

S.B. NO. 2770

JAN 25 2012

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 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:~~

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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 meet the following
15 requirements:

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

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

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

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

19 (2) [~~Verification that:~~

20 ~~(A) The collection agency holds]~~ Documentation that
21 verifies the out-of-state collection agency:

22 (A) Holds a current, unrestricted, and unconditional

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1 license, permit, or registration [~~to conduct~~
2 business] as a collection agency in [~~another~~] a
3 reciprocal state; and

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

22 (B) Upon approval of an out-of-state collection

1 agency exemption, the compliance resolution fund
2 fee for collection agencies.

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

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

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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 this 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 this State;

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

17 (4) Collect debts in this 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 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 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 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 any other form of indebtedness alleged to
14 be due and owing from any person who resides or does business in
15 this State without first registering under this chapter, or
16 being designated as an exempt out-of-state collection agency
17 pursuant 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.

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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

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

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

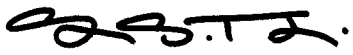
9 ~~(b)~~Violation] Any violation of this chapter [~~by persons~~
10 ~~other than an individual~~] is punishable by a fine of not more
11 than [~~\$1,000.~~] \$5,000 per violation. Any officer, agent, or
12 employee of a collection agency who personally participates in
13 any violation of this chapter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

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INTRODUCED BY: 

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BY REQUEST

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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.

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

JUSTIFICATION SHEET

DEPARTMENT: Commerce and Consumer Affairs.

TITLE: A BILL FOR AN ACT RELATING TO COLLECTION AGENCIES.

PURPOSE: To clarify and strengthen enforcement provisions for exempt out-of-state collection agencies and to increase penalties for violations by all collection agencies governed under chapter 443B, Hawaii Revised Statutes (HRS).

MEANS: Amend sections 443B-3.5 and 443B-14, HRS.

JUSTIFICATION: With limited exceptions, section 443B-3.5, HRS, currently provides an exemption from the requirements of chapter 443B, HRS, for out-of-state collection agencies. The exemption is available to out-of-state agencies holding licenses or registrations in states that provide reciprocal exemptions to Hawaii collection agencies. Exempt out-of-state collection agencies are permitted to engage in limited collection activities in the State without registration and bonding, and without maintaining a local address. However, the exemption is not available to out-of-state collection agencies that have a presence in the State or that represent local creditors.

Currently, there are eleven states with which Hawaii has reciprocity. These states permit exemptions for out-of-state collection agencies, but each state has its own mechanisms to control inappropriate collection activity. There are approximately twenty-one states, including Hawaii, that offer exemptions for out-of-state collection agencies.

Section 443B-3.5, HRS, provides minimal statutory requirements to maintain the out-of-state exemption and offers little guidance on conduct that would trigger enforcement action. As a result, the Department's Regulated Industries Complaints Office (RICO) has had difficulty addressing consumer complaints against exempt out-of-state collection agencies.

The statutory deficiencies are compounded by the considerable influx of out-of-state collection agencies operating as exempt collection agencies in Hawaii. In 2004, there were 199 exempt out-of-state collection agencies and 203 registered collection agencies conducting collection activities in Hawaii. In 2011, there are 402 exempt out-of-state collection agencies, more than double the amount operating in 2004, and 199 registered collection agencies. The increase in the number of exempt out-of-state collection agencies operating without sufficient regulation renders Hawaii consumers particularly vulnerable and warrants amendments to the current law.

This bill clarifies the qualifications collection agencies must satisfy in order to obtain an exemption. The bill also identifies the activities in which an exempt out-of-state collection agency is prohibited from engaging.

In addition, this bill requires the exempt out-of-state collection agency to notify the Director of any judgment, award, disciplinary action, consent decree, or order issued against it within thirty days of entry of the judgment, award, disciplinary action, consent decree, or order. The bill also provides for the automatic forfeiture of the exemption should the out-of-state collection agency fail to maintain a current, unrestricted, and

unconditional license or registration in the reciprocal state.

This bill also deems collection activity not authorized by section 443B-3.5, HRS, to be unlicensed activity and expressly authorizes the Director to initiate court action to enforce chapter 443B, HRS.

Furthermore, this bill establishes a maximum fine amount of \$5,000 for each violation of chapter 443B, HRS. The increase in the maximum fine amount applies to all collection agencies governed by chapter 443B, HRS.

Finally, this bill will enhance the Department's oversight and regulation of exempt out-of-state collection agencies and facilitate enforcement action against exempt out-of-state collection agencies who engage in conduct harmful to Hawaii's consumers.

Impact on the public: The bill will increase oversight and regulation of exempt out-of-state collection agencies that collect debts owed by Hawaii consumers.

Impact on the department and other agencies: The bill will clarify and strengthen the Department's ability to prosecute cases involving exempt out-of-state collection agencies. No impact upon other agencies is anticipated.

GENERAL FUND:	None.
OTHER FUNDS:	None.
PPBS PROGRAM DESIGNATION:	None.
OTHER AFFECTED AGENCIES:	None.
EFFECTIVE DATE:	July 1, 2012.