
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 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 this 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.]~~

14 (b) To be designated as an exempt out-of-state collection
 15 agency, a collection agency shall:

16 (1) Not have any employees or agents located in this State
 17 who engage in the collection of debts for another
 18 person;

19 (2) Not have any business location or office in this State
 20 that engages in collection agency activities;

21 (3) Hold a current, unrestricted, and unconditional
 22 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 this State to the
4 collection of debts from residents of this 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 any creditor who has a
9 business presence in this State. For purposes of this
10 section, a creditor has a "business presence" in this
11 State if the creditor, an affiliate, or a subsidiary
12 of the creditor has an office in this 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~~] Documentation which verifies that
19 the out-of-state collection agency:

20 (A) [~~The collection agency holds~~] Holds a current,
21 unrestricted, and unconditional license, permit,
22 or registration [~~to conduct business~~] as a



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

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

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

11 (3) An agreement in writing to comply with the
12 requirements of [~~sections 443B-9, 443B-15, 443B-16,~~
13 ~~443B-17, 443B-18, and 443B-19, and~~] all laws in this
14 State that regulate collection practices, including
15 chapter 480D and this chapter; and

16 (4) Payment of the following nonrefundable fees:

17 (A) With the application, an application fee of \$25;
18 and

19 (B) Upon approval of an out-of-state collection
20 agency exemption, the compliance resolution fund
21 fee for collection agencies.



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

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

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

15 (e) A collection agency that is designated as an exempt
16 out-of-state collection agency shall be exempt from the
17 registration requirements of this chapter and the bonding
18 requirements of section 443B-5; provided that this section shall
19 not exempt a collection agency from the requirements of other
20 laws that regulate collection practices in this State, including
21 chapter 480D and this chapter.



1 (f) A designated exempt out-of-state collection agency
2 shall not:

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

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

13 (3) Collect debts on behalf of a creditor who has a
14 business presence in this State;

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

19 (5) Bring or maintain any action involving the collection
20 of debts of its clients in any court of this State;



- 1 (6) Communicate with debtors in this State other than by
- 2 interstate communication by telephone, mail,
- 3 facsimile, or electronic mail;
- 4 (7) Provide false or misleading information to any agency
- 5 or official of this State at the time of initial or
- 6 renewal application or during the period of exemption;
- 7 (8) Have any employees or agents located in this State who
- 8 engage in the collection of debts for another person;
- 9 (9) Have any business location or office in this State
- 10 that 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 other form of indebtedness alleged to be

14 due and owing from any person who resides or does business in

15 this 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 this
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 this 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 on 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 the bonding requirements in section 443B-5;
16 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. Statutory material to be repealed is bracketed
 17 and stricken. New statutory material is underscored.

18 SECTION 4. This Act shall take effect on July 1, 2012.

19

INTRODUCED BY:



JAN 25 2012



Report Title:

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

Description:

Clarifies and strengthens enforcement provisions for exempt out-of-state collection agencies and increases fines for collection agencies governed under chapter 443B. Effective July 1, 2012.

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

