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# A BILL FOR AN ACT

RELATING TO COLLECTION AGENCIES.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1 SECTION 1. Section 443B-3.5, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 " ~~[§]§443B-3.5 []- Exempt~~ Designation as exempt out-of-state  
4 collection agency[-]; limitations on business practices; fees;  
5 disciplinary action. (a) A collection agency [~~licensed or~~  
6 ~~registered as a collection agency in another state,~~] that is not  
7 registered as a collection agency in the State may apply for  
8 designation as an exempt out-of-state collection agency [~~and~~  
9 ~~conduct business in this State pursuant to this section. A~~  
10 ~~collection agency granted designation as an exempt out of state~~  
11 ~~collection agency shall be exempt from registration and other~~  
12 ~~regulatory requirements under this chapter except as provided~~  
13 ~~in]~~ by complying with the requirements of this section.

14 (b) [~~A collection agency may apply for designation as an~~  
15 ~~exempt out of state collection agency; provided that the~~  
16 ~~collection agency:~~

17 (1) ~~Is licensed or registered as a collection agency under~~  
18 ~~the laws of a state that:~~



- 1           ~~(A) Regulates collection agencies; and~~
- 2           ~~(B) Does not require a Hawaii collection agency to~~
- 3           ~~obtain a license or register to collect debts in~~
- 4           ~~that state if the activities of the Hawaii~~
- 5           ~~collection agency are limited to those described~~
- 6           ~~in paragraphs (2), (3), and (4);~~
- 7           ~~(2) Is collecting debts on behalf of an out-of-state~~
- 8           ~~creditor;~~
- 9           ~~(3) Does not solicit or engage in collection activities~~
- 10           ~~for clients in this State; and~~
- 11           ~~(4) Only collects debts in this State using interstate~~
- 12           ~~communication methods, including telephone, facsimile,~~
- 13           ~~or mail.] To be designated as an exempt out-of-state~~
- 14           collection agency, a collection agency shall:
- 15           (1) Not have any employees or agents located in the State
- 16           who engage in the collection of debts for another
- 17           person;
- 18           (2) Not have any business location or office in the State
- 19           that engages in collection agency activities;
- 20           (3) Hold a current, unrestricted, and unconditional
- 21           license, permit, or registration as a collection



1           agency in the reciprocal state identified in its  
2           application;

3           (4) Limit its collection activity in the State to the  
4           collection of debts from residents of the State on  
5           behalf of out-of-state clients through interstate  
6           communication by telephone, mail, facsimile, or  
7           electronic mail; and

8           (5) Not collect debts on behalf of creditors who have a  
9           business presence in the State.

10           For purposes of this section, a creditor has a "business  
11           presence" in the State if either the creditor or an affiliate or  
12           subsidiary of the creditor has an office in the State.

13           (c) An applicant for designation as an exempt out-of-state  
14 collection agency shall submit the following:

15           (1) An application for designation as an exempt out-of-  
16 state collection agency [~~exemption~~] as prescribed by  
17 the director;

18           (2) [~~Verification that~~  
19 ~~(A) The collection agency holds~~] Documentation that  
20 verifies the out-of-state collection agency:

21           (A) Holds a current, unrestricted, and unconditional  
22           license, permit, or registration [~~to conduct~~



1           ~~business]~~ as a collection agency in [~~another]~~ a  
2           reciprocal state; and

3           (B) Is in good standing with and has complied with  
4           the laws of [~~that]~~ the reciprocal state,  
5           including the maintenance of a bond [~~, if~~  
6           ~~required, and]~~ in the amount required by the  
7           reciprocal state; [~~and~~

8           ~~(C) The collection agency's state of licensure does~~  
9           ~~not require Hawaii collection agencies to~~  
10           ~~register or become licensed in that state before~~  
11           ~~collecting debts in that state,]~~

12           (3) An agreement in writing to comply with the  
13           requirements of [~~sections 443B-9, 443B-15, 443B-16,~~  
14           ~~443B-17, 443B-18, and 443B-19; and]~~ all laws of the  
15           State that regulate collection practices, including  
16           but not limited to the requirements of chapter 480D  
17           and this chapter, other than registration and bonding  
18           as specified in subsection (e); and

19           (4) Payment of the following nonrefundable fees:

20           (A) With the application, an application fee of \$25;  
21           and



1 (B) Upon approval of an out-of-state collection  
2 agency exemption, the compliance resolution fund  
3 fee for collection agencies.

4 (d) ~~[An]~~ A designated exempt out-of-state collection  
5 agency may ~~[renew]~~ apply for renewal of the exemption biennially  
6 by June 30 of each even-numbered year ~~[pursuant to subsection~~  
7 ~~(e).~~

8 ~~(e) An out of state collection agency shall not collect or~~  
9 ~~attempt to collect any money or any other form of indebtedness~~  
10 ~~alleged to be due and owing from any person who resides or does~~  
11 ~~business in this State without first registering under this~~  
12 ~~chapter or receiving an exemption pursuant to this section.~~

13 ~~(f) An exempt out of state collection agency shall be~~  
14 ~~subject to sections 443B-9, 443B-15, 443B-16, 443B-17, 443B-18,~~  
15 ~~and 443B-19, and all remedies provided by this chapter and by~~  
16 ~~any other law].~~

17 (e) A collection agency that is designated as an exempt  
18 out-of-state collection agency shall be exempt from the  
19 registration requirements of this chapter and bonding  
20 requirements of section 443B-5; provided that this section shall  
21 not exempt a collection agency from the requirements of other  
22 laws that regulate collection practices in the State, including



1 but not limited to the requirements of chapter 480D and this  
2 chapter.

3 (f) A designated exempt out-of-state collection agency  
4 shall not:

5 (1) Engage in collection activities in the State, except  
6 for the collection of claims from residents of this  
7 State on behalf of out-of-state clients through  
8 interstate communication by telephone, mail,  
9 facsimile, or electronic mail, as specified in this  
10 chapter;

11 (2) Advertise or solicit, either in print, by letter, in  
12 person, or otherwise, the right to collect or receive  
13 payment for another of any debt from creditors who  
14 have a business presence in the State;

15 (3) Collect debts on behalf of a creditor who has a  
16 business presence in the State;

17 (4) Collect debts in the State unless it maintains a  
18 current, unrestricted, and unconditional license,  
19 permit, or registration as a collection agency in the  
20 reciprocal state identified in its application;

21 (5) Bring or maintain any action involving the collection  
22 of debts of its clients in any court of the State;



- 1       (6) Communicate with debtors in the State other than by  
2       interstate communication by telephone, mail,  
3       facsimile, or electronic mail;
- 4       (7) Provide false or misleading information at the time of  
5       initial or renewal application or during the period of  
6       exemption;
- 7       (8) Have any employees or agents located in the State who  
8       engage in the collection of debts for another person;
- 9       (9) Have any business location or office in the State that  
10      engages in collection agency activities; or
- 11      (10) Violate any of the provisions of this chapter.
- 12      (g) A collection agency shall not collect or attempt to  
13      collect any money or any other form of indebtedness alleged to  
14      be due and owing from any person who resides or does business in  
15      the State without first registering under this chapter, or being  
16      designated as an exempt out-of-state collection agency pursuant  
17      to this section.
- 18      (h) A designated exempt out-of-state collection agency  
19      shall notify the director in writing of any judgment, award,  
20      disciplinary action, consent decree, or order issued against it  
21      in any jurisdiction within thirty days of the entry of the  
22      judgment, award, disciplinary action, consent decree, or order.



1       (i) The failure of a designated exempt out-of-state  
2 collection agency to maintain a current, unrestricted, and  
3 unconditional license, permit, or registration in the reciprocal  
4 state identified in its application shall cause the automatic  
5 forfeiture of the exemption effective as of the date on which  
6 the designated exempt out-of-state collection agency's license,  
7 permit, or registration is no longer current, unrestricted, or  
8 unconditional in the reciprocal state identified in its  
9 application. Any collection activity by the designated exempt  
10 out-of-state collection agency after the forfeiture date shall  
11 be deemed to be unlicensed activity. An out-of-state collection  
12 agency whose exemption is forfeited shall apply as a new  
13 applicant for an exemption in order to resume business in the  
14 State.

15       (j) The remedies or penalties provided by this section are  
16 cumulative to the remedies or penalties available under this  
17 chapter and all other laws of the State.

18       (k) Any collection activity by a designated exempt out-of-  
19 state collection agency, other than activity authorized by this  
20 section, shall be deemed to be unlicensed activity.

21       (l) The director may deny or refuse to renew an out-of-  
22 state collection agency's initial or renewal application for





1 exemption for failure to comply with this section, or for the  
2 grounds set forth in sections 443B-4.57 or 436B-19.

3 (m) In order to effectuate this section and enforce the  
4 requirements of this chapter as it relates to designated exempt  
5 out-of-state collection agencies, the director is expressly  
6 authorized to initiate any action on behalf of the State as may  
7 be appropriate in any state or federal court of competent  
8 jurisdiction.

9 (n) For purposes of this section, a "reciprocal state" is  
10 one:

11 (1) Whose requirements to be licensed, permitted, or  
12 registered as a collection agency in that state are at  
13 a minimum substantially equivalent to the requirements  
14 to be registered as a collection agency in this State,  
15 including but not limited to the bonding requirements  
16 in section 443B-5; and

17 (2) That does not require a Hawaii collection agency to  
18 obtain a license, permit, or registration to collect  
19 debts in that state if the activities of the Hawaii  
20 collection agency are limited to collecting debts on  
21 behalf of an out-of-state creditor using interstate  
22 communication methods, including telephone, facsimile,



1           mail, or electronic mail, and the Hawaii collection  
2           agency does not solicit or engage in collection  
3           activities for clients in that state."

4           SECTION 2. Section 443B-14, Hawaii Revised Statutes, is  
5 amended to read as follows:

6           "~~[[§443B-14]] Penalties. [(a) Violation of this~~  
7 ~~chapter by an individual is punishable by a fine of not more~~  
8 ~~than \$500.~~

9           ~~(b) Violation]~~ Any violation of this chapter ~~[by persons~~  
10 ~~other than an individual]~~ is punishable by a fine of not more  
11 than ~~[\$1,000.]~~ \$5,000 per violation. Any officer, agent, or  
12 employee of a collection agency who personally participates in  
13 any violation of this chapter by the collection agency ~~[is]~~  
14 shall be subject to penalties prescribed in ~~[subsection (a) of]~~  
15 this section."

16           SECTION 3. This Act does not affect rights and duties that  
17 matured, penalties that were incurred, and proceedings that were  
18 begun before its effective date.

19           SECTION 4. Statutory material to be repealed is bracketed  
20 and stricken. New statutory material is underscored.

21           SECTION 5. This Act shall take effect on July 1, 2012.



**Report Title:**

Collection Agencies; Exempt Out-of-State; Limitations;  
Disciplinary Action; Fines

**Description:**

Clarifies and strengthens enforcement provisions for exempt out-of-state collection agencies and increases fines for collection agencies governed under chapter 443B, Hawaii Revised Statutes.  
(HB2508 HD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

