

ACT 76

S.B. NO. 694

A Bill for an Act Relating to the Collection Agency Board.

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

SECTION 1. Section [26H-4]††, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 26H-4 Repeal dates. [(a) The following chapters are hereby repealed effective December 31, 1978:

- (1) Chapter 448A (Escort Agencies)
- (2) Chapter 462 (Board of Photography)

(b)] (a) The following chapters are hereby repealed effective December 31, 1979:

- (1) Chapter 437 (Motor Vehicle Industry Licensing Board)
- (2) Chapter 440 (Boxing Commission)
- [(3) Chapter 443 (Collection Agencies Board)]
- [(4)] (3) Chapter 446D (Degree Granting Institutions)
- [(5)] (4) Chapter 448H (Elevator Mechanics Licensing Board)
- [(6)] (5) Chapter 467A (Rental Agencies)
- [(7)] (6) Chapter 452 (Board of Massage)

[(c)] (b) The following chapters are hereby repealed effective December 31, 1980:

- (1) Chapter 436 (Board of Examiners for Abstract Makers)

†† “26H-4” substituted for “6H-4” to correct obvious clerical error.

- (2) Chapter 439 (Board of Cosmetology)
- (3) Chapter 447 (Dental Hygienists)
- (4) Chapter 463 (Board of Private Detectives and Guards)
- (5) Chapter 468J (Travel Agencies)
- (6) Chapter 471 (Board of Veterinary Examiners)
- (7) Chapter 438 (Board of Barbers)
- (8) Chapter 443 (Collection Agencies Board)

1981: [(d)] (c) The following chapters are hereby repealed effective December 31,

- (1) Chapter 441 (Cemetery Board)
- (2) Chapter 451A (Board of Hearing Aid Dealers and Fitters)
- (3) Chapter 457B (Board of Examiners of Nursing Home Administrators)
- (4) Chapter 458 (Board of Dispensing Opticians)
- (5) Chapter 459 (Board of Examiners in Optometry)
- (6) Chapter 465 (Board of Certification for Practicing Psychologists)
- (7) Chapter 468E (Board of Speech Pathology and Audiology)

1982: [(e)] (d) The following chapters are hereby repealed effective December 31,

- (1) Chapter 436D (Board of Acupuncture)
- (2) Chapter 437B (Motor Vehicle Repair Industry Board)
- (3) Chapter 442 (Board of Chiropractic Examiners)
- (4) Chapter 448E (Board of Electricians and Plumbers)
- (5) Chapter 464 (Board of Registration of Professional Engineers, Architects, Surveyors and Landscape Architects)
- (6) Chapter 466 (Board of Public Accountancy)
- (7) Chapter 467 (Real Estate Commission)

1983: [(f)] (e) The following chapters are hereby repealed effective December 31,

- (1) Chapter 444 (Contractors License Board)
- (2) Chapter 448 (Board of Dental Examiners)
- (3) Chapter 453 (Board of Medical Examiners)
- (4) Chapter 457 (Board of Nursing)
- (5) Chapter 460 (Board of Osteopathic Examiners)
- (6) Chapter 461 (Board of Pharmacy)

1984: [(g)] (f) The following chapters are hereby repealed effective December 31,

- (1) Chapter 455[, Hawaii Revised Statutes] (Board of Examiners in Naturopathy)
- (2) Chapter 463E[, Hawaii Revised Statutes] (Podiatry).

SECTION 2. The Hawaii Revised Statutes are amended by adding a new chapter to be appropriately designated and to read as follows:

“CHAPTER COLLECTION AGENCIES

Sec. -1 Definitions. As used in this chapter:

- (1) “Person” includes an individual, partnership, joint venture, corporation,

- association, business, trust, or any organized group of persons, or any combination thereof.
- (2) "Collection agency" means any person who by himself or through others offers to undertake or holds himself out as being able to undertake or does undertake to collect for another person, claims or money due on accounts or other forms of indebtedness for a commission or a portion of the sums so collected.
 - (3) "Collection agency" includes:
 - (A) Any person using any name other than his own in collecting his own claims with the intention of conveying, or which tends to convey the impression that a third party has been employed.
 - (B) Any person who, in the conduct of his business for a fee, regularly repossesses any merchandise or chattels for another.
 - (C) Any person who regularly accepts the assignment of claims or money due on accounts or other forms of indebtedness and brings suits upon such assigned claims or money due on accounts or other forms of indebtedness in his own name, provided, that any such suits shall be initiated and prosecuted by an attorney who shall have been appointed by the assignor.
 - (4) "Collection agency" does not include attorneys at law or district court practitioners acting within the scope of their profession, licensed real estate brokers and salesmen residing in this State when engaged in the regular practice of their respective profession, nor banks, trust companies, building and loan associations, companies doing an escrow business, individuals regularly employed on a regular wage or salary in the capacity of credit men or in other similar capacity for a single employer who is not a collection agency, for any person doing business subject to public supervision and regulation, and any public officer or any person acting under an order of court.
 - (5) "Principal collector" means a person who has been determined by the board to be qualified to assume responsibility for the operations and activities of a collection agency.

Sec. -2 Bond required. (a) No person within the purview of this chapter shall act, or assume to act, or advertise, as a collection agency, without a bond in effect previously obtained under and in compliance with this chapter. A copy of such bond shall be filed with the director of regulatory agencies.

(b) No person shall act or assume to act or advertise as a collection agency unless the business thereof is under the direct management and control of a principal collector.

Sec. -3 Bond. (a) A bond shall be executed by the principal collector of the collection agency and by a surety insurer authorized by the state insurance commissioner to transact the business of surety insurance, running to the State and conditioned that the collection agency shall faithfully, promptly, and truly account and pay within thirty days after the calendar month, to its clients the net proceeds due on all collections made during the calendar month. The bond shall be further conditioned that the collection agency will comply with all requirements of this or any other

statute now in force or hereafter enacted with respect to the duties, conduct, obligations, and liabilities of collection agencies. In addition to any other remedy, every person sustaining any damage resulting from a breach of the conditions of the bond may sue the surety for the recovery of any damages sustained by such person. The bond shall be continuous in form and remain in full force and effect unless terminated or cancelled by the surety. Termination or cancellation shall not be effective, unless written notice thereof is delivered by the surety to the collection agency at least thirty days prior to the date of termination or cancellation.

(b) The bond of each collection agency shall be for \$25,000. However, when a person intends to operate more than one office, under one ownership, one bond shall be equal to the sum of \$25,000 for the first office and \$15,000 for each additional office.

Sec. -4 Place of business and posting licenses. A collection agency shall have and maintain a definite place of business in the State.

Sec. -5 Manner in which records and funds are to be kept by collection agencies. (a) Every collection agency shall keep a permanent record of all sums collected by him, and of all disbursements, and shall maintain and keep such records and all customers' funds within the State. No person shall wilfully make any false entry in any collection agency record, or intentionally mutilate, destroy, conceal, or in any way dispose of any such record.

(b) A collection agency shall not commingle the money of its clients with its own, but shall maintain a separate trust account for clients' funds.

Sec. -6 Fees. A collection agency shall not collect, or attempt to collect, any collection fee or attorney's fee or commission from any debtor; provided however, attorney's fee or commission may be collected after filing of a suit against any debtor and such fee or commission shall not be in excess of twenty-five per cent of the unpaid principal balance. All attorney's fees or commissions collected by a collection agency shall be remitted to the attorney and no portion of said collection shall be retained by the collection agency.

Sec. -7 Reports and payments by agency. Every collection agency shall, within thirty days after the close of each calendar month, report and pay to his clients the net amount due to each client out of all collections made during the preceding calendar month.

Sec. -8 Action on collection agency bond. If a collection agency has failed to account for and pay over the proceeds of any collection made, the client shall have, in addition to all other legal remedies, a right of action in his own name on the bond given pursuant to this chapter and the total of all recoveries from the sureties shall not exceed the face of the bond. Upon entering judgment for plaintiff in any action on the bond required by this chapter, for more than any sum which may have been tendered in court by the defendant, the court shall include in the judgment reasonable compensation for the services of plaintiff's attorney in the action.

Sec. -9 Remedies not exclusive. The remedies provided for in this chapter are in addition to and not exclusive of any other remedies provided by law.

Sec. -10 Jurisdiction of courts. The various district courts of the State shall

have concurrent jurisdiction with the circuit courts in all criminal prosecutions for violations of this chapter.

Sec. -11 Penalties. (a) Violation of this chapter by an individual is punishable by a fine of not more than \$500.

(b) Violation of this chapter by persons other than an individual is punishable by a fine of not more than \$1,000. Any officer or agent of a corporation or association who personally participates in any violation of this chapter by such corporation is subject to penalties prescribed in subsection (a) of this section.

PROHIBITED ACTS AND PRACTICES

Sec. -12 Threats or coercion. No collection agency shall collect or attempt to collect any money alleged to be due and owing by means of any threat, coercion, or attempt to coerce, including any conduct which is described as follows:

- (1) The use, or express or implicit threat of use, of violence or other criminal means to cause harm to the person, reputation, or property of any person;
- (2) The accusation or threat to falsely accuse any person of fraud or any crime or any conduct which, if true, would tend to disgrace such other person or in any way subject him to ridicule or any conduct which, if true, would tend to disgrace such other person or in any way subject him to the ridicule or contempt of society;
- (3) False accusations made to another person, including any credit reporting agency that a debtor or an alleged debtor has not paid a just debt, or threat to so make such false accusations;
- (4) The threat to sell or assign to another the obligation of a debtor or an alleged debtor with an attending representation or implication that the result of such sale or assignment would be that the debtor or alleged debtor would lose any defense to the claim or would be subjected to harsh, vindictive, or abusive collection attempt; and
- (5) The threat that nonpayment of an alleged claim will result in the arrest of any person.

Sec. -13 Harassment and abuse. No collection agency shall oppress, harass, or abuse any person in connection with the collection of or attempt to collect any claim alleged to be due and owing by that person or another in any of the following ways:

- (1) The use of profane or obscene language that is intended to abuse the hearer or reader;
- (2) The placement of telephone calls without disclosure of the caller's identity or with the intent to harass, or threaten any person at the called number; and
- (3) Causing expense to any person in the form of long distance telephone tolls, telegram fees, or other charge incurred by a medium of communication, by concealment of the true purpose of the notice, letter, message, or communication.

Sec. -14 Unreasonable publication. No collection agency shall unreasonably publicize information relating to any alleged indebtedness or debtor, in any of the following ways:

- (1) The disclosure, publication or communication of any false information relating to the indebtedness of a debtor or alleged debtor to any employer or his agent.
- (2) The disclosure publication or communication of false information relating to the indebtedness of a debtor or alleged debtor to any relative or family member of the debtor or alleged debtor.
- (3) The disclosure, publication, or communication of any information relating to the indebtedness of a debtor or alleged debtor by publishing or posting any list of debtors, except for the publication of "stop lists" to point-of-sale locations where credit is extended, or by advertising for sale any claim to enforce payment thereof or in any other manner other than through proper legal action, process, or proceeding; and
- (4) The use of any form of communication to the debtor or alleged debtor, which ordinarily may be seen by any other person, that displays or conveys any information about the alleged claim other than the name, address and phone number of the collection agency.

Sec. -15 Fraudulent, deceptive, or misleading representations. No collection agency shall use any fraudulent, deceptive, or misleading representation or means to collect, or attempt to collect, claims or to obtain information concerning a debtor or alleged debtor, including any conduct which is described as follows:

- (1) The use of any company name while engaged in the collection of claims other than the true name of the collection agency;
- (2) The failure to clearly disclose in all written communication made to collect, or attempt to collect, a claim or to obtain, or attempt to obtain, information about a debtor or alleged debtor that the collection agency is attempting to collect a claim and that any information obtained will be used for that purpose;
- (3) Any false representation that the collection agency has in his possession information or something of value for the debtor or alleged debtor that is made to solicit or discover information about the debtor or alleged debtor;
- (4) The failure to clearly disclose the name and full business address of the person to whom the claim has been assigned for collection or to whom the claim is owed at the time of making any demand for money;
- (5) Any false representation or implication of the character, extent, or amount of a claim against a debtor or alleged debtor, or of its status in any legal proceeding;
- (6) Any false representation or false impression that any collection agency is vouched for, bonded by, affiliated with, or an instrumentality, agent, or official of, this State or any agency of federal, state or local government;
- (7) The use or distribution or sale of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by a court, an official, or any other legally constituted or authorized authority, or which creates a false impression about its source, authorization, or approval;
- (8) Any representation that an existing obligation of the debtor or alleged debtor may be increased by the addition of attorney's fees, investigation fees, service fees, and any other fees or charges when in fact such fees or

charges may not legally be added to the existing obligations; or

- (9) Any false representation or false impression about the status or true nature of, or the services rendered by, the collection agency or its business.

Sec. -16 Unfair or unconscionable means. No collection agency shall use unfair or unconscionable means to collect or attempt to collect any claim in any of the following ways:

- (1) The seeking or obtaining of any written statement or acknowledgment in any form that a debtor or alleged debtor's obligation is one incurred for necessities of life where the original obligation was not in fact incurred for such necessities;
- (2) The seeking or obtaining of any written statement or acknowledgment in any form containing an affirmation of any obligation by a debtor or alleged debtor who has been declared bankrupt, without clearly disclosing the nature and consequences of the affirmation and the fact that the debtor or alleged debtor is not legally obligated to make the affirmation;
- (3) The collection of or the attempt to collect from a debtor or alleged debtor all or any part of the collection agency's fees or charge for services rendered;
- (4) The collection of or the attempt to collect any interest or other charge, fee, or expense incidental to the principal obligation unless the interest or incidental fee, charge, or expense is expressly authorized by the agreement creating the obligation and legally chargeable to the debtor or alleged debtor; or unless such interest or incidental fee, charge or expense is expressly authorized by law; and
- (5) Any communication with a debtor or alleged debtor whenever it appears that he is represented by an attorney and the attorney's name and address are known.

Sec. -17 Unfair competition, unfair or deceptive acts or practices. A violation of this chapter by a collection agency shall constitute unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce for the purpose of section 480-2."

SECTION 3. Statutory material to be repealed is bracketed. New material is underscored.

SECTION 4. This Act shall take effect December 31, 1980.

(Approved May 18, 1979.)