

## ACT 188

A Bill for an Act Relating to Collection Agencies and Amending Chapter 171A, Revised Laws of Hawaii 1955, as Amended.

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

SECTION 1. Section 171A-4 (a), Revised Laws of Hawaii 1955, as amended, is hereby amended by inserting the following after the first sentence thereof:

"The bond shall be further conditioned that the licensee will comply with all requirements of this or any other statute now in force or hereafter enacted and any rules and regulations established under this chapter with respect to the duties, conduct, obligations, and liabilities of licensee, and further conditioned that, in the event that a conservator is appointed pursuant to a determination made under section 171A-21.5, and such determination becomes final the licensee shall and will pay the reasonable fees and expenses of the conservator."

SECTION 2. Chapter 171A of the Revised Laws of Hawaii 1955, as amended, is hereby further amended by adding a new section to be numbered section 171A-21.5 and to read as follows:

**"Section 171A-21.5. Conservator.** If the board revokes a license or if the commissioner determines that a licensee is insolvent, the board may appoint a conservator to take possession of the licensee's books, accounts, records, papers, files, safes, vaults, property used in connection with the business, and the trust bank account in which customer funds are deposited. If the licensee disagrees with the determination of insolvency made by the commissioner, he may request a hearing. Such hearing shall follow the procedure applicable in the event of a suspension or revocation of license as provided in section 171A-21. The conservator shall be responsible for the preservation of all assets until a decision has been rendered by the board after the conclusion of the hearing and until all recourse to the courts has been exhausted or abandoned. If no hearing is requested, or if a decision becomes final determining that the licensee has failed to pay sums owed to a customer, that the licensee has misappropriated trust funds, or that the licensee is insolvent, the conservator shall:

"(a) Determine the names and addresses of all customers as shown by the books, accounts, records, and the papers of the licensee.

"(b) Compile records on all assigned accounts showing amounts paid and amounts still owed or due, including all accounts pending in litigation or on which judgments have been secured.

"(c) Notify all customers of the appointment of the conservator and of the accounts outstanding according to the books and records. Each customer shall notify the conservator of any accounts assigned which do not appear in the books and records and of any moneys paid by the licensee on such accounts. Each customer shall also be requested to advise the conservator if the accounts shown on the books and records are incorrect.

"(d) Return all uncollected accounts to the assignor creditor advising of amounts paid by debtors on all unsatisfied accounts.

“(e) Fix a time limit not to exceed three months from the date of the notice in (c) during which time a customer may file verified claims.

“(f) Notify the bank where trust funds are on deposit that a conservator has been appointed and that the trust funds shall be held for the benefit of creditors. Such notification shall be subscribed by the commissioner. The receipt of such notification by a bank shall relieve it from all liability to the licensee or his heirs or assigns.

“(g) Make a demand upon the surety after ascertaining all claims in the manner set forth herein. The conservator shall have the power to settle or compromise such claims with the surety and may, in such case, execute and deliver a release and discharge of the bond involved.

“(h) Bring an action on the bond if the surety refuses to pay the amount demanded pursuant to (g). If the recovery in such action, together with any funds that may be in the trust bank account, is not sufficient to pay all of the claims as finally determined, the amount recovered thereon shall be divided pro rata among such claimants.

“(i) File with any bank having custody of any money or indebtedness due to the licensee in a trust bank account an affidavit showing the right of the conservator to receive such money or indebtedness under the provisions of this chapter. The receipt of such conservator shall constitute sufficient acquittance for any payment of money made pursuant to the provisions of this section and shall fully discharge the bank from any further liability with reference thereto without the necessity of inquiring into the truth of the facts stated in the affidavit.

“Nothing contained in this section shall be construed to prevent any person claiming to be injured by the fraud, deceit, or wilful negligence of a licensee, or by failure of a licensee to comply with the provisions of this chapter or any rule or regulations established thereunder, from bringing an action upon the bond against both principal and surety in any court of competent jurisdiction to recover damages caused by such fraud, deceit, wilful negligence, or failure to comply with the provisions of this chapter or any rule or regulation established thereunder.

“The conservator shall be entitled to reimbursement for his reasonable traveling and all other expenses, including but not limited to expenses for legal or secretarial services, reasonably and necessarily incurred by him in carrying out his duties, and shall be entitled to a reasonable fee for his services. If the determination of the board that a licensee is insolvent is reversed, the fee and expenses of the conservator shall be paid by the State. If the fee and expenses or any part thereof are not paid by the licensee within ten days after the amount of such fee and expenses is fixed by the board, the fee and expenses, or the unpaid amount thereof shall be paid out of the bond of the licensee except that no more than \$3,000 shall be paid out of the bond for such fee and expenses.”

**SECTION 3.** This Act shall take effect upon its approval.  
(Approved June 24, 1965.) **H.B. 1222.**