

Original sponsor: Commerce Committee
by request

Offered: 3/12/68
Referred: Judiciary

1 IN THE SENATE

BY THE COMMERCE COMMITTEE

2 HOUSE CS FOR SENATE BILL NO. 194

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTH LEGISLATURE - SECOND 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 is amended by adding a new chapter to read:

11 CHAPTER 25. COLLECTION AGENCIES.

12 ARTICLE 1. COLLECTION AGENCY BOARD.

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

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

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

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

6 ARTICLE 2. POWERS AND DUTIES OF DEPARTMENT OF COMMERCE.

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

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

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

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

28 ARTICLE 3. LICENSING.

29 Sec. 08.24.090. LICENSE REQUIRED. (a) No person other than a

1 collection agency licensed and authorized under this chapter may for
2 compensation

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

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

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

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

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

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

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

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

15 (2) be a high school graduate, or have the equivalent educa-
16 tion of a high school graduate;

17 (3) be of good moral character;

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

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

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

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

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

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

27 **Sec. 08.24.120. APPLICATION FOR OPERATOR'S LICENSE. (a)** An appli-
28 cation for an operator's license shall be made on forms furnished by
29 the department and shall contain the information required in sec. 110

1 of this chapter and, in addition, the following:

2 (1) a complete set of fingerprints;

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

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

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

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

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

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

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

17 (3) the names and addresses of the applicant and those associated
18 with him; if the applicant is a corporation or association, the applica-
19 tion shall contain the names of the officers of the corporation or
20 association;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 Sec. 08.24.160. FORM OF BOND. The bond required by secs. 140 and
21 150 of this chapter shall be in the form substantially as follows:

22 BOND

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

29 The condition of this obligation is such that whereas, the above

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bended 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

1 at the time of the effective date of this chapter and who wishes to
2 continue to engage in this business shall apply for a license within
3 60 days after the effective date of this chapter.

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

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

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

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

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

26 (b) If a licensee under this chapter is delinquent for a period
27 of 15 days in applying for the renewal of a license, the department
28 shall suspend the license and notify the licensee by certified mail or
29 by personal service. The notice shall state that the license will be

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IN WITNESS WHEREOF, the undersigned has executed this statement
on this day of , 19 . .
(name of licensee)
(signature).
(capacity)

VERIFICATION

STATE OF ALASKA)
) ss
THIRD DISTRICT)

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 . .

Notary Public in and for Alaska
My commission expires:

Sec. 08.24.220. SEMIANNUAL STATEMENT OF EMPLOYEES. (a) Every
collection agency licensee shall file with the department on June 1 and
December 1 of every year a list of the names and residence addresses of
each person employed by the licensee in the six-month period ending
10 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

1 making of a false declaration in the annual statement or biennial state-
2 ment of employees shall constitute sufficient grounds for revocation of
3 the license of the licensee.

4 Sec. 08.24.240. FAILURE TO FILE STATEMENT. If the annual state-
5 ment of collection or semiannual statement of employees is not filed as
6 required under secs. 210 and 220 of this chapter, the failure to file
7 constitutes grounds for the immediate suspension of the collection agency
8 license of the licensee failing to file the statement and the department
9 shall notify the licensee by registered or certified mail that the lic-
10 ense of the licensee will be suspended upon the expiration of 15 days
11 after the date on which the notice was mailed unless the licensee com-
12 plies with the provisions of secs. 210 or 220 of this chapter. However,
13 for good cause shown and upon satisfactory proof furnished by the licen-
14 see that the failure to file the statement was due to a condition not
15 within the control, or was due to excusable neglect, of the licensee,
16 the department may permit the filing of the statement after the time
17 limited and excuse the failure to file the statement within the time
18 limited. If the statement required by secs. 210 or 220 of this chapter
19 is not filed as required in this section the department shall revoke the
20 license.

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

27 Sec. 08.24.260. INVESTIGATIONS. The department may upon its own
28 motion, and shall, upon the sworn complaint in writing of a customer of
29 a collection agency, investigate the actions of a licensee claimed to

1 have violated this chapter and for that purpose shall have free access
2 to the offices and places of business and, if the complaint involves
3 customer accounts, to all pertinent books, accounts, records, papers,
4 files, safes and vaults of the licensee or certificate holder. If the
5 complaint involves the owing of money, or any other thing of value, by
6 a licensee to the complainant, when the licensee raises the issue of an
7 offset or counterclaim, the division may require the complainant to
8 submit all records and data in his possession pertaining to the offset
9 or counterclaim.

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

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

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

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

29 (c) The receipt shall be made immediately upon the receipt of

1 funds by the collection agency in payment of a debt; the original copy
2 to be made immediately available to the debtor who has made payment,
3 upon request; and a copy to be made immediately available to the
4 creditor for whom payment was received, upon request; and a copy to be
5 maintained in the permanent receipt book.

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

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

15 (f) No licensee may co-mingle the money of collection agency
16 customers with other money, but shall maintain a separate trust account
17 for customers' funds and shall keep the funds in a trust account until
18 disbursed to the customer.

19 Sec. 08.24.290. SUSPENSION, REVOCATION OR REFUSAL TO RENEW OR
20 GRANT A LICENSE OR CERTIFICATE. The department may suspend, revoke or
21 refuse to renew or grant a license issued or applied for under this
22 chapter if the licensee or applicant or a partner, associate, or major
23 stockholder of a collection agency has since the date of the applica-
24 tion been disbarred from the practice of law or been convicted of fraud,
25 embezzlement, obtaining money under false pretenses, a crime involving
26 moral turpitude, extortion, conspiracy to defraud, violation of a pro-
27 vision of this chapter or violating a rule or regulation promulgated
28 under authority of this chapter.

29 Sec. 08.24.300. LICENSE AND BOND. No collection agency is

1 entitled to maintain a suit or action involving the collection of money
2 on behalf of its customers in a court of this state without alleging
3 and proving that it is licensed and has procured a bond, as provided
4 in this chapter. A copy of the collection agency license, certified
5 by the department to be a true and correct copy is prima facie evidence
6 of the licensing and bonding of the collection agency for the term
7 expressed in the copy of the license.

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

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

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

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

29 (b) There shall be submitted with the name of the employee

1 employed by the collection agency the following information:

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

6 require.

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

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

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

18 Sec. 08.24.360. FINES AND PENALTIES. A collection agency or an
19 operator who fails on written demand to render a true and complete
20 account to the person from whom an indebtedness was taken for collection
21 or who fails to turn over to that person the proceeds of the collection
22 within 30 days after written demand, or who fails to comply with any of
23 the provisions of this chapter is punishable by a fine of not more than
24 \$500, or by imprisonment for not more than three months, or by both.

25 Sec. 08.24.370. NONRESIDENTS. A nonresident may apply for and
26 receive a collection agency license or an operator license or both on
27 the same basis as a resident. The application fee for a nonresident
28 operator license is \$100, and the biennial license fee is \$200. The
29 application fee for a nonresident agency license is \$200, and the

1 biennial license fee is \$400 for the principal place of business and
2 \$400 for each branch office.

3 Sec. 08.24.380. DEFINITIONS. In this chapter

4 (1) "board" means the Collection Agency Board;

5 (2) "department" means the Department of Commerce;

6 (3) "collection agency business" means the business of
7 engaging directly or indirectly and as a primary or secondary object,
8 business or pursuit in the solicitation of claims for collection or
9 repossession of collateral security or in the collection of claims owed
10 or due or asserted to be owed or due to another or in the repossession
11 of collateral security;

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

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

29 (4) "collection agency" means a person licensed and authorized

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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 is repealed.

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