

LEGISLATIVE BILL 261

Approved by the Governor March 10, 1993

Introduced by Lindsay, 9; Byars, 30

AN ACT relating to collection agencies; to amend sections 45-601, 45-602, 45-604, 45-605, 45-607 to 45-616, 45-619, 45-622, 71-3205, and 77-377.01, Reissue Revised Statutes of Nebraska, 1943, and sections 45-603, 45-606, 45-620, and 45-621, Revised Statutes Supplement, 1992; to name an act; to define a term; to create the Collection Agency Licensing Board; to change provisions relating to the licensing of collection agencies; to provide powers and duties for the board and eliminate powers and duties of the Secretary of State; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 45-601, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

45-601. Sections 45-601 to 45-622 shall be known and may be cited as the Collection Agency Act.

No person, firm, corporation, or association shall conduct or operate a collection agency or do a collection agency business as defined in ~~sections 45-601 to 45-622~~ the act until he, she, or it shall ~~have~~ has secured a license ~~therefor~~ as provided in ~~such sections~~ the act. Any person, firm, corporation, or association conducting or operating such a collection agency or doing such a collection agency business without ~~such~~ a license shall be guilty of a Class III misdemeanor for each day that such unlawful business is conducted. Any officer or agent of a firm, corporation, or association who ~~shall~~ personally ~~participate~~ participates in any violation of ~~sections 45-601 to 45-622~~ the act shall be guilty of a Class III misdemeanor.

Nothing contained in this section shall be construed to require a regular employee of a collection agency duly licensed as such in this state to procure a collection agency license.

Nothing in the act shall be construed to prohibit a person, firm, corporation, or association regulated as a collection agency in another state and residing in another state from communicating with a debtor in this state.

Sec. 2. That section 45-602, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

45-602. ~~As used in sections 45-601 to 45-622 unless the context otherwise requires~~ For purposes of the Collection Agency Act:

(1) Board shall mean the Collection Agency Licensing Board;

(2) Collection agency shall mean and include:

(a) All persons, firms, corporations, and associations directly or indirectly engaged in soliciting, from more than one person, firm, corporation, or association, claims of any kind owed or due or asserted to be owed or due such solicited person, firm, corporation, or association, and all persons, firms, corporations, and associations directly or indirectly engaged in asserting, enforcing, or prosecuting such claims;

(b) Any person, firm, corporation, or association which, in attempting to collect or in collecting his, her, or its own accounts or claims, uses a fictitious name or any name other than his, her, or its own name which would indicate to the debtor that a third person is collecting or attempting to collect such account or claim; and

(c) Any person, firm, corporation, or association which attempts to or does give away or sell to any person, firm, corporation, or association, other than one licensed under ~~sections 45-601 to 45-622~~ the act, any system or series of letters or forms for use in the collection of accounts or claims which assert or indicate, directly or indirectly, that the claim or account is being asserted or collected by any other person, firm, corporation, or association other than the creditor or owner of the claim or demand; and

(2) (3) Collection agency shall not mean or include (a) regular employees of a single creditor, (b) banks, (c) trust companies, (d) savings and loan associations, (e) building and loan associations, (f) abstract companies doing an escrow business, (g) duly licensed real estate brokers and agents when the claims or accounts being handled by such broker or agent are related to or are in connection with such brokers' or agents' regular real estate business, (h) express and telegraph companies subject to public regulation and supervision, (i) attorneys at law handling claims and collections in their own names and not operating a collection agency under the management of a layperson, (j) any person, firm, corporation, or association handling claims, accounts, or collections under an order or orders of any court, or (k) a person, firm, corporation, or association which, for valuable consideration, purchases accounts, claims, or demands of another and then, in such purchaser's own name, proceeds to assert or collect such accounts, claims, or demands.

Sec. 3. That section 45-603, Revised Statutes Supplement, 1992, be amended to read as follows:

45-603. (1) There is hereby created the Collection Agency Licensing Board which shall consist of the Secretary of State, who shall be chairperson of the board, and four members appointed by the Governor. Three of the members appointed by the Governor shall be licensees actively engaged in the collection business in this state, one of whom shall reside in each of the state's three congressional districts. The remaining member shall be appointed at large as a representative of the public. Such person shall not be a licensee actively engaged in the collection business in this state.

(2) The term of office of each appointed member shall be for four years, except that of the members of the first board appointed

under this section, two shall be appointed for a term of two years. Before a member's term expires, the Governor shall appoint a successor to take office on the expiration of the member's term. A member shall continue to serve after the expiration of his or her term until a successor is appointed and qualified. A vacancy in the office of a member shall be filled by appointment for the unexpired term.

(3) The members of the board shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

(4) The board ~~The Secretary of State~~ may employ such persons as may be necessary to carry out ~~sections 45-601 to 45-622~~ the Collection Agency Act, fix the salaries of such employees, and make such other expenditures as are necessary to properly carry out ~~such sections~~ the act, except that all remuneration, expenses, salaries, and expenditures provided for in ~~such sections~~ the act shall be paid out of the Nebraska Collection Agency Fund. ~~The Secretary of State shall designate, for advice and consultation on such matters as necessary, a person or persons directly or indirectly associated with collection agencies. Such persons shall be reimbursed for actual and necessary expenses from the Nebraska Collection Agency Fund.~~

(5) The Secretary of State shall keep a record of all the proceedings, transactions, communications, and official acts performed pursuant to sections 45-601 to 45-622 the act and perform such other duties as may be necessary to carry out the intent and purpose of the act. ~~such sections. The Secretary of State shall receive a monthly sum from the Nebraska Collection Agency Fund for services rendered in the administration of such sections.~~

Sec. 4. That section 45-604, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

45-604. The ~~Secretary of State~~ board may enact rules and regulations relating to the administration of, but not inconsistent with, ~~the provisions of sections 45-601 to 45-622~~ Collection Agency Act.

Sec. 5. That section 45-605, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

45-605. The ~~Secretary of State~~ board shall be responsible for the administration of ~~sections 45-601 to 45-622~~ the Collection Agency Act. All applications for licenses provided for in ~~such sections~~ the act shall be made to the ~~Secretary of State~~ board. The ~~Secretary of State~~ board shall investigate the qualifications of each applicant for a license. Based on the results of the investigation, the ~~Secretary of State~~ board may either issue a license to the applicant upon the payment of the license fee and the furnishing of the bond provided for in ~~sections 45-601 to 45-622~~ section 45-608 or refuse to issue such license. The action of the ~~Secretary of State~~ board may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

Sec. 6. That section 45-606, Revised Statutes Supplement, 1992, be amended to read as follows:

45-606. Any person, firm, corporation, or association

desiring to engage in this state in the collection business as defined in ~~sections 45-601 to 45-622~~ the Collection Agency Act shall make written and sworn application for a license therefor to the ~~Secretary of State board~~ Secretary of State board upon a form to be prescribed by the ~~Secretary of State board~~ Secretary of State board, which application shall be accompanied by an investigation fee of not to exceed two hundred fifty dollars. The amount of the fee shall be fixed by the ~~Secretary of State board~~ Secretary of State board and shall not exceed the amount actually necessary to sustain the administration and enforcement of ~~such sections~~ the act. Such application shall be accompanied by a duly verified financial statement of the applicant in form prescribed by the ~~Secretary of State board~~ Secretary of State board.

Sec. 7. That section 45-607, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

45-607. (1) The license provided for by ~~sections 45-601 to 45-622~~ section 45-606 shall be granted only to applicants who are trustworthy, who have a good reputation for honesty and fair dealings, who are financially responsible, and who are, in the opinion of the ~~Secretary of State board~~ Secretary of State board, competent to engage in the collection of accounts and claims of others. No license shall be issued to a partnership, corporation, or association unless the manager or executive officer thereof has been engaged in the collection business either as owner, officer, partner, or employee of an established reputable collection agency for a period of at least two years, except that the ~~Secretary of State board~~ Secretary of State board may, if satisfied that the applicant or the manager or executive officer thereof has had sufficient business experience to be fully competent to engage in the collection business without such previous collection experience, approve such application.

(2) No such license shall be issued to any person, firm, corporation, or association who or which is not a resident of this state or does not keep and maintain a regular office in this state in which are kept complete records of collections and claims handled by such person, firm, corporation, or association for creditors residing in this state and against debtors residing in this state, except that a foreign corporation duly authorized, admitted, and licensed to do business in this state may be issued such a license if it complies with all requirements of ~~sections 45-601 to 45-622~~ the Collection Agency Act, nor shall any license be issued to any person, firm, corporation, or association who or which; or the principal officers of which; have, within the past five years, been convicted in any court of fraud or have been convicted of or had judgment entered against them in any court for failure to account to their client or customer for money or property collected by them for such client or customer.

Sec. 8. That section 45-608, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

45-608. No license shall be issued under ~~sections 45-601 to 45-622~~ section 45-607 until the applicant has furnished a good and sufficient corporate surety bond in the sum of fifteen thousand dollars for those agencies or foreign corporations having sixteen or more licensed

solicitors, ten thousand dollars for any agency having five to fifteen licensed solicitors, and five thousand dollars for any agency having less than five solicitors, payable to and approved by the ~~Secretary of State~~ board and conditioned that the licensee shall faithfully and truly perform all agreements entered into with the licensee's clients or customers and shall, within forty-five days after the close of each calendar month, report to and pay to his, her, or its client or customer the net proceeds of all collections made during the preceding calendar month and due to each client or customer, which bond shall be in such form as approved by the ~~Secretary of State~~ board and shall be filed in the office of the Secretary of State. No person shall be required to post a bond in excess of one hundred thousand dollars.

An action may be brought in any court of competent jurisdiction upon such bond by any person to whom the licensee fails to account and pay as set forth in such bond or who has been damaged by failure of the licensee to comply with all agreements entered into with such person, except that the aggregate liability of the surety to all such persons shall, in no event, exceed the sum of such bond.

Sec. 9. That section 45-609, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

45-609. The license provided for in section 45-607 shall be in such form as prescribed by the ~~Secretary of State~~ board. If the licensee maintains a branch office, he, she, or it shall not do a collection agency business in such branch office until he, she, or it has secured a branch office certificate therefor. A licensee, so long as his, her, or its license is in full force and effect and in good standing, shall be entitled to branch office certificates for any branch offices operated by such licensee upon payment of the fee therefor provided in ~~sections 45-601 to 45-622~~ section 45-620. A licensee shall display his, her, or its license in a conspicuous place in his, her, or its principal place of business, and; if he, she, or it conducts a branch office, the branch office certificate shall be conspicuously displayed ~~therein~~ in the branch office.

Sec. 10. That section 45-610, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

45-610. The ~~Secretary of State~~ board shall, upon written application by a licensee and the payment of the fee therefor provided in ~~sections 45-601 to 45-622~~ section 45-620, issue solicitor's certificates to employees of the licensee who solicit or collect accounts, ~~solicitor's certificates~~ which certificates shall be in such form as determined by the ~~Secretary of State~~ board. Such certificates shall entitle the solicitor named ~~therein~~ in the certificate to solicit and handle, for the licensee named ~~therein~~ in the certificate, collection agency business, accounts, and claims. Upon the termination of the employment of the solicitor by the licensee, such certificate shall become null and void and shall be returned by such solicitor to the licensee for cancellation by the ~~Secretary of State~~ board.

Sec. 11. That section 45-611, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

45-611. All licenses and certificates issued under the ~~provisions of sections 45-601 to 45-622~~ Collection Agency Act shall expire on December 31 following the date of issuance unless renewed as provided in this section prior to such date. All branch office certificates and solicitor's certificates shall continue in full force and effect only so long as the license under which they are issued is in full force and effect.

Each licensee shall, if he or she desires to have his or her license renewed, make application to the ~~Secretary of State~~ board for such renewal on or before December 1 of each year and shall, with such application, furnish the bond required by section 45-608 or furnish evidence of the continuation in effect of the prior bond so furnished and pay the renewal fee provided for in ~~sections 45-601 to 45-622~~ section 45-620.

If an application for renewal of a license is denied, the applicant may appeal from such refusal the same as from the refusal to issue an original license.

Upon renewal of a license, the ~~Secretary of State~~ board shall issue to the licensee a new license or a certificate of renewal of the previous license in such form as the ~~Secretary of State shall determine~~ board determines. Upon the renewal of a license, the licensee may, if he, she, or it maintains a branch office, secure a renewal of his, her, or its branch office certificate upon payment of the renewal fee provided for in ~~sections 45-601 to 45-622~~ such section. Such licensee may also secure renewals of his, her, or its solicitor's certificates upon payment of the renewal fee provided for in such ~~sections~~ section.

Sec. 12. That section 45-612, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

45-612. Upon final conviction of any licensee or solicitor by any court in Nebraska of fraud or embezzlement or upon final judgment against such licensee or solicitor in any court in Nebraska for fraud or embezzlement or for failure to account to his, her, or its client or customer within the time provided for in section 45-608; or upon the termination of the bond furnished by the licensee under ~~sections 45-601 to 45-622~~ such section without another sufficient bond being substituted therefor, the ~~Secretary of State~~ board shall forthwith ~~cancel and terminate~~ revoke such license or, in the case of a solicitor, such solicitor's certificate. Such license shall also be ~~cancelled and terminated~~ revoked by the ~~Secretary of State~~ board at any time a licensee fails to maintain a regular office in this state in which are kept complete records of all collections and claims handled and being handled by such licensee or at any time the licensee becomes a nonresident of this state or, in the case of a foreign corporation, is no longer licensed to do business in this state. Such license or solicitor's certificate shall also be ~~cancelled and terminated~~ revoked if after a hearing, as provided in sections ~~45-601 to 45-622~~, the ~~Secretary of State~~ 45-613 and 45-614, the board finds that such license or certificate should be ~~cancelled and terminated~~ revoked.

Sec. 13. That section 45-613, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

45-613. The ~~Secretary of State may, upon his or her~~ board may, upon its own motion, and shall, upon the sworn complaint of any customer or client of a licensee, cite such licensee or solicitor of such licensee to appear before ~~him or her~~ it at a time and place as set forth in such citation; to show cause, if any, ~~there be,~~ why such license or certificate should not be ~~annulled, suspended, or terminated~~ suspended or revoked. Such citation shall be in writing and shall set forth the exact charges against the licensee or solicitor, and a true copy thereof shall be served on such licensee or solicitor at least twenty days prior to the day of hearing in the same manner as summons of the district courts are served, ~~and by an officer authorized to serve such summons.~~ If the citation is against a solicitor, a true copy of the citation shall also be served upon the licensee under whose license the solicitor's certificate has been issued.

Sec. 14. That section 45-614, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

45-614. In the preparation for and the conduct of a hearing held pursuant to section 45-613, the ~~Secretary of State shall have the power to~~ board may issue subpoenas to require the attendance and testimony of witnesses and the production of any pertinent records, papers, books, and documents and may administer oaths, examine witnesses, and take any evidence ~~he or she~~ it deems pertinent to a proper determination of the charge. The party against whom such citation is issued shall have the right to obtain from the Secretary of State subpoenas for witnesses such party may desire to have at such hearing. Depositions may be taken and used at such hearings the same as taken and used in civil actions in the district courts of this state. Witnesses so subpoenaed shall receive the same fees as witnesses in the district courts of this state.

Sec. 15. That section 45-615, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

45-615. After a hearing held pursuant to sections 45-613 and 45-614, the ~~Secretary of State~~ board shall state in writing ~~his or her~~ its findings in the matter. If the ~~Secretary of State~~ board finds that the cited licensee or solicitor has failed to comply with the intent and purposes of ~~sections 45-601 to 45-622~~ the Collection Agency Act or, in the case of a licensee, has failed to account to a customer or client as provided for in section 45-608 or is not financially responsible, ~~he or she may annul or suspend~~ the board may suspend or revoke such license or certificate. A certified copy of the findings of the ~~Secretary of State~~ the board shall be served upon the cited licensee or solicitor by ~~either certified or registered~~ mail within five days of the issuance of such findings.

Sec. 16. That section 45-616, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

45-616. Any refusal to grant a license or solicitor's certificate under ~~sections 45-601 to 45-622~~ the Collection Agency Act or the suspension or revocation of a license or solicitor's certificate may be appealed, and the appeal shall be in accordance with the Administrative

Procedure Act.

Sec. 17. That section 45-619, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

45-619. The ~~Secretary of State~~ board may, at any time, require a licensee to submit ~~to him or her~~ a verified financial statement for examination so that ~~he or she~~ it may determine whether the licensee is financially responsible to carry on a collection agency business within the intents and purposes of ~~sections 45-601 to 45-622~~ the Collection Agency Act. Any financial statement submitted by a licensee shall be confidential and not a public record unless introduced in evidence at a hearing conducted by the ~~Secretary of State~~ board.

Sec. 18. That section 45-620, Revised Statutes Supplement, 1992, be amended to read as follows:

45-620. No license, renewal of license, branch office certificate, or solicitor's certificate, as provided for in ~~sections 45-601 to 45-622~~ the Collection Agency Act, shall be issued by the ~~Secretary of State~~ board until the following fees have been paid to the Secretary of State: For a license, not to exceed two hundred dollars; for renewal of a license, not to exceed one hundred dollars; for a branch office certificate, not to exceed fifty dollars; for renewal of a branch office certificate, not to exceed thirty-five dollars; for a solicitor's certificate and for renewal of a solicitor's certificate, not to exceed ten dollars. The amount of the fees shall be fixed by the ~~Secretary of State~~ board and shall not exceed the amounts actually necessary to sustain the administration and enforcement of ~~such sections~~ the act.

Sec. 19. That section 45-621, Revised Statutes Supplement, 1992, be amended to read as follows:

45-621. All fees collected under ~~sections 45-601 to 45-622~~ shall be transmitted as received to the State Treasurer for deposit in the state treasury to the credit of the Collection Agency Act shall be remitted to the State Treasurer for credit to a special fund to be known as the Nebraska Collection Agency Fund. The ~~Secretary of State~~ board may use the fund as may be necessary for the proper administration and enforcement of ~~such sections~~ the act. The fund shall be paid out only on proper vouchers approved by the ~~Secretary of State~~ board and upon warrants issued by the Director of Administrative Services and countersigned by the State Treasurer as provided by law. All fees and expenses of the Attorney General in representing the ~~Secretary of State~~ board pursuant to ~~sections 45-601 to 45-622~~ the act shall be paid out of such fund. Any money in the Nebraska Collection Agency Fund available for investment shall be invested by the state investment officer pursuant to ~~the provisions of~~ sections 72-1237 to 72-1276.

Sec. 20. That section 45-622, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

45-622. Nothing in ~~sections 45-601 to 45-622~~ the Collection Agency Act shall be construed to authorize or permit the holder of a license or the holder of a solicitor's certificate, as provided for in ~~such sections~~ the act, to engage in the practice of law.

Sec. 21. That section 71-3205, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-3205. Any person desiring to engage in the private detective business in the State of Nebraska and desiring to be licensed under ~~the provisions of~~ sections 71-3201 to 71-3213 shall file with the secretary an application for a license. The secretary shall issue to the person if qualified therefor a nontransferable license to engage in the private detective business as a private detective, as a private detective agency, or as a plain clothes investigator in the State of Nebraska as follows:

(1) If the applicant is an individual, the individual, if the applicant is a corporation, each of its individual officers performing the duties of the president, the secretary, and the treasurer of the corporation and the duties of the manager of the business of the corporation in the State of Nebraska, or if the applicant is any person other than an individual or a corporation, each of the individual partners, members, managers, officers, or other individuals having a right to participate in the management of the applicant's business in the State of Nebraska, before the license may be issued, shall be at least twenty-one years of age, a citizen of the United States, and of good moral character, temperate habits, and good reputation for truth, honesty, and integrity and shall have such experience and competence in the detective business or otherwise as the secretary may determine to be reasonably necessary for the individual to perform the duties of his or her position with the applicant in a manner consistent with the public interest and welfare. No license issued under ~~the provisions of~~ sections 71-3201 to 71-3213 shall be issued or renewed to any person who in any manner engages in the business of debt collection in the State of Nebraska as licensee or employee of a licensee as provided in ~~sections 45-601 to 45-622~~ the Collection Agency Act. If any collection agency, or any person in the employ of such agency with knowledge of the owner or operator of such agency, engages in the business of a private detective or represents to others that he or she is engaged in such business, it shall be cause for suspension or revocation of such agency's license as a collection agency. Prior to the issuance of the license, the secretary shall notify the Nebraska State Patrol, and the ~~State Patrol~~ patrol shall investigate the character and reputation of the applicant respecting his or her fitness to engage in the business of a private detective. Upon completion of the investigation, the ~~State Patrol~~ patrol shall notify the secretary of the results of the investigation within ninety days after the date of the application. The license shall be issued by the secretary unless he or she has received within ninety days after the application is made for the license a report of investigation from the ~~State Patrol~~ patrol stating that the applicant is not of the proper character and reputation to engage in the business of a private detective; and

(2) The applications shall be made on a suitable form prescribed by the secretary, shall be accompanied when filed by an application fee of fifty dollars for a license for a private detective, one hundred dollars for a license for a private detective agency, or twenty-five

dollars for a license for a plain clothes investigator, shall be signed and verified by each individual connected with the applicant to whom the requirements of subdivision (1) of this section apply, and may contain such information, including specimens of fingerprints, as may be required by the secretary.

Sec. 22. That section 77-377.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-377.01. The Tax Commissioner may, for the purposes of collecting delinquent taxes due from a taxpayer not residing or domiciled in this state; and in addition to exercising those powers in section 77-27,107, contract with any collection agency licensed pursuant to ~~sections 45-601 to 45-622~~ the Collection Agency Act, within or without the state, for the collection of such delinquent taxes, including penalties and interest thereon. Such delinquent tax claims may be assigned to the collection agency, for the purpose of litigation in the agency's name and at the agency's expense, as a means of facilitating and expediting the collection process.

For purposes of this section, a delinquent tax claim shall be defined as a tax liability that is due and owing for a period longer than six months and for which the taxpayer has been given at least three notices requesting payment, one of which shall have been sent by certified or registered mail. The notice sent by certified or registered mail shall include a statement that the matter of such taxpayer's delinquency may be referred to a collection agency in the taxpayer's home state.

Sec. 23. That original sections 45-601, 45-602, 45-604, 45-605, 45-607 to 45-616, 45-619, 45-622, 71-3205, and 77-377.01, Reissue Revised Statutes of Nebraska, 1943, and sections 45-603, 45-606, 45-620, and 45-621, Revised Statutes Supplement, 1992, are repealed.