

Introduced: 2/16/70
Referred: Commerce and
Judiciary

1 IN THE HOUSE

BY KAY

2 HOUSE BILL NO. 702

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to collection activities; and
7 providing for an effective date."

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

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

10 Sec. 08.24.390. APPLICABILITY. (a) The provisions of secs. 390
11 440 of this chapter apply to:

12 (1) collection activities of a collection agency; and

13 (2) collection activities of a small loan agency with
14 respect to alleged indebtedness bearing interest at a rate which is
15 usurious or which would be usurious except for the provisions of
16 AS 06.20.

17 (b) The provisions of secs. 390 - 440 of this chapter do not
18 apply to collection activities with respect to any claim asserted
19 against a government agency or a public or private corporation.

20 Sec. 08.24.400. NOTICE TO DEBTOR BY COLLECTION AGENCY. Prior
21 to contacting the debtor or any other person in an attempt to collect,
22 a collection agency shall notify the debtor of its intent to engage
23 in collection activities with respect to a debt, and supply him with
24 a certified copy of an instrument executed by the creditor stating the
25 amount due, the name of the debtor, the date the indebtedness was
26 incurred, and which either assigns the right of collection to the col-
27 lection agency or appoints the collection agency an agent for purposes
28 of collection. The collection agency shall also, upon request of the
29 debtor or his representative, supply a copy of any instrument executed

1 by the debtor which is alleged to give rise to or evidence the debt,
2 and a statement of the amount currently owed. Failure to comply with
3 a provision of this section is prima facie evidence of an unfair
4 collection practice.

5 Sec. 08.24.410. COLLECTION PRACTICES. (a) The following acts
6 are prohibited

7 (1) in a case in which an instrument of assignment or agency
8 is required under sec. 400 of this chapter, any contact with a person,
9 other than the person named as a debtor in the instrument, in an
10 attempt to collect all or part of the debt from the person contacted;
11 or

12 (2) in the case of a debt founded on a written instrument,
13 any contact with a person, other than an obligor or surety on the
14 instrument, in an attempt to collect all or part of the debt from the
15 person contacted; or

16 (3) in any case not covered by (a)(1) or (2) of this section
17 contact with a person not believed, in good faith, to be the debtor
18 in an attempt to collect all or part of the debt from the person
19 contacted; or

20 (4) the use of instruments or documents which simulate the
21 form of judicial process; or

22 (5) the use of instruments or documents or other format
23 which simulate that of a governmental agency, or otherwise implies that
24 the collection agency is a branch of, or associated with a government
25 or governmental agency; or

26 (6) contact with a person not alleged to be the debtor in
27 an attempt to obtain payment by the debtor through embarrassment or
28 harassment or by indirect pressure upon the person contacted or upon
29 the debtor; or

3 (7) threatening the attachment, garnishment or seizure of
4 any assets which would not be subject to attachment for execution of
5 a judgment obtained on the debt, or which may be exempt from attachment
6 under a provision of federal or state law; or

7 (8) directly or indirectly, by expression or implication,
8 threatening or suggesting that a person may be arrested, imprisoned,
9 or otherwise subjected to criminal process, for failure to pay the
10 debt; or

11 (9) collection activity after the debtor has informed the
12 collection agency or the small loan agency in writing of his declina-
13 tion to pay the alleged debt; or

14 (10) contact by telephone or in person with the debtor in
15 excess of one contact per week, unless justified by a change in circum-
16 stances; or

17 (11) contact with the debtor or any other person in connection
18 with the debt by telephone or in person at a time when the person con-
19 tacted would be reasonably expected to be asleep.

20 (b) Nothing contained in this section may be construed so as to
21 prohibit a lawful garnishment or attachment, or authorize an act or
22 practice which could constitute the unauthorized practice of law under
23 a statute of the state or rule or order of the supreme court or bar
24 association having jurisdiction over the matter.

25 (c) An act of an agent or employee of a collection agency or
26 small loan agency which is a violation of this section or sec. 383 of
27 this chapter shall be presumed to be within the scope of his employment
28 or agency, and to be authorized by the employer or principal.

29 Sec. 08.24.420. ACTIONS FOR COLLECTION. No action may be main-
tained on a debt covered by secs. 390 - 440 of this chapter unless there
is attached to the complaint

1 (1) a certified copy of the license required of the plaintiff
2 under AS 06.20.010 or 08.24.090, or in lieu thereof, an appropriate
3 allegation in the complaint that the plaintiff is licensed as required;
4 and

5 (2) a certified copy of the instrument giving rise to the
6 alleged debt in the event that the action is founded upon a written
7 document; and

8 (3) in the case of a collection agency, a certified copy of
9 the instrument of assignment or agency.

10 Sec. 08.24.430. ACTION FOR DAMAGES. A person injured or aggrieved
11 by an act declared to be an unfair collection practice under secs. 390 -
12 440 of this chapter may maintain an action for damages or injunction
13 in the superior court. The court may award actual damages for
14 pecuniary, physical or emotional damages to the plaintiff, and may
15 award punitive damages without regard to the existence of actual damages,
16 giving due regard to the frequency and seriousness of the violations,
17 on the part of the defendant, the age, experience, and circumstances
18 of the plaintiff, and the necessity of deterring similar conduct. A
19 claim under this section may also be asserted by way of counterclaim
20 or set off at any time during maintenance of an action for the collec-
21 tion of an alleged debt.

22 Sec. 08.24.440. REVOCATION, SUSPENSION, OR REFUSAL TO RENEW
23 LICENSES. The Department of Commerce may revoke, suspend, or refuse
24 to renew a license granted under AS 06.20.010 or sec. 90 of this
25 chapter, upon a finding in a proceeding under the Administrative Proce-
26 dure Act (AS 44.62) that the licensee has engaged in an unfair collec-
27 tion practice described in secs. 400 - 410 of this chapter.

28 * Sec. 2. AS 08.24.380 is amended by adding new paragraphs to read:

29 (6) "small loan agency" means a person required to be

1 licensed under AS 06.20.010;

2 (7) "debt" means an obligation or alleged obligation of a
3 person to pay money to another;

4 (8) "creditor" means the person in whose favor a debt was
5 incurred prior to its assignment to a collection agency;

6 (9) "collection activity" means any action except litigation
7 or foreclosure or seizure authorized by law or actions engaged in by
8 an attorney for a client, directed at causing a person, whether or not
9 he is a debtor as defined in this section, to pay a debt.

10 * Sec. 3. This Act takes effect on the day after its passage and approv-
11 al or on the day it becomes law without approval.

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