY OF THE FOLLOWING: HEALTH CARE INSTITUTIONS AS DEFINED IN SECTION 36-401; PRIVATE OFFICES OR CLINICS OF HEALTH CARE PROVIDERS LICENSED UNDER TITLE 32; AND AMBULANCES OR AMBULANCE SERVICES AS DEFINED IN SECTION 36-2201.

Sec. 7. Conflicts with federal law

This act shall not be interpreted or applied so as to create any power or duty in conflict with federal law.

Sec. 8. Severability

If a provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Sec. 9. Saving clause

This act applies prospectively only. Accordingly, it does not affect rights and duties that matured before the effective date of this act, contracts entered into before the effective date of this act, or the interest rate on judgments that are based on a written agreement entered into before the effective date of this act.

Sec. 10. Legal defense

The People of Arizona desire that this initiative, if approved by the voters, be defended if it is challenged in court. They therefore declare that the political committee registered to circulate petitions and campaign in support of the adoption of the initiative, or any one or more of its officers, has standing to defend this initiative on behalf of and as the agent of the People of Arizona in any legal action brought to challenge the validity of this initiative.

Sec. 11. Short title

This act may be cited as Arizona Protection from Predatory Debt Collection Act.

