

LEGISLATIVE BILL 471

Approved by the Governor April 11, 1984

Introduced by Warner; 25, Kilgarin, 7; Wagner, 41;
Goodrich, 20; L. Johnson, 15; Kahle, 37;
Marsh, 29; Morehead, 30; H. Peterson, 35

AN ACT relating to collection agencies; to amend sections 81-8,158, 81-8,159, 81-8,162, and 81-8,165 to 81-8,183, Reissue Revised Statutes of Nebraska, 1943; to eliminate the Nebraska Collection Agency Board and to transfer the powers and duties of such board to the Secretary of State; to change a bond requirement; to harmonize provisions; to provide an operative date; to repeal the original sections, and also sections 81-8,160, 81-8,161, 81-8,163, and 81-8,164, Reissue Revised Statutes of Nebraska, 1943; and to declare an emergency.

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

Section 1. That section 81-8,158, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~81-8,158.~~ No person, firm, corporation, or association shall conduct or operate a collection agency or do a collection-agency business as defined in sections ~~81-8,158 to 81-8,183~~ 1 to 22 of this act until he, she, or it shall have secured a license therefor as provided in such sections. ~~81-8,158 to 81-8,183.~~ Any person, firm, corporation, or association conducting or operating such a collection agency or doing such a collection-agency business without such 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 in any violation of sections ~~81-8,158 to 81-8,183~~ 1 to 22 of this 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.

Sec. 2. That section 81-8,159, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~81-8,159.~~ As used in sections ~~81-8,158 to 81-8,183~~ 1 to 22 of this act unless the context otherwise requires:

(1) Collection agency shall mean and include:

(a) All ~~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 ~~(2)~~ Collection agency shall include 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 ~~(3)~~ Collection agency shall include 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 ~~81-8-158 to 81-8-183~~ 1 to 22 of this 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) ~~(4)~~ 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 layman 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 81-8,162, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~81-8,162.~~ The office of the board shall be in the State Capitol or some other state office building in Lincoln and shall be under the direction of the Secretary of State. The board Secretary of State may employ such persons as may be necessary to carry out the provisions of sections 81-8-158 to 81-8-183 1 to 22 of this act, fix the salaries of all such employees, of the board, and make such

other expenditures as are necessary to properly carry out the provisions of such sections, ~~81-8,158 to 81-8,183~~, except that all remuneration, expenses, salaries, and expenditures provided for in such sections ~~81-8,158 to 81-8,183~~ 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. The Secretary of State shall keep a record of all of the proceedings, transactions, communications, and official acts performed pursuant to sections 1 to 22 of this act of the board, be custodian of all the records of the board and perform such other duties as may be necessary to carry out the intent and purpose of such sections. ~~81-8,158 to 81-8,183~~. The board and the Secretary of State may agree upon a monthly sum to be paid shall receive a monthly sum from the Nebraska Collection Agency Fund to the Secretary of State for services rendered by the Secretary of State in the administration of such sections. ~~81-8,158 to 81-8,183~~. 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 ~~72-1259~~ 72-1269.

Sec. 4. That section 81-8,165, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~81-8,165~~. The board Secretary of State may enact rules and regulations relating to the administration of, but not inconsistent with, the provisions of sections ~~81-8,158 to 81-8,183~~ 1 to 22 of this act.

Sec. 5. That section 81-8,166, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~81-8,166~~. The Secretary of State shall be responsible for the administration of the provisions of sections ~~81-8,158 to 81-8,183~~ 1 to 22 of this act. It shall be the duty of the board to advise with and assist the Secretary of State in the administration of the provisions of sections ~~81-8,158 to 81-8,183~~. All applications for licenses provided for in such sections ~~81-8,158 to 81-8,183~~ shall be made to the Secretary of State, who shall refer them to the board for investigation and recommendation. The board Secretary of State shall, after investigating investigate the qualifications of each applicant for a license, recommend to the Secretary of State whether such license should or should not be granted. if the recommendation of the board is unfavorable, the Secretary of State shall Based on the results of the investigation, the Secretary of State may either refuse to issue a license to the applicant but, if the recommendation is favorable, the Secretary of State shall issue a license to the applicant upon the payment of the license fee and the furnishing of the bond provided for in sections

81-8,158 to 81-8,183 1 to 22 of this act or refuse to issue such license. Any applicant who is refused a license under such sections 81-8,158 to 81-8,183 may appeal from such refusal to the district court of Lancaster County or the district court of the county in which such applicant, in his, her, or its application, states his, her, or its principal place of business in the state is to be located.

Sec. 6. That section 81-8,167, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-8,167. Any person, firm, corporation, or association desiring to engage in this state in the collection business as defined in sections 81-8,158 to 81-8,183 1 or 22 of this act shall make written and sworn application for a license therefor to the Secretary of State upon a form to be prescribed by the ~~board~~ and Secretary of State, which application shall be accompanied by an investigation fee of one hundred dollars. Such application shall be accompanied by a duly verified financial statement of the applicant in a form prescribed by the ~~board~~ and Secretary of State.

Sec. 7. That section 81-8,168, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~81-8,168-~~ (1) The license provided for by sections 81-8,158 to 81-8,183 1 to 22 of this act shall be granted only to applicants who are trustworthy, have a good reputation for honesty and fair dealings, who are financially responsible, and who are, in the opinion of the ~~board~~ Secretary of State, 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 ; ~~PROVIDED,~~ the ~~board~~ Secretary of State 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 81-8,158 to 81-8,183 1 to 22 of this 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.

(3) ~~Any person, firm, corporation or association doing a collection agency business on October 19, 1963 shall, upon the payment of the fees and furnishing the bond provided for in sections 81-8,158 to 81-8,183, be issued a collection agency license as provided for in sections 81-8,158 to 81-8,183.~~

Sec. 8. That section 81-8,169, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~81-8,169.~~ No license shall be issued under sections ~~81-8,158 to 81-8,183~~ 1 to 22 of this act until the applicant has furnished a good and sufficient corporate surety bond in the sum of two thousand dollars 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 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 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 ; ~~PROVIDED,~~ 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 81-8,170, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~81-8,170:~~ The license provided for in section ~~81-8,168~~ 7 of this act shall be in such form as prescribed by the ~~board~~ Secretary of State. 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 ~~81-8,158 to 81-8,183~~ 1 to 22 of this act. 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.

Sec. 10. That section 81-8,171, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~81-8,171-~~ The Secretary of State shall, upon written application by a licensee and the payment of the fee therefor provided in sections ~~81-8,158 to 81-8,183~~ 1 to 22 of this act, issue to employees of the licensee, solicitor's certificates which shall be in such form as determined by the ~~board~~ Secretary of State. Such certificates shall entitle the solicitor named therein to solicit and handle for the licensee named therein, 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.

Sec. 11. That section 81-8,172, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~81-8,172-~~ All licenses and certificates issued under the provisions of sections ~~81-8,158 to 81-8,183~~ 1 to 22 of this 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 for such renewal on or before December 1 of each year and shall, with such application, furnish the bond required by section ~~81-8,169~~ 8 of this act or furnish evidence of the continuation in effect of the prior bond so furnished and pay the renewal fee provided for in sections ~~81-8,158 to 81-8,183~~ 1 to 22 of this act. ~~Such licenses shall be renewed by the Secretary of State unless the board recommends to the Secretary of State that such application for renewal be denied.~~ 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 shall issue to the licensee a new license or a certificate of renewal of the previous license as shall be determined by the ~~board~~ and in such form as the ~~board~~ Secretary of State shall determine. 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 ~~81-8,158 to 81-8,183~~ 1 to 22 of this act. 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. 81-8,158 to 81-8,183.

Sec. 12. That section 81-8,173, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~81-8,173.~~ 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 81-8,169 8 of this act, or upon the termination of the bond furnished by the licensee under sections ~~81-8,158 to 81-8,183~~ 1 to 22 of this act without another sufficient bond being substituted therefor, the Secretary of State shall forthwith cancel and terminate such license or, in the case of a solicitor, such solicitor's certificate. Such license shall also be canceled and terminated by the Secretary of State 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 canceled and terminated if after a hearing, as provided in sections ~~81-8,158 to 81-8,183~~ 1 to 22 of this act, the ~~board recommends to the~~ Secretary of State finds that such license or certificate should be canceled and terminated.

Sec. 13. That section 81-8,174, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~81-8,174.~~ The ~~board~~ Secretary of State may, upon ~~its~~ his or her 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 ~~it~~ him or her 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 canceled, suspended, or terminated. 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 81-8,175, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~81-8,175.~~ In the preparation for and the conduct of ~~such hearings~~ a hearing held pursuant to section

13 of this act, the board Secretary of State shall have the power to 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 ~~if~~ he or she 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 board 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 81-8,176, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~81-8,176-~~ After such a hearing held pursuant to sections 13 and 14 of this act, the board Secretary of State shall state in writing, signed by the members of the board concurring therein, its his or her findings and recommendations to the Secretary of State in the matter. If the board Secretary of State finds that the cited licensee or solicitor has failed to comply with the intent and purposes of sections ~~81-8,158 to 81-8,183~~ 1 to 22 of this act or, in the case of a licensee, has failed to account to a customer or client as provided for in section ~~81-8,169~~ 8 of this act or is not financially responsible, the Secretary of State he or she may shall cancel or suspend such license or certificate. A certified copy of the findings of the board Secretary of State shall be served upon the cited licensee or solicitor by either certified or registered mail within five days of the finding issuance of such findings. by the board-

Sec. 16. That section 81-8,177, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~81-8,177-~~ Any refusal to grant a license or solicitor's certificate under the provisions of sections ~~81-8,158 to 81-8,183~~ 1 to 22 of this act or the revocation of a license or solicitor's certificate may be reversed, vacated, or modified by the district court of the county where the applicant for a license or certificate or a licensee or certificate holder resides or has his, her, or its principal place of business in the state. The procedure to obtain such reversal, vacation, or modification shall be by the filing with the Secretary of State of a notice of intention to appeal, followed by the filing of a petition in the district court setting forth the contentions upon which such party relies for such reversal, vacation, or modification. Such notice of intention to appeal shall be filed with the Secretary of State within twenty days following the mailing of a copy of the finding ~~of the board~~ as required by section ~~81-8,176~~ 15 of this act. The petition shall be filed in the district

court within ten days of the filing of such notice of appeal. It shall be unnecessary to issue or serve a summons upon the filing of the petition referred to in this section. It shall be deemed to be sufficient notice of the filing of such petition if a copy thereof is filed with the Secretary of State. The time for answering or otherwise pleading to such petition shall be as in other cases in the district court. Upon the filing of a notice of intention to appeal with the Secretary of State as provided in this section, the Secretary of State shall prepare and deliver to the appellant on request a transcript of the proceedings and a transcript of the testimony and evidence ~~before the board offered at the hearing~~, which transcript of the proceedings shall contain (1) a copy of the application for license or certificate, (2) a copy of the findings ~~and recommendation of the board of the Secretary of State~~, and (3) a copy of the order of the Secretary of State refusing to grant the license or certificate or canceling the license or certificate, as the case may be. Such transcript shall be filed in the district court of the proper county as designated in this section with the petition, if received by the appellant within the time permitted for the filing of the petition, or if not, as soon thereafter as the same may be received from the Secretary of State. The jurisdiction of the district court shall attach when the petition on appeal has been filed and shall not depend upon the filing of the transcript. The appeal provided for in this section shall be heard and tried de novo in the district court in the manner provided for the trial of suits in equity. Additional testimony may be introduced at the hearing on appeal. The appellant shall deposit with the Secretary of State the costs of the transcript of the proceedings and the transcript of the testimony and evidence ~~before the board~~ and the Secretary of State when requesting the same.

Sec. 17. That section 81-8,178, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~81-8,178-~~ Pending final determination of an appeal as provided in section ~~81-8,177~~ 16 of this act, the holder of a license or the holder of a solicitor's certificate shall be permitted to do business as a collection agency or as a collection agency solicitor the same as though such license or certificate was in full force and effect.

Sec. 18. That section 81-8,179, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~81-8,179-~~ ~~Should~~ If a licensed collection agency or its branch office ~~change~~ changes the location of its place of business, the licensee shall forthwith notify the Secretary of State of such change and the Secretary of State shall thereupon issue a new license or branch office certificate, as the case may be, setting forth the new address. If the employment, by a licensee, of a solicitor

holding a certificate is terminated, such certificate shall be forthwith turned over to the licensee by such solicitor and the licensee shall forthwith turn such certificate over to the Secretary of State for cancellation.

Sec. 19. That section 81-8,180, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~81-8,180-~~ The ~~board~~ Secretary of State may, at any time, require a licensee to submit to ~~it~~ him or her a verified financial statement for the examination of the ~~board~~ so that ~~it~~ he or she may determine whether the licensee is financially responsible to carry on a collection-agency business within the intents and purposes of sections ~~81-8,158 to 81-8,183~~ 1 to 22 of this act. Any financial statement submitted by a licensee shall be confidential and not a public record unless introduced in evidence ~~on~~ at a hearing conducted by the ~~board~~ Secretary of State.

Sec. 20. That section 81-8,181, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~81-8,181-~~ No license, renewal of license, branch office certificate, or solicitor's certificate, as provided for in sections ~~81-8,158 to 81-8,183~~ 1 to 22 of this act, shall be issued by the Secretary of State until the following fees have been paid to the Secretary of State: For a license, one hundred dollars; for renewal of a license, fifty dollars; for a branch office certificate, thirty-five dollars; for renewal of a branch office certificate, twenty-five dollars; for a solicitor's certificate, three dollars; and for renewal of a solicitor's certificate, three dollars.

Sec. 21. That section 81-8,182, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~81-8,182-~~ All fees collected under sections ~~81-8,158 to 81-8,183~~ 1 to 22 of this act shall be transmitted as received to the State Treasurer for deposit in the state treasury to the credit of a special fund to be known as the Nebraska Collection Agency Fund. The ~~board~~ Secretary of State may use such part of ~~said~~ the fund as may be necessary for the proper administration and enforcement of such sections. ~~81-8,158 to 81-8,183-~~ The fund shall be paid out only on proper vouchers approved by the ~~chairman~~ of the ~~board~~ Secretary of State and upon warrants issued by the Director of Administrative Services and countersigned by the State Treasurer as provided by law. The expenses of conducting ~~said board,~~ its office, and the business thereof shall be kept within the income collected and deposited with the State Treasurer by such ~~board~~ and such ~~board,~~ its office and business and the expenses thereof shall not be supported or paid from any other state fund. All fees and expenses of the Attorney General in representing the ~~board~~ Secretary of State pursuant to sections 1 to 22 of this 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 ~~72-1259~~ 72-1269.

Sec. 22. That section 81-8,183, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~81-8,183:~~ Nothing in sections ~~81-8,158 to 81-8,183~~ 1 to 22 of this 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, ~~81-8,158 to 81-8,183~~, to engage in the practice of law.

Sec. 23. This act shall become operative on July 1, 1984.

Sec. 24. That original sections 81-8,158, 81-8,159, 81-8,162, and 81-8,165 to 81-8,183, Reissue Revised Statutes of Nebraska, 1943, and also sections 81-8,160, 81-8,161, 81-8,163, and 81-8,164, Reissue Revised Statutes of Nebraska, 1943, are repealed.

Sec. 25. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.