

Introduced: 3/17/67
Referred: Commerce
and Judiciary

BY THE COMMERCE COMMITTEE
BY REQUEST

1 IN THE SENATE

2 SENATE BILL NO. 194

3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FIFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act concerning the licensing and regulation of
7 collection agencies; and providing for an effective
8 date."

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

10 * Section 1. AS 08.24 is amended by adding sections to read:

11 ARTICLE 1. COLLECTION AGENCY BOARD.

12 Sec. 08.24.011. COLLECTION AGENCY BOARD. There is created a
13 Collection Agency Board consisting of three members two of whom shall be
14 appointed by the governor. The board shall consist of two persons en-
15 gaged in the collection agency business within the state and licensed
16 under this chapter. The third member shall be designated by the commis-
17 sioner of commerce from his staff.

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

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

29 Sec. 08.24.031. DUTY OF BOARD TO ENFORCE CHAPTER. The commissioner

1 of commerce shall pass upon the qualifications of applicants for collec-
2 tion agency licenses and operators' licenses. The board may also adopt
3 rules and regulations necessary to effectuate the purposes of this chapter.

4 **ARTICLE 2. POWERS AND DUTIES OF DEPARTMENT OF COMMERCE.**

5 **Sec. 08.24.041. DUTY TO ENFORCE CHAPTER.** The department shall en-
6 force all laws, rules and regulations relating to collection agencies
7 except those relating to qualifications of applicants.

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

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

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

27 **ARTICLE 3. LICENSING.**

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

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

10 (b) This section does not apply to the following when engaged
11 in the regular course of their respective businesses:

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

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

28 **Sec. 08.24.100. LICENSED OPERATOR REQUIRED, EXCEPTIONS AND FEE.**

29 (a) Notwithstanding any other provision of this chapter, no licensee

1 may engage in the collection agency business unless and until the collec-
2 tion agency, and each branch office of the agency is under the management
3 and control of a licensed operator for each office. The department or the
4 board may waive this requirement for a period not to exceed 90 days upon
5 the death or disability of an operator, or for other good cause.

6 (b) The annual operator's license shall be renewable on or before
7 July 1 of each second year beginning on July 1, 1967, and the biennial
8 fee is \$100.

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

11 (1) have been a resident of this state continuously for at
12 least one year before the time of application;

13 (2) be a high school graduate, or have the equivalent
14 education of a high school graduate;

15 (3) be of good moral character;

16 (4) not have been convicted of violating this chapter, nor
17 have any unsettled complaints under this chapter against him;

18 (5) not have been convicted of a felony or a crime of
19 larceny or embezzlement or a crime involving moral turpitude;

20 (6) be 21 years of age or older at the time of application;

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

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

23 (b) The board may waive or modify the requirements specified in
24 (a)(2) or (4) of this section.

25 Sec. 08.24.120. APPLICATION FOR OPERATOR'S LICENSE. (a) An appli-
26 cation for an operator's license shall be made on forms furnished by
27 the department and shall contain the information required in sec. 110
28 of this chapter and, in addition, the following:

29 (1) a complete set of fingerprints;

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

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

4 (4) the biennial license fee required by sec. 110 of this
5 chapter.

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

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

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

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

16 (3) the names and addresses of the applicant and those assoc-
17 iated with him; if the applicant is a corporation or association, the
18 application shall contain the names of the officers of the corporation
19 or association;

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

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

24 (b) Within 10 days after the filing of an application the department
25 shall notify all collection agency licensees of receipt of the application.
26 Each notice shall contain the name of the applicant and if a corporation,
27 the names of all its stockholders, the applicant's prospective business
28 location and further information which the division by rule or regulation
29 requires.

1 (c) Every natural person applying for a collection agency license
2 must be 21 years of age or older at the time of making application.

3 Sec. 08.24.140. FEE, BOND AND OTHER MATERIAL. (a) The applica-
4 tion shall be accompanied by:

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

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

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

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

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

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

29 (c) A surety may file with the department notice of his withdrawal.

1 on the bond of a licensee. Upon filing a new bond, or upon the revoca-
2 tion of the collection agency license, or upon expiration of 60 days
3 after the filing of notice of withdrawal as surety by the surety, the
4 liability of the former surety for all future acts of the licensee
5 shall terminate.

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

9 (e) Upon the filing with the department of notice by a surety
10 of his withdrawal as the surety on the bond of a licensee, or upon the
11 cancellation by the department of the bond of a surety company as
12 provided in this section, the department shall immediately give notice
13 to the licensee of the withdrawal or cancellation, which notice shall
14 be by registered or certified mail with request for a return receipt
15 and addressed to the licensee at his main office, as shown by the
16 records of the department. At the expiration of 30 days from the date
17 of mailing the notice, the license of the licensee shall be terminated,
18 unless the licensee has filed a new bond with a surety satisfactory
19 to the department. All bonds given under this chapter shall be filed
20 and held in the office of the department.

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

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

27 **BOND**

28 Know All Men by These Presents that we,, as principal,
29 and as surety, are held and firmly bound unto the State of

1 Alaska, in the penal sum of (\$. . .), lawful money of the
2 United States, for the payment of which well and truly to be made we,
3 and each of us, bind ourselves, our heirs, executors, administrators,
4 successors and assigns jointly and severally, firmly by these presents.

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

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

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

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

25 IN WITNESS WHEREOF we have hereunto set our hands and seals at
26 , in the State of Alaska, this day of ,
27 19

28 (SEAL) Principal

29 (SEAL) Surety

1 **Sec. 08.24.170. RETURN OF FEES AND BOND.** If the department does
2 not issue the license applied for, the license fee and bond shall be
3 returned. The application fee shall not be returned.

4 **Sec. 08.24.180. PERSONS PRESENTLY ENGAGED IN COLLECTION BUSINESS.**

5 **(a)** All persons wishing to engage in the collection agency business
6 after the effective date of this chapter must meet the requirements of
7 this chapter both as to licensure of operators and licensure of agencies.

8 **(b)** If a person now presently licensed to engage in the collection
9 agency business has not made application under this chapter by July 1,
10 1967, his present collection agency license expires. This does not,
11 however, prejudice the right of a person to make original application
12 for licensure under this chapter.

13 **(c)** The department and the board shall by January 1, 1968, approve
14 or deny the applications of persons previously licensed, provided that
15 persons previously licensed and who have made timely application under
16 this section may continue to operate a collection agency, provided they
17 have posted the bond required by secs. 140, 150 and 160 of this chapter,
18 until time the new application is acted upon.

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

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

29 **(c)** The death of the operator of a corporate licensee shall in

1 no way interfere with the continuation of the licensed business if
2 another licensed operator is placed in management control of the
3 corporate licensee.

4 Sec. 08.24.200. EXPIRATION AND RENEWAL. (a) All licenses
5 required by this chapter shall expire on June 30, 1969 and June 30 of
6 each second year thereafter and shall be renewed as of July 1 following
7 upon payment of required annual fees.

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

17 Sec. 08.24.210. ANNUAL STATEMENT OF COLLECTION. Each collection
18 agency licensee shall, not later than January 31 of each calendar year,
19 file with the department a verified annual statement for the preceding
20 calendar year, showing the respective amounts of all customers' money
21 collected by the licensee during the preceding calendar year, which
22 will not previously be remitted to the customers entitled to it or
23 properly accounted for, and showing also the amounts of money which
24 the licensee has on deposit in a bank or in the licensee's possession
25 for the purpose of liquidating any and all amounts due to customers.
26 The statement shall contain the name and address of the bank. The
27 annual statement shall be made substantially in the following form:

28 ANNUAL STATEMENT TO DEPARTMENT OF COMMERCE

29 Pursuant to AS 08.24.210 the undersigned, , duly licensed

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under AS 08.24 to conduct a collection agency business hereby does declare that the amount of money collected during the preceding calendar year by the undersigned, as a licensee under AS 08.24 which has not been remitted to a customer or properly accounted for is \$. . . ; and that the amount on deposit with all banks for the purpose of liquidating all amounts to customers is \$

The attached schedule contains a true statement of the name and address of each customer of the undersigned to whom there was due or owing at the end of the preceding calendar year on account of collections made during the preceding calendar year the aggregate sum of \$20 or more.

IN WITNESS WHEREOF, the undersigned has executed this statement on this day of, 19 . .

(name of licensee)
(signature)
(capacity)

VERIFICATION

STATE OF ALASKA }
THIRD DISTRICT } ss

I, the undersigned, being first duly sworn, do on oath depose and say: That I executed the within annual statement as the licensee therein named or on behalf of the licensee therein named as the operator, director, or officer of the licensee therein named, as indicated therein; that I have read the statement and know the contents thereof; and that the statement is true.

.
Subscribed and sworn to before me this . . . day of ,
19 . .
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1 statement within the time limited. If the statement required by
2 secs. 210 or 220 of this chapter is not filed as required in this
3 section the department shall revoke the license.

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

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

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

26 Sec. 08.24.280. RECORDS AND FUNDS. (a) A collection agency
27 shall keep a record of all sums collected by it, and of all disturbs-
28 ments made by it, and shall maintain and keep all the records and all
29 customers' funds in a trust account with a recognized financial

1 institution in this state. Collection agencies shall maintain account-
2 ing records of collections for and payments to customers for a period
3 of six years from the date of the last entry. Collection agencies
4 shall keep other records for a period of two years from the date of
5 the last entry.

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

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

14 (c) The receipt shall be made immediately upon the receipt of
15 funds by the collection agency in payment of a debt; the original
16 copy to be made immediately available to the debtor who has made
17 payment, upon request; and a copy to be made immediately available to
18 the creditor for whom payment was received, upon request; and a copy
19 to be maintained in the permanent receipt book.

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

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

29 (f) No licensee may co-mingle the money of collection agency

1 customers with other money, but shall maintain a separate trust account
2 for customers' funds and shall keep the funds in a trust account until
3 disbursed to the customer.

4 Sec. 08.24.290. **SUSPENSION, REVOCATION OR REFUSAL TO RENEW OR**
5 **GRANT A LICENSE OR CERTIFICATE.** The department may suspend, revoke
6 or refuse to renew or grant a license issued or applied for under this
7 chapter if the licensee or applicant has been disbarred from the
8 practice of law or been convicted of fraud, embezzlement, obtaining
9 money under false pretenses, a crime involving moral turpitude,
10 extortion, conspiracy to defraud, violation of a provision of this
11 chapter or violating a rule or regulation promulgated under authority
12 of this chapter. The department may take any action permitted in this
13 section when a partner, associate or major stockholder of a collection
14 agency has ever been convicted of such acts.

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

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

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

1 accounts or other indebtedness.

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

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

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

- 17 (1) the employee's residence address;
18 (2) the employee's length of residence in the state;
19 (3) a statement of his previous employment in the last year;
20 (4) further information which the board or department may
21 require.

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

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

28 **Sec. 08.24.350. NOTICE OF WITHDRAWAL OF EMPLOYERS.** When an
29 employee withdraws from employment or his employment with a collection

1 agency is terminated for any reason, the agency shall, within 15 days
2 of withdrawal or termination of employment, notify the department in
3 writing of the employee's withdrawal from employment.

4 Sec. 08.24.360. DEFINITIONS. In this chapter

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

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

19 (B) a person who sells, attempts to sell, gives away
20 or attempts to give away to another person, other than a licensee
21 under this chapter a system of collection letters, demand forms
22 or other printed matter where the name of a person other than
23 a creditor appears in a manner to indicate that a request or
24 demand is being made by another person, other than the creditor,
25 for the payment of a sum due, or asserted to be due, or who
26 solicits or accepts accounts for collection on a contingent or
27 percentage basis or by a fee or outright purchase for collection
28 purposes, is considered to be in the collection agency business
29 within the meaning of this chapter;

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(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, 08.24.020, 08.24.030, 08.24.040, 08.24.050, 08.24.060, 08.24.070, and 08.24.080 are repealed.

* Sec. 4. This Act takes effect May 1, 1967.