

MAINE STATE LEGISLATURE

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ONE - HUNDRETH LEGISLATURE

Legislative Document

No. 1349

S. P. 407

In Senate, February 8, 1961

Referred to Committee on Business Legislation. Sent down for concurrence and ordered printed.

CHESTER T. WINSLOW, Secretary

Presented by Senator Marden of Kennebec.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-ONE

AN ACT Regulating Collection Agencies.

Be it enacted by the People of the State of Maine, as follows :

R. S., c. 59-A, additional. The Revised Statutes are amended by adding a new chapter 59-A, to read as follows :

Chapter 59-A.

Collection Agencies.

Sec. 1. Definitions. The following terms, as used in this chapter, shall have the following meanings, unless a different meaning is clearly indicated from the context:

I. Collection agency. "Collection Agency" means any person engaged in the business of collecting or receiving for payment for others any account, bill or other indebtedness. It shall not include banks, any person admitted to the practice of law, real estate broker or any public officer or person acting under order of court, or individuals regularly employed for a regular wage or or salary upon the staff or as an employee of any person or persons not engaged in the business of a collection agency, or any person appointed by or acting for any public service company, provided any such person so appointed and so acting is not authorized to initiate or make any collection efforts.

II. Person. "Person" means and includes individuals, partnerships, associations and corporations.

Sec. 2. Must procure license; license fee; bond. No person shall conduct within this State a collection agency without first obtaining a license from the

Bank Commissioner. Application for such license shall be in writing and shall contain the full name and address, both of the residence and place of business, of the applicant, and if the applicant is a copartnership or association, of every member thereof, or if a corporation, of every officer thereof; and the county and municipality, with street and number, if any, where the business is to be conducted. Every such applicant, at the time of making such application, shall pay to the Bank Commissioner an annual license fee of \$100. The applicant shall, at the same time, file with the Bank Commissioner a bond in the sum of \$5,000, which said bond shall run to the Bank Commissioner for the use of the State and of any person who may be damaged by the wrongful conversion of any funds entrusted to, held by or received by such collection agency; and any person so damaged may proceed on such bond against the principal or surety thereon or both to recover damages. Such bond shall be executed by the applicant as principal, and by a corporation, which is licensed by the Insurance Commissioner to transact the business of fidelity and surety insurance, as surety, such bond to be approved by the Bank Commissioner. In case the bond shall at any time appear to be insecure or exhausted, or otherwise doubtful, an additional bond in the sum of not more than \$5,000, satisfactory to the Bank Commissioner, shall be filed. Fees received from licenses issued under this section shall be paid to the Treasurer of the State for deposit in the General Fund.

Sec. 3. License issued by Bank Commissioner; expiration. Upon the filing of the application provided for in section 2 and the approval of the required bond and the payment of the required fee, the Bank Commissioner in his discretion may issue a license to the applicant to conduct a collection agency in accordance with this chapter for a period which shall expire the first day of January next following the date of its issuance. Such license shall not be assignable and shall be kept conspicuously posted in the place of business of the licensee.

Sec. 4. Revocation of license. The Bank Commissioner shall, if satisfied that a license was issued without compliance with sections 2 and 3, immediately revoke such license; and, after the issuance of such license, if there be any conviction of any of the offenses referred to in section 5, or if the licensee fail to file the additional bond as required in section 2, then the Bank Commissioner shall forthwith revoke such license. In all other cases the Bank Commissioner may, in his discretion, upon notice to the collection agency and opportunity to be heard, revoke the license provided for in section 3 if satisfied that any collection agency has violated any of the provisions of this chapter and the issuance of another license after a revocation shall be at the discretion of the Bank Commissioner. In case any collection agency shall be convicted a second time of violation of any of the provisions of this chapter, the Bank Commissioner shall forthwith revoke such license for 2 years.

Sec. 5. Conviction of certain crimes disqualification to engage in collection business. No person shall be licensed to conduct within this State a collection agency if such person, or if such person is a copartnership or association any member thereof, or if such person is a corporation, any officer thereof, has been convicted, in any state or federal court of the crime of forgery, fraud, obtaining money under false pretenses, embezzlement, extortion, larceny, burglary, break-

ing and entering, robbery, criminal conspiracy to defraud, bribery, conspiracy to commit bribery or perjury.

Sec. 6. Transaction of business under other name or at other place than stated in license; removal of licensee. No person, copartnership, association or corporation licensed under sections 2 and 3 shall conduct a collection agency under any other name or at any other place of business than that named in the license. Not more than one office or place of business shall be maintained under the same license, but the Bank Commissioner may issue more than one license to the same person upon the payment of an additional license fee, and the Bank Commissioner may in his discretion require the filing of an additional bond for each such additional license. In case of the removal of a licensee to another place of business, he shall at once give written notice thereof to the Bank Commissioner, who shall attach to the license his consent in writing to the removal.

Sec. 7. Investigations by Bank Commissioner. The Bank Commissioner, for the purpose of discovering violations of any of the provisions of this chapter, may either personally, or by any person designated by him, at any time and as often as he may desire, investigate the business of every licensee thereunder. For that purpose he shall have free access to the books, papers, records and vaults of all such persons and he shall have authority to summon and examine, under oath, all persons whose testimony he may require relative to such business. Upon the refusal of any person to permit the Bank Commissioner or such person designated by him to have access to such books, papers, records and vaults, or upon refusal of any person to answer such summons, or upon refusal of any person to so testify, the Bank Commissioner may summarily revoke the license of such licensee. For the purpose of discovering such violations and for the enforcement of this chapter, the Bank Commissioner is authorized to appoint, subject to the Personnel Law, an examiner who shall receive, in addition to his salary, his necessary traveling expenses. The salary, traveling expenses and all expenses of administration and enforcement of this chapter shall be paid out of such amounts as the Legislature may appropriate.

Sec. 8. Reports. Every person licensed under sections 2 and 3 shall annually, on or before November 15th, file with the Bank Commissioner a report for the preceding twelve months, or for such portions of the preceding twelve months during which said person has been so licensed. If such person maintains more than one place of business as provided in section 6, he shall file a separate report for each such place of business. Such report shall give information with respect to the financial condition of such licensee and shall include: The name and address of the licensee; balance sheets at the end of the accounting period; a statement of income and expenses for said period; a list of all persons employed during said period; an analysis of accounts handled during the preceding twelve months, and any other relevant information which the Bank Commissioner may reasonably require concerning the business and operations during the preceding twelve months for each licensed place of business conducted by such licensee. Such report shall be made under oath and shall be in the form prescribed by the Bank Commissioner.

In addition to the report, the Bank Commissioner may require reports from the licensee at any time, containing such information as he deems necessary to the proper supervision of licensees.

Each licensee shall keep such books and records as may be prescribed by the Bank Commissioner and shall preserve books and records used in such business for a period of at least 6 years after making the final entry of or relative to collections recorded therein.

Any person who knowingly makes a false statement or entry in any such reports, records, books or information furnished to the Bank Commissioner shall be punished by a fine of not less than \$500 nor more than \$1,000, or by imprisonment for not less than one year nor more than 5 years, or by both.

Sec. 9. Duties of licensee. Every licensee shall:

I. Name of creditor and amount of claim. State to the debtor in its initial demand in the English language in clear and distinct terms the name of the creditor and the nature and amount of the claim.

II. Receipts. Give to the debtor a plain and complete serially numbered receipt for each payment made in each and every account or collection showing thereon the date of payment, the amount paid and the remaining balance due, of which the licensee shall retain a serially numbered duplicate. Such duplicate receipts shall be retained in serial order for at least 6 years after the last payment on the account or collection for which each receipt is given, separate and apart from all other records of the licensee.

III. Cross index. Maintain a cross index of all accounts by names of the creditor and debtor, showing thereon the page or number of the ledger account.

IV. Ledger account. Maintain a ledger account by page or number of every account held for collection, setting forth the original amount of claim, the date, amount and serial number of receipt for every payment made on such account by the debtor, dates and amounts of all remittances to the creditor and commissions retained.

V. Daily record. Maintain a daily record of all cash receipts, stating the account upon which paid.

VI. Statement of balance. Furnish to a debtor upon request a written statement of the balance owed by him on any account.

VII. Monthly reports. Make monthly reports to each creditor in all accounts by him submitted, showing amount collected, if any, amount remitted and retained commissions, and shall remit all amounts collected less commissions at the time of making such report.

VIII. Paid in full. Upon the payment in full of every account, mark the words "paid in full", and the date of such payment indelibly upon the debtor's final receipt and the duplicate thereof, the ledger account, and the respective cross indices of the account for debtor and creditor.

Sec. 10. Prohibited practices. No collection agency shall:

I. Threaten legal action. Communicate with any person threatening legal action or judicial process of any nature, or state that claims will be turned over to an attorney if unpaid, or represent that it can or has authority to take or direct legal action, or communicate with any person in the name of an attorney or upon the stationery of an attorney, or use instruments, letters or any form of correspondence which in any way simulates the form of judicial process, or use seals of an official appearance, or letters signed in the capacity of justice of the peace or notary public.

II. Legal advice or services. Furnish legal advice or perform legal services or represent that it is competent to do so, or institute judicial proceedings on behalf of others or cause the same to be done, or assume authority on behalf of any creditor to employ or terminate the services of any attorney, or arrange for compensation for such services, or demand or obtain in any manner a share of the compensation for services performed by any attorney in collecting a claim, whether or not such agency has previously attempted collection thereof.

III. Licensed detective. Use or employ any licensed detective or any officer authorized to serve legal papers in connection with the collecting of a claim in any capacity whatsoever.

IV. Solicit claims. Solicit claims for collection under ambiguous or deceptive contract, or purchase or receive assignments of claims for the purpose of collection, or institute or cause to be instituted suits thereon in any court.

V. Threaten physical violence. Use or threaten physical violence in the collection of claims; advertise or threaten to advertise claims for sale as a means of compelling payment; use "shame cards" or "shame automobiles," or make repeated or harassing communications to employers, or make collect telephone calls by subterfuge, or use any other device or method of intimidation to collect accounts. Any person who violates any of the provisions of this subsection shall be punished by a fine of not more than \$500, or by imprisonment for not more than 2 years, or by both.

VI. Lending money. Engage in the business of lending money to any person, or contact any person for the purpose of securing a loan for any person with which to pay any claim left with it for collection, or recommend or suggest any person or persons as a source of funds to pay any such claim.

VII. Refuse to return claims. Fail or refuse to return any claims upon the request of the claimant; fail or refuse to return all valuable papers left with a claim when such claim is returned.

VIII. Collect an excess. Collect or attempt to collect from any person an amount in excess of that submitted by the creditor for collection.

IX. List of debtors. Prepare or distribute generally or threaten to prepare or distribute generally whether to its customers or otherwise, any list of debtors or alleged debtors, in code or otherwise, or any list of information

obtainable at any registry of deeds, registry of probate, town clerk's office or any other location where legal or commercial documents are commonly recorded. Any person who violates any of the provisions of this subsection shall be punished by a fine of not more than \$500, or by imprisonment for not more than 2 years, or by both.

X. Threaten the credit or reputation of any person, or in any way refer to "keeping credit good," or threaten or intimate in any way that any person's credit or reputation will suffer if he does not pay the debt or account due or alleged to be due.

XI. Employ person who could not be licensed. Knowingly employ any person who could not be licensed to conduct a collection agency within this State.

XII. Wage assignment. Take from any person any wage assignment in behalf of creditors.

XIII. Use of terms. Use, attempt to use or make reference to the term "bonded by the State of Maine," "bonded," "bonded collection agency," "licensed by the State of Maine," "licensed" or "licensed collection agency" or any combination of such terms or words or any combination of terms or words intended to circumvent the intent of this section; nor shall any collection agency allege, claim or advertise in any way that the county attorney's office, the Attorney General's office or any other law enforcement agency has certified its correspondence or methods of collection or contracts to be legal.

XIV. Subterfuge. Circumvent this chapter by any subterfuge, evasion, sham, concealment or corporate device.

Sec. 11. Vicarious responsibility. Whenever an employee of such corporation, partnership, association or person violates any of the provisions of this chapter, then both said employee and said corporation, partnership, association or person shall be jointly and severally responsible to criminal prosecution therefor.

Sec. 12. General penalty where specific penalty is not provided. Revocation of licenses as provided for in this chapter shall not constitute the specific and exclusive penalty for violation or failure to comply with any of the provisions of this chapter.

Any person who violates or fails to comply with any provision of this chapter or any rules or regulations by the Bank Commissioner established thereunder, when no other penalty is specifically provided shall be punished by a fine of not more than \$500 or by imprisonment for not more than 6 months, or by both.'