



# LAWS OF ALASKA

1968

Source

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Chapter No.

101

## AN ACT

Concerning the licensing and regulation of collection agencies; and providing for an effective date.

### BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

\* Section 1. AS 08 is amended by adding a new chapter to read:

#### CHAPTER 25. COLLECTION AGENCIES.

##### ARTICLE 1. COLLECTION AGENCY BOARD.

Sec. 08.24.011. COLLECTION AGENCY BOARD. There is created a Collection Agency Board consisting of three members, two of whom shall be appointed by the governor. The board shall consist of two persons engaged in the collection agency business within the state and licensed under this chapter. The third member shall be designated by the commissioner of commerce from his staff.

Sec. 08.24.016. TRANSPORTATION AND PER DIEM. Notwithstanding the provisions of AS 39.20, no board member, other than the member designated by the commissioner of commerce, is entitled to transportation or per diem allowance.

Sec. 08.24.021. APPOINTMENT AND TERM OF OFFICE. The board members shall be appointed initially for terms of two and three years respectively. Thereafter, appointments to the board shall be made upon the expiration of the initial appointment and the term of office for each member so appointed shall be three years. The members shall serve at the pleasure of the governor. Vacancies caused by death, resignation or removal from office shall be filled by appointment of the governor.

Sec. 08.24.031. DUTIES OF BOARD. The board may adopt rules and regulations necessary to effectuate the purposes of this chapter. The commissioner of the Department of Commerce or his designee within the department shall pass upon the qualifications of applicants for collection agency licenses and operators licenses.

ARTICLE 2. POWERS AND DUTIES OF DEPARTMENT OF COMMERCE.

Sec. 08.24.041. DUTY TO ENFORCE CHAPTER. The department shall enforce all laws, rules and regulations relating to collection agencies.

Sec. 08.24.051. POWER TO SEEK INJUNCTIONS. The department may apply to the superior court for an injunction to temporarily restrain a violation of this chapter or a rule or regulation issued under it, conduct investigations of alleged violations of this chapter, and regulations enacted under this chapter, and perform other action necessary to accomplish the purposes of this chapter.

Sec. 08.24.061. PUBLICATION OF APPLICABLE LAW. The department shall reproduce the laws relating to licensing of collection agencies and operators, the rules and regulations adopted by the department or the board and other pertinent matter, publish the material in pamphlet form, and make the pamphlets available to the public without expense.

Sec. 08.24.071. DIRECTORY OF LICENSED AGENCIES. The department shall publish on or about August 1 of each year a directory containing a list of licensed collection agencies which shall specify as to each agency its owners and officers and the names of its licensed operator or operators, together with other matters pertinent to the general purposes of this chapter. The department shall mail one copy of the directory to each licensed collection agency, to the clerk of each superior court in the state, and upon request, to other persons.

ARTICLE 3. LICENSING.

Sec. 08.24.090. LICENSE REQUIRED. (a) No person other than a collection agency licensed and authorized under this chapter may for compensation

- (1) conduct a collection agency business in this state;
- (2) collect claims for others in this state;
- (3) solicit the right to collect or receive payment of a claim for another;
- (4) advertise or solicit either in print, by letter, in person or otherwise, the right to collect or receive payment of a claim for another;
- (5) seek to make collection or obtain payment of a claim on behalf of another;

(b) This chapter does not apply to the following when engaged in the regular course of their respective

businesses:

- (1) attorneys at law;
- (2) persons regularly employed on a regular wage or salary in the capacity of credit men or a similar capacity, except as an independent contractor;
- (3) banks, including trust departments of banks, fiduciaries and financing and lending institutions;
- (4) common carriers;
- (5) title insurers and abstract companies while doing an escrow business;
- (6) licensed real estate brokers;
- (7) employees of licensees under this chapter;
- (8) substation payment offices employed by or serving as independent contractors for public utilities.

(c) A violation of this section is a misdemeanor punishable by imprisonment in a jail for not to exceed one year, or by a fine of not more than \$1,000, or by both.

Sec. 08.24.100. LICENSED OPERATOR REQUIRED, EXCEPTIONS AND FEE. (a) Notwithstanding any other provision of this chapter, no licensee may engage in the collection agency business unless and until the collection agency, and each branch office of the agency is under the management and control of a licensed operator for each office. The department or the board may waive this requirement for a period not to exceed 90 days upon the death or disability of an operator, or for other good cause.

(b) The annual operator's license shall be renewable on or before July 1 of each second year beginning on July 1, 1968, and the biennial fee is \$100.

Sec. 08.24.110. QUALIFICATION FOR OPERATOR'S LICENSE. (a) To qualify for an operator's license, the applicant shall:

- (1) have been a resident of this state continuously for at least one year before the time of application;
- (2) be a high school graduate, or have the equivalent education of a high school graduate;
- (3) be of good moral character;
- (4) not have been convicted of violating this chapter, nor have any unsettled complaints under this chapter against him;
- (5) not have been convicted of a felony or a crime of larceny or embezzlement or a crime involving moral turpitude;

(6) be 19 years of age or older at the time of application;

(7) not be a disbarred attorney or have filed bankruptcy;

(8) pay the biennial license fee which is fixed at \$100.

(b) The commissioner may waive or modify the requirements specified in (a)(2), (4), (5) and (7) of this section for good cause shown.

Sec. 08.24.120. APPLICATION FOR OPERATOR'S LICENSE.

(a) An application for an operator's license shall be made on forms furnished by the department and shall contain the information required in sec. 110 of this chapter and, in addition, the following:

(1) a complete set of fingerprints;

(2) a 2" x 3" photograph showing a front view of head and shoulders;

(3) if an original application, an application fee of \$40;

(4) the biennial license fee required by sec. 100 of this chapter.

(b) The department and the board are authorized to make a complete investigation of applicants including inquiry of police agencies as to the applicant's record of arrest or conviction of crime.

Sec. 08.24.130. APPLICATION FOR AGENCY LICENSE. (a) An application for a collection agency license, or for a renewal of a license shall be made upon forms furnished by the department and shall contain the following information:

(1) the full name and proposed business name of the applicant;

(2) the address of the applicant's principal place of business and branch offices;

(3) the names and addresses of the applicant and those associated with him; if the applicant is a corporation or association, the application shall contain the names of the officers of the corporation or association;

(4) the names and residential addresses of the applicant's operators;

(5) additional information which the department or the board, by rule or regulation, requires.

(b) Every natural person applying for a collection agency license must be 19 years of age or older at the time of making application.

Sec. 08.24.140. FEE, BOND AND OTHER MATERIAL. (a) The application shall be accompanied by:

(1) if an original application, an application fee of \$100;

(2) the biennial license fee for a collection agency which is fixed at \$200 for the principal place of business and \$200 for each branch office;

(3) a bond running to the state with a surety or sureties to the satisfaction of the department, and conditioned that the licensee shall, within 30 days after the close of each calendar or fiscal month, report and pay to his customers the net proceeds due and payable of all collections made during the calendar or fiscal month which exceed \$20 in amount.

(b) All money collected by an agency belonging to a client shall be deposited in a trust account and cleared at the end of each month. The department may audit any agency transaction.

Sec. 08.24.150. BOND. (a) The bond provided for in sec. 140 of this chapter shall be in the sum of \$5,000, executed by the applicant, as principal, and by a corporation which is licensed or authorized to transact business of fidelity and surety insurance within the state as surety. The department may at any time request verification of a bonding agent's authority by the main office of any company acting as surety.

(b) A licensee may, at any time, file with the department a new bond. A licensee may in lieu of a bond make a \$5,000 cash deposit with the department, the deposit to be held by the department under the same terms and conditions as if bond in that amount were posted.

(c) A surety may file with the department notice of his withdrawal on the bond of a licensee. Upon filing a new bond, or upon the revocation of the collection agency license, or upon expiration of 60 days after the filing of notice of withdrawal as surety by the surety, the liability of the former surety for all future acts of the licensee shall terminate.

(d) The department shall immediately cancel the bond given by a surety company upon being advised its license to transact business of fidelity and surety insurance has been revoked by the state.

(e) Upon the filing with the department of notice by a surety of his withdrawal as the surety on the bond of a licensee, or upon the cancellation by the department of the bond of a surety company as provided in this section, the department shall immediately give notice to the licensee of the withdrawal or cancellation, which notice shall be by registered or certified mail with request for a return receipt and addressed to the licensee at his main office, as shown by the records of the department. At the expiration of 30 days from the date of mailing the notice, the license of the licensee shall be terminated,

unless the licensee has filed a new bond with a surety satisfactory to the department. All bonds given under this chapter shall be filed and held in the office of the department.

(f) The bond required by this section shall remain in effect until cancelled by action of the surety, the principal or the department. No action may be initiated upon the bond after two years from its cancellation.

Sec. 08.24.160. FORM OF BOND. The bond required by secs. 140 and 150 of this chapter shall be in the form substantially as follows:

BOND

Know All Men by These Presents that we, . . . . ., as principal, and . . . . . as surety, are held and firmly bound unto the State of Alaska, in the penal sum of . . . . . (\$ . . . ), lawful money of the United States, for the payment of which well and truly to be made we, and each of us, bind ourselves, our heirs, executors, administrators, successors and assigns jointly and severally, firmly by these presents.

The condition of this obligation is such that whereas, the above bonded principal has applied to the Department of Commerce of the State of Alaska for a collection agency license under the provisions of AS 08.24 and is required by the provisions of that law to furnish a bond conditioned as herein set forth.

Now, therefore, if the said . . . . . shall within 30 days after the close of each fiscal or calendar month, report and pay to customers the net proceeds due and payable of all collections made during said calendar or fiscal month which shall exceed \$20 in amount, and shall strictly, honestly and faithfully comply with the provisions of AS 08.24 and all amendments, regulations, and supplements now or hereafter enacted, then this obligation shall be void, otherwise to remain in full force and effect.

This bond shall become effective on the . . . . . day of . . . . ., 19 . . . . . The surety may be relieved of future liability hereunder by giving 60 days' written notice to the principal and to the Department of Commerce of the State of Alaska.

This bond shall be one continuing obligation and the liability of the surety for the aggregate of any and all claims which may arise hereunder shall in no event exceed the amount of the penalty hereof.

IN WITNESS WHEREOF we have hereunto set our hands and seals at . . . . ., in the State of Alaska, this . . . . . day of . . . . ., 19 . . . . .

(SEAL) . . . . .Principal

(SEAL) . . . . .Surety

Sec. 08.24.170. RETURN OF FEES AND BOND. If the

department does not issue the license applied for, the license fee and bond shall be returned. The application fee shall not be returned.

Sec. 08.24.180. PERSONS PRESENTLY ENGAGED IN COLLECTION BUSINESS. (a) A person who is actively engaged in a collection agency business at the time of the effective date of this chapter and who wishes to continue to engage in this business shall apply for a license within 60 days after the effective date of this chapter.

(b) A person who applies or receives a license under (a) of this section is subject to all of the provisions of this chapter, except that in his application for a license he is not required to comply with sec. 120(a)(3) and (4) of this chapter.

Sec. 08.24.190. LICENSE AS PERSONAL PRIVILEGE. (a) Except as provided in (b) of this section, a license granted under this chapter is a personal privilege and is not assignable.

(b) Upon the death of a collection agency licensee, the department shall have the right to transfer the license of the decedent to the executor or administrator of his estate for the period of the unexpired term of the license and the court having jurisdiction of the probate of the estate of the decedent may authorize the executor or administrator to continue the collection agency business of the decedent and upon other terms and conditions as the court may prescribe.

(c) The death of the operator of a corporate licensee shall in no way interfere with the continuation of the licensed business if another licensed operator is placed in management control of the corporate licensee.

Sec. 08.24.200. EXPIRATION AND RENEWAL. (a) All licenses required by this chapter shall expire on June 30, 1970, and June 30 of each second year thereafter and shall be renewed as of July 1 following upon payment of required biennial fees.

(b) If a licensee under this chapter is delinquent for a period of 15 days in applying for the renewal of a license, the department shall suspend the license and notify the licensee by certified mail or by personal service. The notice shall state that the license will be revoked if application for renewal is not made within 15 days from the date on which the notice was mailed or personally served. When a licensee has been delinquent in renewing his license or certificate, the department shall charge an additional fee of \$50 for the renewal of the license.

Sec. 08.24.210. ANNUAL STATEMENT OF COLLECTION. Each collection agency licensee shall, not later than January 31 of each calendar year, file with the department a verified annual statement for the preceding calendar year, showing the respective amounts of all customers' money collected by the licensee during the preceding calendar year, which has not previously been remitted to



days before the due date of the report.

(b) If any of these employees have used pseudonyms or false names in their collection business efforts for the reporting period, those pseudonyms or false names must be set out following the true name of the employee using the name.

Sec. 08.24.230. FALSE DECLARATIONS IN STATEMENT. The wilful making of a false declaration in the annual statement or biennial statement of employees constitutes sufficient grounds for revocation of the license of the licensee.

Sec. 08.24.240. FAILURE TO FILE STATEMENT. If the annual statement of collection or semiannual statement of employees is not filed as required under secs. 210 and 220 of this chapter, the failure to file constitutes grounds for the immediate suspension of the collection agency license of the licensee failing to file the statement and the department shall notify the licensee by registered or certified mail that the license of the licensee will be suspended upon the expiration of 15 days after the date on which the notice was mailed unless the licensee complies with the provisions of secs. 210 or 220 of this chapter. However, for good cause shown and upon satisfactory proof furnished by the licensee that the failure to file the statement was due to a condition not within the control, or was due to excusable neglect, of the licensee, the department may permit the filing of the statement after the time limited and excuse the failure to file the statement within the time limited. If the statement required by secs. 210 or 220 of this chapter is not filed as required in this section the department shall revoke the license.

Sec. 08.24.250. INFORMATION CONFIDENTIAL. Except as otherwise provided in this chapter, information in whatever form required to be filed by the terms of secs. 210 and 220 of this chapter shall be confidential and may not become a public record, but it may be introduced in evidence in a suit, action or proceeding in a court or in a proceeding involving the granting or revocation of the license of a licensee.

Sec. 08.24.260. INVESTIGATIONS. The department may upon its own motion, and shall, upon the sworn complaint in writing of a customer of a collection agency, investigate the actions of a licensee claimed to have violated this chapter and for that purpose shall have free access to the offices and places of business and, if the complaint involves customer accounts, to all pertinent books, accounts, records, papers, files, safes and vaults of the licensee or certificate holder. If the complaint involves the owing of money, or any other thing of value, by a licensee to the complainant, when the licensee raises the issue of an offset or counterclaim, the division may require the complainant to submit all records and data in his possession pertaining to the offset or counterclaim.

Sec. 08.24.270. ADMINISTRATIVE PROCEDURE ACT. The department and the board shall comply with the Administrative Procedure Act both as to enactment of regulations

and adjudication.

Sec. 08.24.280. RECORDS AND FUNDS. (a) A collection agency shall keep a record of all sums collected by it, and of all disbursements made by it, and shall maintain and keep all the records and all customers' funds in a trust account with a recognized financial institution in this state. Collection agencies shall maintain accounting records of collections for and payments to customers for a period of six years from the date of the last entry. Collection agencies shall keep other records for a period of two years from the date of the last entry.

(b) Every collection agency shall maintain a permanent numerical receipt record which shall indicate as to each payment made by a debtor the following information:

- (1) the name of the debtor making payment;
- (2) the amount paid;
- (3) the name of the creditor to whom funds are being applied;
- (4) the date and form of payment;
- (5) the balance remaining due on account.

(c) An agency using a computer system giving read-out debtor payment information will not have to maintain a numerical receipt record; however, if requested, a receipt will be furnished to debtor.

(d) The receipt shall be made immediately upon the receipt of funds by the collection agency in payment of a debt; the original copy to be made immediately available to the debtor who has made payment, upon request; and a copy to be made immediately available to the creditor for whom payment was received, upon request; and a copy to be maintained in the permanent receipt record.

(e) A collection agency shall maintain daily cash ledger sheets showing all funds received from debtors and all funds received as fees for services, such as credit reports and the like.

(f) No collection agency, or an employee of a collection agency, may intentionally make a false entry in the collection agency record or intentionally mutilate, destroy or otherwise dispose of a record within the time limits provided in this section. The records shall at all reasonable times be open for inspection by the department, the board or their authorized agent.

(g) A collection agency shall maintain a separate trust account exclusively for customers' funds and shall keep the funds in the trust account until disbursed to the customer.

Sec. 08.24.290. SUSPENSION, REVOCATION OR REFUSAL TO RENEW OR GRANT A LICENSE OR CERTIFICATE. The department may suspend, revoke or refuse to renew or grant a

license issued or applied for under this chapter if the licensee or applicant or a partner, associate, or major stockholder of a collection agency has since the date of the application been disbarred from the practice of law or been convicted of fraud, embezzlement, obtaining money under false pretenses, a crime involving moral turpitude, extortion, conspiracy to defraud, violation of a provision of this chapter or violating a rule or regulation promulgated under authority of this chapter.

Sec. 08.24.300. LICENSE AND BOND. No collection agency is entitled to maintain a suit or action involving the collection of money on behalf of its customers in a court of this state without alleging and proving that it is licensed and has procured a bond, as provided in this chapter. A copy of the collection agency license, certified by the department to be a true and correct copy is prima facie evidence of the licensing and bonding of the collection agency for the term expressed in the copy of the license.

Sec. 08.24.310. ADDITIONAL BUSINESS NAMES. A collection agency using a business name other than the one appearing on the application for its license shall secure a separate license and bond as provided in this chapter for each business name used.

Sec. 08.24.320. DOCUMENTS WHICH IMITATE JUDICIAL PROCESS. Forms of demand or notice or other documents drawn to resemble court process may not be used by collection agencies in the collection of bills, accounts or other indebtedness.

Sec. 08.24.330. DUTY TO MAINTAIN A PUBLIC OFFICE. Each collection agency shall maintain its principal office and any branch office at a street address which is stated in its original application for license or another address which the agency may designate to the department; the office shall be maintained in such a manner as to be open for contact by the public or debtors during normal working hours.

Sec. 08.24.340. STATEMENT OF PERSONS EMPLOYED BY AGENCY. (a) Within 15 days after licensure under this chapter, a collection agency shall submit to the department a list of all persons employed by the agency. Thereafter, upon hiring a new employee, the collection agency shall, within 15 days after the hiring, submit to the department the name of the newly hired employee and the further information required by (b) of this section.

(b) There shall be submitted with the name of the employee employed by the collection agency the following information:

- (1) the employee's residence address;
- (2) the employee's length of residence in the state;
- (3) a statement of his previous employment in the last year;

(4) further information which the board or department may require.

(c) The statement shall be verified by the employee before a notary public or other person authorized to administer oaths.

(d) The owner or licensed operator of the collection agency shall also state upon the form submitted the date upon which the new employee was hired and that he is an employee of the collection agency at the time the form is executed.

Sec. 08.24.350. NOTICE OF WITHDRAWAL OF EMPLOYEES. When an employee withdraws from employment or his employment with a collection agency is terminated for any reason, the agency shall, within 15 days of withdrawal or termination of employment, notify the department in writing of the employee's withdrawal from employment.

Sec. 08.24.360. FINES AND PENALTIES. A collection agency or an operator who fails on written demand to render a true and complete account to the person from whom an indebtedness was taken for collection or who fails to turn over to that person the proceeds of the collection within 30 days after written demand, or who fails to comply with any of the provisions of this chapter is punishable by a fine of not more than \$500, or by imprisonment for not more than three months, or by both.

Sec. 08.24.370. NONRESIDENTS. A nonresident may apply for and receive a collection agency license or an operator license or both on the same basis as a resident. The application fee for a nonresident operator license is \$100, and the biennial license fee is \$200. The application fee for a nonresident agency license is \$200, and the biennial license fee is \$400 for the principal place of business and \$400 for each branch office.

Sec. 08.24.380. DEFINITIONS. In this chapter

- (1) "board" means the Collection Agency Board;
- (2) "department" means the Department of Commerce;
- (3) "collection agency business" means the business of engaging directly or indirectly and having as a primary or secondary object, business or pursuit the solicitation of claims for collection or repossession of collateral security or the collection of claims owed or due or asserted to be owed or due to another or the repossession of collateral security;

(A) a house, agency, firm, person, corporation or voluntary association using a name other than its own in collecting its own claims with the intention of conveying, or which tends to convey, the impression that a third party has been employed, is conducting a collection agency business within the meaning of this chapter;

(B) a person who sells, attempts to sell,

gives away or attempts to give away to another person, other than a licensee under this chapter a system of collection letters, demand forms or other printed matter where the name of a person other than a creditor appears in a manner to indicate that a request or demand is being made by another person, other than the creditor, for the payment of a sum due, or asserted to be due, or who solicits or accepts accounts for collection on a contingent or percentage basis or by a fee or outright purchase for collection purposes, is considered to be in the collection agency business within the meaning of this chapter;

(4) "collection agency" means a person licensed and authorized to engage in the collection agency business;

(5) "operator" means a person having managerial control of a collection agency.

\* Sec. 2. AS 08.01.010 is amended by adding a new subsection to read:

(15) Collection Agency Board.

\* Sec. 3. AS 08.24.010, AS 08.24.020, AS 08.24.030, AS 08.24.040, AS 08.24.050, AS 08.24.060 and AS 08.24.080 are repealed.

\* Sec. 4. This Act takes effect May 1, 1968.