

ACT 191

H.B. NO. 518

A Bill for an Act Relating to Collection.

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

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
COLLECTION AGENCIES**

§ -1 **Definitions.** As used in this chapter:

“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 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 profession, nor banks, trust companies, building and loan associations, savings and loan associations, industrial 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.

"Department" means the department of commerce and consumer affairs.

"Director" means the director of commerce and consumer affairs.

"Person" includes an individual, partnership, joint venture, corporation, association, business, trust, or any organized group of persons, or any combination thereof.

"Principal collector" means an individual who has been designated by a collection agency to assume responsibility for the operations and activities of the agency's office in this State.

§ -2 **Powers and duties of the director.** In addition to any other duties and powers granted by this chapter the director shall adopt, amend, or repeal rules as the director deems proper to fully effectuate this chapter.

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

(b) Any collection agency who 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 the effective date of this chapter; and
- (3) Paying the registration fee.

Any collection agency who has not filed an application and paid the registration fee within ninety days of the effective date of this chapter shall submit an application in the same manner as a new applicant subject to the provisions of sections -4 and -7.

§ -4 **Application for registration.** The director shall prescribe the form of the application for registration. Each application shall be accompanied by the appropriate fees and the bond or bonds required by section -5.

§ -5 **Bond.** (a) Each collection agency shall file and maintain with the director a bond in the penal sum of \$25,000 for the first office and \$15,000 for each additional office.

(b) All bonds required by this section shall be issued by a surety company authorized to do business in the State, and shall run to the State. The bond shall be conditioned that the collection agency faithfully, promptly, and truly shall 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 conditioned further that the collection agency will comply with all requirements of this chapter or any other statute now in force or hereafter enacted with respect to the duties, conduct, obligations, and liabilities of collection agencies.

(c) In addition to any other remedy, the director or any person claiming to have sustained damage by reason of any breach of the conditions of the bond may bring action on the bond for the recovery of any damages sustained therefrom. The liability of the surety shall not exceed the amount of the bond issued to the collection agency for which the bond was issued.

(d) The bond shall be continuous in form and remain in full force and effect unless terminated or canceled by the surety. Termination or cancellation shall not be effective, unless notice thereof is delivered by the surety to the director and the collection agency at least sixty days prior to the date of termination or cancellation.

(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, thereby forfeiting all registration and biennial renewal fees. A collection agency, within fifteen days after receipt of the notification of the registration termination, may request an administrative hearing to review the termination pursuant to chapter 91.

(f) Upon expiration, termination, or cancellation of the bond, the collection agency shall cease to do business as a collection agency in this State and the collection agency shall not resume business in this State until a bond as required in subsection (a) is submitted to the director.

§ -6 **Place of business; principal collector.** (a) A collection agency shall have and maintain a regular active business office in the State for the purpose of conducting collection agency business. The business office shall be open to the public during stated reasonable business hours.

(b) Every collection agency shall designate a principal collector to assume responsibility for the direct management and control of the daily operation of the office.

§ -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

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- (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.

§ -8 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 it, and of all disbursements, and shall maintain and keep the records and all customers' funds within the State. 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.

§ -9 Fees. A collection agency shall not collect, or attempt to collect, any collection fee or attorney's fee or commission from any debtor; provided that an attorney's fee or commission may be collected after filing of a suit against any debtor and the 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 the collection shall be retained by the collection agency.

§ -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.

§ -11 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 the client's 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.

§ -12 Remedies not exclusive. The remedies provided for in this chapter are in addition to and not exclusive of any other remedies provided by law.

§ -13 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.

§ -14 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, agent, or employee of a collection agency who personally participates in any violation of this chapter by the collection agency is subject to penalties prescribed in subsection (a) of this section.

§ **-15 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 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.

§ **-16 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.

§ **-17 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 the employer's 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 by a collection agency 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 by a collection agency 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.

§ -18 **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 disclose clearly 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 its 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 disclose clearly 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 the 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.

§ -19 **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 these 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 charges 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 the 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 the debtor or alleged debtor is represented by an attorney and the attorney's name and address are known.

§ -20 **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 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

"CHAPTER COLLECTION PRACTICES

§ -1 **Scope and purpose.** This chapter is intended to ensure that consumers are not subjected to unfair, deceptive, coercive, abusive, or harassing conduct in collection activities that are covered by this chapter. This chapter is intended to cover collection activities by debt collectors in collecting consumer debts.

§ -2 **Definitions.** As used in this chapter:

"Consumer debt" means any debt of a natural person incurred primarily for personal, family, or household purposes. "Debt" means any obligation or alleged obligation of a person to pay money arising out of any transaction, whether or not the obligation has been reduced to judgment.

"Debt collector" means any person, who is not a collection agency, and who in the regular course of business collects or attempts to collect consumer debts owed or due or asserted to be owed or due to the collector.

"Person" means an individual, partnership, joint venture, corporation, association, business, trust, or any organized group of persons, or any combination thereof.

§ -3 **Prohibited practices.** It shall be a prohibited practice for any debt collector to engage in any of the following practices while collecting a consumer debt:

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- (1) To threaten the use of violence or other criminal means to cause harm to the physical person, reputation, or property of any person;
- (2) To falsely accuse or threaten to falsely accuse any person of fraud or any other criminal conduct;
- (3) To make false accusations or threaten to make false accusations, to another person, including any credit reporting agency, that a debt has not been paid;
- (4) To threaten that nonpayment of a debt will result in the arrest of any person;
- (5) To threaten to turn over the collection of the debt to a person who will engage in practices prohibited by this section;
- (6) To threaten to sell or assign the debt with statements that, or implying that, the sale or assignment will cause the debtor to lose a defense or legal right as a result of the sale or assignment;
- (7) To use profane or obscene language that is intended to abuse the hearer or reader;
- (8) To disclose, publish, or communicate any false and material information relating to the indebtedness;
- (9) To represent that an existing obligation may be increased by attorney's fees, investigation fees, service fees, and other fees or charges when in fact the fees or charges may not legally be added to the existing obligations;
- (10) To seek or obtain any statement or acknowledgment that the debt was incurred for necessities of life when in fact the debt was not so incurred; or
- (11) To collect or attempt to collect any interest, charge, fee, or expense incidental to the debt unless the additions are authorized by the agreement or by law.

§ -4 **Enforcement.** (a) Except as provided in subsection (b), any person who engages in any practice prohibited by this chapter shall be deemed to have engaged in an unfair method of competition or unfair and deceptive acts or practices in the conduct of any trade or commerce within the meaning of section 480-2.

(b) In any case involving violations of section -3(3) or (8), the debt collector shall not be subject to the provisions of subsection (a) if the debt collector can prove that the violation resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adopted to avoid such error. Examples of bona fide error include, but are not limited to, clerical miscalculations, computer malfunction, printing errors, and computer programming errors. If bona fide error is proven, the debt collector shall:

- (1) Correct the error as expeditiously as possible and make every reasonable effort to correct any consequences of that error; and
- (2) Be liable for any actual damages suffered by the consumer including the time and expense required to correct the error.

A court may award reasonable attorney's fees and costs incurred by the consumer in insuring that the error and its consequences are corrected.

§ -5 **Remedies not exclusive.** The remedies provided for in this chapter are in addition to and not exclusive of any other remedies provided by law."

SECTION 3. Section 26H-4, Hawaii Revised Statutes, is amended to read as follows:

“§26H-4 Repeal dates. (a) The following chapters are hereby repealed effective December 31, 1987:

- (1) Chapter 458 (Board of Dispensing Opticians)
- (2) Chapter 459 (Board of Examiners in Optometry)
- (3) Chapter 452 (Board of Massage)
- (4) Chapter 471 (Board of Veterinary Examiners)
- (5) Chapter 441 (Cemeteries and Mortuaries)
- (6) Chapter 463 (Board of Detectives and Guards)
- (7) Chapter 455 (Board of Examiners in Naturopathy)

(b) The following chapters are hereby repealed effective December 31, 1988:

- (1) Chapter 465 (Board of Psychology)
- (2) Chapter 468E (Board of Speech Pathology and Audiology)
- (3) Chapter 468K (Travel Agencies)
- (4) Chapter 373 (Commercial Employment Agencies)
- (5) Chapter 442 (Board of Chiropractic Examiners)
- (6) Chapter 448 (Board of Dental Examiners)
- (7) Chapter 436E (Board of Acupuncture)

(c) The following chapters are hereby repealed effective December 31, 1989:

- (1) Chapter 444 (Contractors License Board)
- (2) Chapter 448E (Board of Electricians and Plumbers)
- (3) Chapter 464 (Board of Registration of Professional Engineers, Architects, Surveyors and Landscape Architects)
- (4) Chapter 466 (Board of Public Accountancy)
- (5) Chapter 467 (Real Estate Commission)
- (6) Chapter 439 (Board of Cosmetology)
- (7) Chapter 454 (Mortgage Brokers and Solicitors)
- (8) Chapter 454D (Mortgage and Collection Servicing Agents)

(d) The following chapters are hereby repealed effective December 31, 1990:

- (1) Chapter 447 (Dental Hygienists)
- (2) Chapter 453 (Board of Medical Examiners)
- (3) Chapter 457 (Board of Nursing)
- (4) Chapter 460J (Pest Control Board)
- (5) Chapter 462A (Pilotage)
- (6) Chapter 438 (Board of Barbers)

(e) The following chapters are hereby repealed effective December 31, 1991:

- (1) Chapter 448H (Elevator Mechanics Licensing Board)
- (2) Chapter 451A (Board of Hearing Aid Dealers and Fitters)
- (3) Chapter 457B (Board of Examiners of Nursing Home Administrators)
- (4) Chapter 460 (Board of Osteopathic Examiners)
- (5) Chapter 461 (Board of Pharmacy)
- (6) Chapter 461J (Board of Physical Therapy)
- (7) Chapter 463E (Podiatry)

(f) The following chapters are hereby repealed effective December 31, 1992:

- (1) Chapter 437 (Motor Vehicle Industry Licensing Board)
- (2) Chapter 437B (Motor Vehicle Repair Industry Board)
- (3) Chapter 440 (Boxing Commission)[.]

(g) The following chapter is hereby repealed effective December 31,

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- (1) Chapter (Collection Agencies).”

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SECTION 4. Chapter 443A, Hawaii Revised Statutes, is repealed.

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved June 6, 1987.)