

A Bill for an Act Relating to Collection Agencies.

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

SECTION 1. Chapter 443B, Hawaii Revised Statutes, is amended by adding fifteen new sections to be appropriately designated and to read as follows:

**“§443B- Certificate of registration.** Each certificate of registration shall be in a form prescribed and signed by the director, and shall be issued in the name of the department.

**§443B- Notice of termination of business.** (a) Not less than sixty days before a collection agency terminates its business operations in the State, the registrant shall transmit a notarized statement to the director and to each of the agency’s clients indicating:

- (1) That the registrant intends to terminate business in this State;
- (2) The effective date of the termination; and
- (3) That prior to the termination, the registrant shall lawfully expend or disburse all funds acquired in the course of business.

(b) If the registrant intends to transfer its client accounts to another collection agency, the notification shall also include:

- (1) The name, address, telephone number, and registration number of the purchasing agency, and the purchasing agency’s principal collector in this State to whom the accounts will be assigned; and
- (2) The date on which the purchasing agency intends to begin servicing the accounts transferred by the terminating agency.

(c) Registration is not canceled until the director has received the notice of termination, the terminating collection agency’s registration, and if applicable, verified the validity of the purchasing agency’s registration.

**§443B- Termination of business and surrender of certificate of registration.** Within ten days after termination of the business, the registrant shall surrender the certificate of registration to the director.

**§443B- Notification of change.** Every collection agency shall notify the director in writing of any material change at any time during the application process or the period of registration.

**§443B- Single act; evidence of practice.** Evidence that a collection agency has committed any act which is prohibited by this chapter shall be sufficient to justify the remedies set forth in this chapter, without proof of a general course of conduct.

**§443B- Transfer of registration.** No registration, including the rights, privileges, and obligations thereof, shall be assigned, sold, leased, encumbered, or otherwise transferred, voluntarily or involuntarily, directly or indirectly, including by transfer of control of any collection agency, whether by change in ownership or otherwise, except upon written application to and approval by the director. The form of the application shall be prescribed by the director.

**§443B- Severability.** If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity does not affect the other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

**§443B- Fiduciary responsibility.** Each collection agency shall be considered a fiduciary with respect to its clients and shall keep and disburse funds collected on its client's behalf in strict compliance with any agreement made with a client and with all applicable laws.

**§443B- Fine, revocation, suspension, termination, denial of registration, renewal of registration, or restoration of registration.** The director may fine any agency, revoke or terminate any registration, suspend the right of the registrant to use the registration, or refuse to renew or restore a registration for any of the following causes:

- (1) Dishonesty, deceit, fraud, or gross negligence in conducting business as a collection agency;
- (2) Advertising by means of false and deceptive statements or by statements which tend to deceive or defraud;
- (3) Advertising or acting as a collection agency without a current and active certificate of registration issued under this chapter;
- (4) Violation of any provision of this chapter or the rules adopted pursuant thereto;
- (5) Commingling of clients' funds or other property;
- (6) Breach of fiduciary duty;
- (7) Failure to notify the director in writing of any material change in information; and
- (8) Providing false or misleading information at the time of application or during the time of registration.

**§443B- Biennial renewal requirement.** (a) Each collection agency shall renew its registration by June 30 of each even-numbered year.

(b) When renewing its registration, an agency shall submit to the director the following:

- (1) An application on a form prescribed by the director;
- (2) Satisfactory evidence that the collection agency is bonded as required by section 443B-5;
- (3) A certificate of good standing or a certificate of authority issued by the business registration division, if the applicant is a corporation, partnership, or joint venture;
- (4) The name and business address of the applicant's principal collector who is authorized to directly manage and control the daily operations of the applicant's Hawaii office; and
- (5) A renewal fee in the amount specified by rule.

(c) Failure on the part of a collection agency to renew its registration as provided in subsection (a) shall cause the registration to be forfeited; provided that the director may make an exception for good cause shown.

**§443B- Restoration of forfeited registration.** (a) A forfeited registration may be restored by submitting an application provided by the director and by paying a delinquent renewal fee and a restoration fee in the amount specified by rule.

(b) Failure to restore a forfeited registration within sixty days of forfeiture shall cause the registration to be terminated.

(c) The director may extend the sixty day limitation for good cause shown.

(d) Upon termination of registration, the collection agency shall cease to do business.

(e) Within fifteen days of receipt of the notification of termination, the collection agency may request an administrative hearing pursuant to chapter 91 to contest the termination.

**§443B- Collecting without a registration.** Any collection agency whose registration has been terminated but continues to conduct business as a collection agency shall be engaging in an unregistered activity, and any agency so engaged, and any employee or agent of the agency who engages in an unregistered activity, shall be subject to the sanctions provided in this chapter. Nothing in this chapter shall be deemed to limit or prohibit other available civil or criminal actions against an agency engaged in an unregistered activity or any employee or agent of the agency engaged in an unregistered activity.

**§443B- Hearings.** (a) Before any action to revoke, suspend, or terminate a registration, the applicant or registrant shall be entitled to a notice and hearing pursuant to chapter 91.

(b) If an application for registration, renewal, or restoration is denied, the director shall notify the applicant by letter of the action taken. The notice shall include a statement of the reasons therefor and shall inform the applicant of the right to contest the decision.

**§443B- Audits.** (a) When the director has reasonable cause to believe that a registrant created deficiencies or other problems in accounts which hold funds or other forms of payment collected on behalf of a complainant, the director may order an audit of the account or accounts, or an unannounced verification of the account's cash balance. The audit or verification shall be conducted by a certified public accountant, public accountant, or other designee of the director.

(b) If an audit or unannounced verification of an account ordered by the director reveals deficiencies or other problems in accounts which hold client funds and other forms of payment, the cost of the audit or the verification shall be paid by the collection agency. If an audit or unannounced verification of an account ordered by the director does not reveal deficiencies and problems in accounts, the cost of the audit or unannounced verification shall be paid by the complainant. Failure of a collection agency to pay for an audit or unannounced verification within thirty days of receipt of the billing statement shall result in suspension of the agency's registration until payment is made.

**§443B- Furnishing deceptive forms.** It is unlawful for any person who is not a registered collection agency to design, compile, or furnish any form knowing that the form could be used to create a belief in a debtor that the person who designed, compiled or furnished the form is a collection agency."

SECTION 2. Section 443B-1, Hawaii Revised Statutes, is amended by adding eight new definitions to be appropriately inserted and to read as follows: "Client" means a person who offered or extended credit which created a debt, or to whom a debt is owed, and who engages the professional services of a collection agency. The term does not include any person who receives an

assignment or transfer of a debt in default solely for the purpose of facilitating collection of a debt for another.

“Communication” means directly or indirectly conveying information regarding a debt to any person by any means.

“Debt” means any obligation or alleged obligation of a consumer to pay money or other forms of payment arising out of a transaction in which the money, property, insurance, or services, which are the subject of the transaction, are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.

“Debtor” means any person or the person’s spouse, parent (if the person is a minor), guardian, executor, or administrator obligated or allegedly obligated to pay a debt.

“Material change” means any change of circumstance which might affect a collection agency’s registration, including the assigning, selling, leasing, encumbering, or other transfer of the rights, privileges, and obligations of a collection agency, whether voluntarily or involuntarily or directly or indirectly, including by transfer of fifty-one per cent of control of any collection agency, whether by change in ownership or otherwise.

“Regularly repossesses” means to locate, confiscate, and return merchandise or chattels to a client whenever the client requires service.

“Regular practice” means duties being of the sort or kind that are expected, ordinary, or typical of the profession.

“Regular wage or salary” means the expected, ordinary, or typical payment for employment.”

SECTION 3. Section 443B-1, Hawaii Revised Statutes, is amended by amending the definition of “collection agency” to read:

“Collection agency” means any person, whether located within or outside this State, who by oneself or through others offers to undertake or holds oneself 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, fixed fee, or a portion of the sums so collected.

“Collection agency” includes:

- (1) Any person using any name other than the person’s own in collecting the person’s own claims with the intention of conveying, or which tends to convey the impression that a third party has been employed;
- (2) Any person who, in the conduct of the person’s business for a fee, regularly repossesses any merchandise or chattels for another; and
- (3) Any person who regularly accepts the assignment of claims or money due on accounts or other forms of indebtedness and brings suits upon the assigned claims or money due on accounts or other forms of indebtedness in the person’s own name; provided that any suits shall be initiated and prosecuted by an attorney who shall have been appointed by the assignee; provided further that any person who by oneself or through others offers to undertake or holds oneself out as being able to undertake or does undertake to collect for another person the amounts due under any agreement which provides for installment payments and which is secured by an interest in real property, including without limitation, mortgage loans and agreements of sale, whether or not the collection servicing agent receives any compensation or other consideration for one’s services, shall fall within the purview of chapter 454D.

“Collection agency” does not include licensed attorneys at law 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 profession, nor banks, trust companies, building and loan associations, savings and loan associations, financial services loan companies, credit unions, 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, nor any person doing business subject to public supervision and regulation, nor any public officer or any person acting under an order of court.”

SECTION 4. Section 443B-2, Hawaii Revised Statutes, is amended to read as follows:

**“[§443B-2] Powers and duties of the director.** In addition to any other duties and powers granted by this chapter, the director shall:

- (1) Grant certificates of registration to collection agencies pursuant to this chapter;
- (2) [adopt,] Adopt, amend, or repeal rules as the director deems proper to fully effectuate this chapter[.];
- (3) Enforce this chapter and the rules relating to collection agencies;
- (4) Fine, suspend, terminate, or revoke any registration for any cause prescribed by this chapter, or for any violation of the rules, and refuse to grant any registration for any cause which would be grounds for revocation, termination, or suspension of a registration;
- (5) Investigate the actions of any person or agency acting or alleged to be acting in the capacity of a registrant under this chapter;
- (6) Order an audit of an account or an unannounced verification of an account’s cash balance; and
- (7) Extend the deadlines required under this chapter and the rules; provided that the registrant or applicant meets the conditions and requirements prescribed.”

SECTION 5. Section 443B-3, Hawaii Revised Statutes, is amended to read as follows:

**“[§443B-3] Registration required.** (a) No collection agency shall collect or attempt to collect any money or any other forms of indebtedness alleged to be due and owing from any person who resides or does business in this State without first registering under this chapter.

(b) Registration shall include:

- (1) Submission of a complete application for registration;
- (2) Submission of a certificate of good standing or a certificate of authority from the business registration division;
- (3) Payment of appropriate fees;
- (4) Filing and maintenance of a bond in the amount prescribed in section 443B-5;
- (5) Maintenance of a regular active business office in the State; and
- (6) Designation of a principal collector, as prescribed in section 443B-6.

**[(b)] (c)** Any collection agency [who] which has filed a bond with the director and maintained that bond in full force and effect, [shall be registered under this chapter subject to:

- (1) Meeting all the requirements of this chapter;

(2) Submitting an application to the director within ninety days of June 6, 1987; and

(3) Paying the registration fee.

Any collection agency who] and which has not filed an application and paid the registration fee within ninety days of June 6, 1987, shall submit an application in the same manner as a new applicant subject to the provisions of section 443B-4, 443B-6, and 443B-7.”

SECTION 6. Section 443B-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Each collection agency shall file and maintain with the director a bond in the penal sum of \$25,000 for the first office in this State and \$15,000 for each additional office[.] in this State.”

SECTION 7. Section 443B-5, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) Failure, refusal, or neglect of a collection agency to maintain in full force and effect a bond as required by this section shall cause the automatic suspension of the registration of the collection agency effective as of the date of expiration, termination, or cancellation of the bond. The director shall not reinstate the affected registration until satisfactory proof of bond coverage is submitted to the director as required by this section. Failure to effect a reinstatement of a suspended registration within sixty days of the expiration of the requirements of registration shall cause it to be [terminated,] forfeited, thereby forfeiting all registration and biennial renewal fees. A collection agency, within fifteen days after receipt of the notification of the registration [termination,] forfeiture, may request an administrative hearing to review the [termination] forfeiture pursuant to chapter 91.”

SECTION 8. Section 443B-7, Hawaii Revised Statutes, is amended to read as follows:

“~~[[[~~§443B-7~~]] Fees; biennial renewal; restoration].~~ [(a) The fees for collection agencies shall be as follows:

- (1) Application fee ..... \$25
- (2) Registration fee:
  - (A) First year of biennium (original registration fee, plus one-half of the biennial renewal fee) ..... \$80
  - (B) Second year of biennium (original registration fee) ..... \$40
- (3) Renewal fee ..... \$80
- (4) Restoration fee ..... \$80
- (5) Duplicate identification card ..... \$ 5
- (6) Duplicate certificate fee ..... \$ 5
- (7) Compliance resolution fund:
  - (A) Compliance resolution fund fee ..... \$10
  - (B) Annual compliance resolution fund fee ..... \$10
  - (C) Biennial compliance resolution fund fee ..... \$20

(b) Every collection agency registered under this chapter shall pay a renewal fee on or before June 30 of each even-numbered year. Failure, neglect, or refusal to pay the renewal fee shall constitute a forfeiture of the registration as of the date of expiration. Any registration so forfeited may be restored upon filing of an application and payment of any delinquent renewal fees and a restoration fee.] Every collection agency shall pay to the department the fees specified in this chapter in the amounts specified by rule.”

SECTION 9. Section 443B-8, Hawaii Revised Statutes, is amended to read as follows:

**“[[§443B-8]] Manner in which records, [and] funds, and other forms of indebtedness are to be kept by collection agencies.** (a) Every collection agency shall keep and maintain a permanent record or have immediate access to copies of the permanent record of all [sums] funds and other forms of indebtedness collected by it, and of all disbursements[, and]. Every collection agency shall maintain and keep [the records and] a record of<sup>1</sup> all clients' funds [within the State.] or have immediate access to copies of the record. No person wilfully shall make any false entry in any collection agency record, or intentionally mutilate, destroy, conceal, or in any way dispose of any 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[.] in a federally insured financial institution.”

SECTION 10. Section 443B-10, Hawaii Revised Statutes, is amended to read as follows:

**“[[§443B-10]] Reports and payments by agency.** Every collection agency shall, within thirty days after the close of each calendar month, report and pay to its clients the net amount due to each client out of all collections made during the preceding calendar month.

In the event the gross amount due is paid to a client and the client fails to pay a collection agency any sums due under this section, the collection agency shall have, in addition to other remedies provided by law, the right to offset any moneys due the collection agency under this section against any moneys due its client.”

SECTION 11. Section 443B-15, Hawaii Revised Statutes, is amended to read as follows:

**“[[§443B-15]] Threats or coercion.** No collection agency shall collect or attempt to collect any money or other forms of indebtedness 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 the other person or in any way subject a person to ridicule or any conduct which, if true, would tend to disgrace the other person or in any way subject a person 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 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 the 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 attempts; and
- (5) The threat that nonpayment of an alleged claim will result in the arrest of any person.”

## **ACT 246**

SECTION 12. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>2</sup>

SECTION 13. This Act shall take effect upon its approval.

(Approved June 25, 1990.)

### **Notes**

1. So in original.
2. Edited pursuant to HRS §23G-16.5.