

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SECOND LEGISLATURE

Legislative Document

No. 1582

H. P. 1150

House of Representatives, May 21, 1965

Reported by Mr. Richardson, from Committee on Judiciary. Printed under
Joint Rules No. 10.

JEROME G. PLANTE, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-FIVE

AN ACT Regulating Collection Agencies.

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

Sec. 1. R. S., T. 32, c. 10, additional. Title 32 of the Revised Statutes is amended by adding a new chapter 10 to read as follows:

'CHAPTER 10

COLLECTION AGENCIES

§ 571. Definitions

The following words and terms, as used in this chapter, shall be construed as follows:

1. Collection agency. "Collection agency" means and includes any person engaged in the business of collecting for others any account, bill or other indebtedness. It includes persons who furnish collection systems carrying a name which simulates the name of a collection agency and who supply forms or form letters to be used by the creditor even though such forms direct the debtor to make payments directly to the creditor rather than to such fictitious agency.

2. Commissioner. "Commissioner" means the Bank Commissioner.

3. Person. "Person" means and includes individuals, partnerships, associations or corporations.

§ 572. Exclusions

The term "collection agency" shall not include persons whose collection activities are confined to and are directly related to the operation of a business

other than that of a collection agency such as but not limited to banks, credit unions, credit union leagues, real estate brokers, public officers or persons acting under order of a court, lawyer, trust companies, building and loan associations, savings and loan associations.

§ 573. Licenses

1. Licenses required. Except as hereinafter provided, no person shall conduct within this State a collection agency or engage within this State in the business of collecting claims for others as defined in this chapter, without having first applied for and obtained a license.

2. Penalty. Any person who shall carry on business as a collection agency without first having obtained a license pursuant to this section, or who shall carry on such business after the revocation, suspension or expiration of any license shall be guilty of a misdemeanor and punishable by a fine not exceeding \$500 or by imprisonment not exceeding 6 months, or by both.

3. Licenses. Licenses granted by the commissioner under this section shall be for a period of one year from the first day of January following the effective date of this Act. Each license shall plainly state the name and business address of the licensee and shall be posted in a conspicuous place in the office where the business is transacted. The fee for each license shall be not more than \$100. If the licensee desires to carry on business in more than one place within the State he shall procure a license for each place where the business is to be conducted.

4. Commissioner. The commissioner may require such financial statements and references of all applicants for a license as he deems necessary; and may make or cause to be made an independent investigation concerning the applicant's reputation, integrity, competence and net worth. Such investigation may cover all managerial personnel employed by or associated with the applicant.

5. Application for license. Every application for a license shall be acted upon promptly by the commissioner. If the application shall comply in form and substance with the provisions of this chapter and the rules and regulations promulgated thereunder and the commissioner shall find that the applicant is qualified under this chapter, the commissioner shall issue a license forthwith. If the application shall not be sufficient in form or substance, the commissioner shall reject it and notify the applicant of the manner in which it is deficient. Such rejection shall be without prejudice to the filing of a new application. If the commissioner shall find that the applicant is not qualified under this chapter, he shall reject the application and shall give the applicant written notice of such rejection and the reasons therefor.

§ 574. Bond

The commissioner shall require each licensee to file and maintain in force a surety bond, in a form to be prescribed by the commissioner and acceptable to him, and in such sum as he may deem reasonably necessary, to safeguard the interests of the public. The bond may be cancelled by the surety thereon by giving 30 days' notice to the Bank Commissioner but such cancellation shall not

in any manner affect the liability of the surety as to anything occurring prior thereto.

§ 575. Prior convictions as disqualifications

No license shall be granted to any applicant if an individual or to any partnership or corporate applicant if such applicant or any partner of a partnership applicant or officer or director of a corporate applicant, or employee of the foregoing, has been convicted in any state or federal court of the crime of forgery, fraud, obtaining money under false pretenses, embezzlement, extortion, larceny, burglary, breaking and entering, robbery, criminal conspiracy to defraud, or bribery, of which the record of conviction or a copy certified by the clerk or judge of the court shall be conclusive evidence. No license shall be granted to any lawyer whose license to practice law has been suspended or revoked, during the effective period of such suspension or revocation.

§ 576. Prohibited practices

No collection agency shall: Threaten to bring legal action or list the names of the lawyer; use or employ justices of the peace, constables, sheriffs, or any officer authorized to serve legal papers in connection with the collection of a claim; use or threaten to use physical violence in connection with the collection of claims; furnish legal advice or otherwise engage in the practice of law or represent that it is competent to do so, or institute judicial proceedings on behalf of others; communicate with debtors in the name of a lawyer or upon the stationery of a lawyer, or prepare any forms or instruments which only lawyers are authorized to prepare; solicit, purchase or receive assignments of claims for the purpose of collection, or institute suits thereon in any court; use instruments which simulate the form and appearance of judicial process; exercise authority on behalf of a creditor to employ the services of lawyers unless the creditor has specifically authorized the agency in writing to do so and the agency's course of conduct is at all times consistent with the true relationship of attorney and client between the lawyer and the creditor; demand or obtain in any manner a share of the compensation for services performed by a lawyer in collecting a claim; publish or cause to be published any list of debtors except for credit reporting purposes or threaten to do so; use "shame cards," "shame automobiles," or similar devices, methods or intimidation or methods contrary to postal regulations to collect accounts; refuse to return any claim or claims upon written request of the creditor, claimant or forwarder after the tender of such amounts, if any, as may be due and owing to the agency; advertise or threaten to advertise for sale any claim as a means of forcing payment thereof, unless such agency is acting as the assignee for the benefit of creditors or acting under an order of court; refuse or intentionally fail to account to its clients for all money collected within 60 days from the last day of the month in which the same is collected; refuse or intentionally fail to return to the creditor all valuable papers deposited with a claim when such claim is returned; refuse or fail to furnish at intervals of not less than 90 days, upon the written request of the claimant or forwarder, a written report upon claims received from such claimant or forwarder; operate under a name or in a manner which implies that such agency is a branch of or associated with any department of the Federal Government or of any state or municipal government, or use any seal, insignia,

envelope or other format which simulates that of any government department or agency; commingle money collected for a customer with the agency's own funds or use any part of a customer's money in the conduct of the agency's business; or share quarters or office space, or have a common waiting room with a practicing lawyer; make repeated or harassing communications to employers, or make collect telephone calls by subterfuge; 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; collect or attempt to collect from any person an amount in excess of the amount legally due the creditor.

§ 577. Application in case of pretended purchase or assignment

This chapter shall apply to any person who, by any device, subterfuge or pretense, makes a pretended purchase or takes a pretended assignment of accounts from any other person for the purpose of evading this chapter.

§ 578. Investigation, suspension and revocation of licenses

The commissioner may investigate the collection records of a licensee and for that purpose the commissioner shall have free access to the books and records of a licensee relating thereto. If a licensee violates any provisions of this chapter, or any administrative rules issued pursuant to this chapter, or fails to maintain its financial condition sufficient to qualify for a license on an original application, the commissioner may, after notice and hearing in accordance with the laws of this State governing proceedings before the Bank Commissioner, under Title 9, revoke a license or suspend such license for such period as he may deem proper.

§ 579. Appeals

1. Event of rejection. In the event of the rejection of an application for a license or the renewal thereof filed under this chapter or of the suspension or revocation of a license granted under this chapter, the applicant or licensee may, within 30 days after receipt of notice of such rejection, suspension or revocation, file an appeal and thereafter prosecute the appeal in accordance with the statutes governing appeal from, or review of, decisions of the Bank Commissioner.

2. Filing of appeal. The filing of an appeal from an order of the commissioner rejecting an application for a license by a collection agency engaged in business as of the effective date of this Act, or rejecting an application for the renewal of a license, or suspension or revoking a license within 60 days after the date of such order, shall operate as a supersedeas which shall continue pending final determination of such appeal.

§ 580. Reports and records

1. Financial statements. The commissioner may at any time require a licensee to submit to the department a verified financial statement for examination by the commissioner so that he may determine whether the licensee is financially responsible to carry on a collection agency business within the intents and purposes of this chapter.

2. **Books and records.** The commissioner shall require the licensee to keep such books and records in his place of business in this State as will enable the commissioner to determine whether the provisions of this chapter are being complied with. Every such licensee shall preserve the records of final entry used in such business for a period of 6 years after final remittance is made on any account placed with the licensee for collection or after any account has been returned to the claimant on which one or more payments have been made.

§ 581. **Delinquent collection agencies**

1. **Insolvency.** If the commissioner shall determine that a licensee is insolvent or that he has collected accounts but has failed to remit money due to any claimant or forwarder within 60 days from the end of the month in which collection was made, or when the license of a collection agency has expired or terminated for any reason whatsoever, the commissioner, if he shall determine such action necessary to protect the public interest, may apply to the Superior Court within and for the county in which the main office of such agency is located for an order authorizing him to take possession of the assets and the books and records of the licensee for the purpose of liquidating its business and for such other relief as the nature of the case and the interest of the claimants or forwarders may require. The court, after citing the licensee to show cause why the commissioner should not be authorized to take possession of the assets and books of account and records for the purpose of liquidating the business of the licensee, and after hearing the allegations and proofs of the parties and determining the facts, may upon the merits dismiss the application or, if it shall find such action necessary for the protection of the public, issue its order authorizing the commissioner to take possession of the said books and records and to liquidate the business and granting such other relief as it may deem necessary under the circumstances.

2. **Powers and duties.** In every case where the court shall issue an order authorizing the commissioner to take possession of the said books and records and to liquidate the business of a licensee, the commissioner shall be vested with all of the powers, duties, authority and responsibility of a receiver, and without limiting the generality of the foregoing and subject to the approval of the court;

A. The liquidation of the business shall be made by and under the supervision of the commissioner either in the name of the commissioner or in the name of the licensee, and the commissioner or his successor shall be vested with title to all of the assets including the proceeds of the financial security which has been filed with the commissioner and the proceeds of any and all money paid direct to the claimant or forwarder by any debtor prior to the date of the order. Money paid to the licensee or to the commissioner after the date of the order shall be disposed of by the commissioner.

B. The commissioner for the purpose of collection or liquidation may sell, assign, convey and transfer or approve the sale, assignment, conveyance and transfer of the assets of such collection agency under such terms and conditions as the commissioner may deem best for the best interests of the claimants of such collection agency.

C. The commissioner shall cause notice to be given by advertisement in such

newspapers as he may direct weekly for 4 consecutive weeks after the issue of the order authorizing him to take possession of the assets of the collection agency, calling on all persons who may have claims against such licensee to bring the same to the commissioner and make legal proof thereof at a place and within a time to be therein specified. The commissioner shall mail a similar notice to all persons whose names appear as claimants or forwarders upon the books and records of the licensee or as may appear in the records of the commissioner. Any claimant or forwarder whose portion of the collection or collections has not been properly remitted shall file a claim which shall be allowed for the amount actually due the claimant or forwarder after deduction of commission or fee that may be due and owing the licensee. If the commissioner doubts the justice and validity of any claim, he may reject the same and serve notice of such rejection upon the claimant either by mail or personally. An affidavit of service of such notice which shall be prima facie evidence thereof shall be filed with the commissioner. The claimant may within 30 days after receipt of notice of rejection file a petition in the court in which the proceedings are pending to establish his claim or claims. Claims presented after the expiration of the time fixed in the notice to the claimants or forwarders shall be entitled to receive only liquidating dividends declared after presentation unless otherwise ordered by the court. The court may fix a date after which all claimants may be barred.

D. Whenever the commissioner shall have paid to each and every claimant or forwarder of such collection agency whose claims as such claimant or forwarder have been duly approved and allowed the full amount of such claims and shall have made proper provisions for unclaimed and unpaid collections and shall have paid all the expenses of the liquidation, he shall distribute the remaining assets exclusive of the proceeds of the financial security for the benefit of the general creditors. Any amount remaining after all claimants and forwarders and general creditors have been paid in full shall be turned over to the licensee.

E. All accounts and valuable papers given to the agency by the claimant or forwarders in possession of the commissioner pertaining to accounts placed with the agency for collection shall be returned to the claimant or forwarder by the commissioner within 30 days after verification of the claim has been made.

F. Nothing herein contained shall preclude a creditor of a collection agency from prosecuting any and all legal actions and pursuing any and all remedies afforded him by the laws of this State for collection of debts until such time as the commissioner shall take possession of the collection agency under this section.

§ 582. Rule making power

The commissioner, after giving notice and an opportunity to be heard to all interested parties, may make such reasonable rules and regulations, not inconsistent with this chapter, pertaining to the operation of the business of licensees as he may deem necessary to safeguard the interest of the public. Such rules

and regulations shall be adopted pursuant to the law of this State governing the adoption of administrative rules or regulations by state agencies.'

Sec. 2. Appropriation. There is appropriated from the General Fund to the Department of Banks and Banking the sum of \$2,800 for the fiscal year ending June 30, 1966 and the sum of \$5,414 for the fiscal year ending June 30, 1967 to carry out the purposes of this Act.

The breakdown shall be as follows :

DEPARTMENT, BANKS AND BANKING	1965-66	1966-67
Personal Services	(1) \$2,500	(1) \$4,914
All Other	300	500
	<hr/> \$2,800	<hr/> \$5,414