

HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 112

COLLECTION AGENCIES

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SUBCHAPTER 1

GENERAL PROVISIONS

§16-112-1 Objective. This chapter is intended to clarify and implement chapter 443B, Hawaii Revised Statutes, to the end that the provisions thereunder may be best effectuated and the public interest most effectively served. [Eff 4/22/94] (Auth: HRS §443B-2) (Imp: HRS §443B-2)

§16-112-2 Definitions. Definitions of terms found in section 443B-1, HRS, are incorporated by reference and made a part of this chapter. In addition, the following definitions shall be included:

"Acting under an order of court" means acting at the direction of the court and not merely collecting or attempting to collect a court ordered judgment on behalf of the prevailing party.

"Chattel" means an item of tangible movable or immovable property except real estate and things which are part and parcel of it.

"Direct management and control" means the act by the principal collector of personally conducting or supervising the operations and activities of the collection agency business in this State.

"Immediate access" means retrievable within five business days.

"Indebtedness" means any obligation or alleged obligation of a consumer to pay money or other forms of payment owed to another person.

"Judgment" includes, but is not limited to, damage amounts, liens, garnishments, attachments, child support or alimony imposed by an order of court. [Eff 4/22/94] (Auth: HRS §443B-2) (Imp: HRS §443B-1)

SUBCHAPTER 2

REGISTRATION REQUIREMENTS

§16-112-6 Registration. No collection agency shall collect or attempt to collect any money or other forms of debt in this State without first registering under this chapter. Registration requirements shall include:

- (1) Filing with the director an application for registration on a form prescribed by the director;
- (2) Submitting a certificate of good standing or a certificate of authority from the business registration division of the department of commerce and consumer affairs;

- (3) Filing a bond or bonds with the director in the amount prescribed in section 443B-5, HRS; and
- (4) Paying the appropriate fees. [Eff 4/22/94] (Auth: HRS §443B-2) (Imp: HRS §§ 436B-15, 443B-3, 443B-4, 443B-5)

§16-112-7 Conducting business. Each registrant conducting a collection agency business in this State shall:

- (1) Be registered with the director as prescribed in section 16-112-6;
- (2) Maintain a regular active business office in this State as prescribed in section 16-112-11;
- (3) Designate a principal collector to assume responsibility for the direct management and control of the daily operation of the collection agency's office in this State as prescribed in section 16-112-10; and
- (4) Maintain a separate trust account for clients' funds in a federally insured financial institution as provided for in section 443B-8, HRS. [Eff 4/22/94] (Auth: HRS §443B-2) (Imp: HRS §§443B-1, 443B-3, 443B-6, 443B-8)

§16-112-8 Notification of change. Each collection agency shall notify the director in writing of any material change at any time during the application process or the period of registration. Notification shall be made within ten days of the change. [Eff 4/22/94] (Auth: HRS §443B-2) (Imp: HRS §§443B-4.54)

§16-112-9 Fees. Each agency shall pay the appropriate fees to the department in the amount specified in section 16-53-16.3. Registration shall not be deemed complete until all appropriate fees are paid. If a check is dishonored by a financial institution, fees shall be paid by certified check, money order, cash, or cashier's check. The fees shall be considered unpaid and registration deemed incomplete until one of these accepted forms of payment is received by the department. [Eff 4/22/94] (Auth: HRS §443B-2) (Imp: HRS §§436B-15, 443B-3)

§16-112-10 Principal collector. (a) The principal collector shall be a natural person as defined in section 16-112-11(2) to staff the collection agency office in this State. The principal collector shall be responsible for the direct

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management and control of the daily operation of the collection agency's office in this State and shall:

- (1) Be an employee or agent of the collection agency;
- (2) Have full knowledge of the collection agency's operations;
- (3) Have full knowledge of the collection agency's accounting practices which include the monies belonging to and in custody of the agency in connection with its operation as a collection agency; and
- (4) Have full and immediate access to all books and records, or copies thereof, as will disclose debts, payments, remittances, or other transactions related to the daily operation of the collection agency's business.

(b) No collection agency shall conduct collection agency business until the name, Hawaii address, and telephone number of the principal collector have been provided to the director by the collection agency. [Eff 4/22/94] (Auth: HRS §443B-2) (Imp: HRS §443B-6)

§16-112-11 Regular active business office. A regular active business office shall include the following:

- (1) A physical place, other than a post office box, a drop box, telephone, telephone answering service, or motor vehicle, where business is conducted;
- (2) A natural person to staff the office. The natural person shall be the principal collector who may be either an employee or an agent of the registrant;
- (3) A business telephone number;
- (4) A schedule of operation that states reasonable business hours according to Hawaiian standard time as defined in chapter 1, sections 30 and 31, HRS; and
- (5) Immediate access to such books and records, or copies thereof, as will disclose debts, payments, remittances, or other transactions related to the daily operation of the collection agency's business. [Eff 4/22/94] (Auth: HRS §443B-2) (Imp: HRS §443B-6)

§16-112-12 Biennial renewal. Each agency shall pay the appropriate renewal fee as specified in section 16-53-16.3, by June 30 of each even-numbered year. License renewal shall not be deemed complete until the requirements of section 443B-4.58, HRS, are met. A completed renewal application sent by

United States mail shall be considered timely filed if the envelope bears a postmark on or before the deadline date of June 30 of the even-numbered year. If a check is dishonored by a financial institution, fees shall be paid by certified check, money order, cash, or cashier's check. The fees shall be considered unpaid and registration deemed incomplete until one of the accepted forms of payment is received by the department. [Eff 4/22/94] (Auth: HRS §443B-2) (Imp: HRS §443-4.58)

SUBCHAPTER 3

TRUST ACCOUNTS, FIDUCIARY RESPONSIBILITY, RECORDS, AUDIT

§16-112-15 Maintenance of records of funds and chattels. Each collection agency shall maintain, at its regular active business office in this State, permanent records or have immediate access to permanent records of all of its receipts and disbursements of funds for each customer or copies thereof. Such records shall be kept for a period of at least six years. The records shall clearly indicate the following:

- (1) Date of the receipt of the funds to be held in trust or chattels to be held;
- (2) A description of the type of funds held in trust or chattels held;
- (3) The name of the debtor from whom the funds held in trust or chattels were received;
- (4) The name of the client for whose benefit the funds or chattels are being held;
- (5) The date and to whom the funds or chattels were or will be delivered; and
- (6) Other pertinent information concerning funds and chattels. [Eff 4/22/94] (Auth: HRS §443B-2) (Imp: HRS §443B-8)

§16-112-16 Maintenance of records of accounts assigned to collection agency of indebtedness to be kept by collection agency. (a) Each collection agency shall maintain permanent legible records or have immediate access to permanent legible records of all of the accounts assigned to the agency. The records may be in the form of one or a combination of the following methods:

- (1) A listing sheet;
- (2) An acknowledgment-receipt slip; or
- (3) A master contract or agreement.

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(b) The records for each account shall contain but shall not be limited to the following:

- (1) Client's name and address;
- (2) Debtor's name and address;
- (3) Date of assignment;
- (4) Amount owed by the debtor;
- (5) Date and description of all collection agency transactions; and
- (6) Fee to be charged the client for each account.

(c) The collection agency may dispose of the records of an account, provided that no less than six years have passed since the date of the last transaction. [Eff 4/22/94] (Auth: HRS §443B-2) (Imp: HRS §443B-8)

SUBCHAPTER 4

PRACTICE AND PROCEDURE

§16-112-21 Administrative practice and procedure. The rules of practice and procedure for collection agencies shall be as provided in chapter 16-201, the rules of practice and procedure of the department of commerce and consumer affairs, which are incorporated by reference and made a part of this chapter. [Eff 4/22/94] (Auth: HRS §§91-2, 443B-2) (Imp: HRS §§91-2, 443B-2)

The Department of Commerce and Consumer Affairs adopted Chapter 16-112, Hawaii Administrative Rules, relating to collection agencies, on February 24, 1994, following a public hearing held on the same date, after public notices were given in the Honolulu Advertiser, Kauai Times, Maui News, Hawaii Tribune-Herald, and West-Hawaii Today on January 23, 1994.

These rules shall take effect ten days after filing with the Office of the Lieutenant Governor.

/s/ Clifford K. Higa

CLIFFORD K. HIGA

Director of Commerce and Consumer Affairs

APPROVED AS TO FORM: Date 3/18/94

/s/ Rodney J. Tam

Deputy Attorney General

APPROVED: Date 4/12/94

/s/ John Waihee

JOHN WAIHEE

Governor of Hawaii

April 12, 1994

Filed

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Adoption of Chapter 16-112
Hawaii Administrative Rules

SUMMARY

Chapter 16-112, Hawaii Administrative Rules, entitled "Collection Agencies" is adopted.