

A Bill for an Act Relating to Collection Agencies.

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

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

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

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

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

(A) ~~Regulates collection agencies; and~~

(B) ~~Does not require a Hawaii collection agency to obtain a license or register to collect debts in that state if the activities of the Hawaii collection agency are limited to those described in paragraphs (2), (3), and (4);~~

(2) ~~Is collecting debts on behalf of an out-of-state creditor;~~

(3) ~~Does not solicit or engage in collection activities for clients in this State; and~~

(4) ~~Only collects debts in this State using interstate communication methods, including telephone, facsimile, or mail.]~~ To be designated

as an exempt out-of-state collection agency, a collection agency shall:

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

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

(3) Hold a current, unrestricted, and unconditional license, permit, or registration as a collection agency in the reciprocal state identified in its application;

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

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

For purposes of this section, a creditor has a “business presence” in the State if either the creditor or an affiliate or subsidiary of the creditor has an office in the State.

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

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

- (2) ~~[Verification that:~~
 - ~~(A) The collection agency holds]~~ Documentation that verifies the out-of-state collection agency:
 - (A) Holds a current, unrestricted, and unconditional license, permit, or registration [to conduct business] as a collection agency in [another] a reciprocal state; and
 - (B) Is in good standing with and has complied with the laws of [that] the reciprocal state, including the maintenance of a bond[, if required, and] in the amount required by the reciprocal state; [and
 - (C) The collection agency's state of licensure does not require Hawaii collection agencies to register or become licensed in that state before collecting debts in that state;]
 - (3) An agreement in writing to comply with the requirements of [sections 443B-9, 443B-15, 443B-16, 443B-17, 443B-18, and 443B-19; and] all laws of the State that regulate collection practices, including but not limited to the requirements of chapter 480D and this chapter, other than registration and bonding as specified in subsection (e); and
 - (4) Payment of the following nonrefundable fees:
 - (A) With the application, an application fee of \$25; and
 - (B) Upon approval of an out-of-state collection agency exemption, the compliance resolution fund fee for collection agencies.
 - (d) ~~[An]~~ A designated exempt out-of-state collection agency may [renew] apply for renewal of the exemption biennially by June 30 of each even-numbered year [pursuant to subsection (e).
 - (e) ~~An out-of-state collection agency shall not collect or attempt to collect any money or any other form 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 or receiving an exemption pursuant to this section.~~
 - (f) ~~An exempt out-of-state collection agency shall be subject to sections 443B-9, 443B-15, 443B-16, 443B-17, 443B-18, and 443B-19, and all remedies provided by this chapter and by any other law].~~
 - (e) A collection agency that is designated as an exempt out-of-state collection agency shall be exempt from the registration requirements of this chapter and bonding requirements of section 443B-5; provided that this section shall not exempt a collection agency from the requirements of other laws that regulate collection practices in the State, including but not limited to the requirements of chapter 480D and this chapter.
 - (f) A designated exempt out-of-state collection agency shall not:
 - (1) Engage in collection activities in the State, except for the collection of claims from residents of this State on behalf of out-of-state clients through interstate communication by telephone, mail, facsimile, or electronic mail, as specified in this chapter;
 - (2) Advertise or solicit, either in print, by letter, in person, or otherwise, the right to collect or receive payment for another of any debt from creditors who have a business presence in the State;
 - (3) Collect debts on behalf of a creditor who has a business presence in the State;
 - (4) Collect debts in the State unless it maintains a current, unrestricted, and unconditional license, permit, or registration as a collection agency in the reciprocal state identified in its application;
 - (5) Bring or maintain any action involving the collection of debts of its clients in any court of the State;

- (6) Communicate with debtors in the State other than by interstate communication by telephone, mail, facsimile, or electronic mail;
- (7) Provide false or misleading information at the time of initial or renewal application or during the period of exemption;
- (8) Have any employees or agents located in the State who engage in the collection of debts for another person;
- (9) Have any business location or office in the State that engages in collection agency activities; or
- (10) Violate any of the provisions of this chapter.

(g) A collection agency shall not collect or attempt to collect any money or any other form of indebtedness alleged to be due and owing from any person who resides or does business in the State without first registering under this chapter, or being designated as an exempt out-of-state collection agency pursuant to this section.

(h) A designated exempt out-of-state collection agency shall notify the director in writing of any judgment, award, disciplinary action, consent decree, or order issued against it in any jurisdiction within thirty days of the entry of the judgment, award, disciplinary action, consent decree, or order.

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

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

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

(l) The director may deny or refuse to renew an out-of-state collection agency's initial or renewal application for exemption for failure to comply with this section, or for the grounds set forth in sections 443B-4.57 or 436B-19.

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

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

- (1) Whose requirements to be licensed, permitted, or registered as a collection agency in that state are at a minimum substantially equivalent to the requirements to be registered as a collection agency in this State, including but not limited to the bonding requirements in section 443B-5; and
- (2) That does not require a Hawaii collection agency to obtain a license, permit, or registration to collect debts in that state if the activities of the Hawaii collection agency are limited to collecting debts on behalf of an out-of-state creditor using interstate communication methods, including telephone, facsimile, mail, or electronic mail, and the Hawaii collection agency does not solicit or engage in collection activities for clients in that state."

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

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

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

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

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

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

(Approved April 23, 2012.)