

IN THE SENATE

SENATE BILL NO. 1014

BY COMMERCE AND HUMAN RESOURCES COMMITTEE

AN ACT

1 RELATING TO COLLECTION AGENCIES; AMENDING SECTION 26-2222, IDAHO CODE,
2 TO DEFINE A TERM AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION
3 26-2223A, IDAHO CODE, TO REMOVE A PROVISION REGARDING DESIGNATION OF
4 A RESPONSIBLE PERSON; AMENDING SECTION 26-2224, IDAHO CODE, TO REVISE
5 A PROVISION REGARDING A LICENSE APPLICATION, TO REMOVE A CERTAIN RE-
6 QUIREMENT FOR A LICENSE APPLICATION, TO REVISE THE APPLICATION FEE,
7 TO PROVIDE THAT CERTAIN APPLICATIONS SHALL BE DEEMED WITHDRAWN AND
8 VOID, AND TO PROVIDE FOR A WRITTEN DEFICIENCY NOTICE; AMENDING SECTION
9 26-2227, IDAHO CODE, TO REMOVE A PROVISION REGARDING DENIAL, SUSPEN-
10 SION, OR REVOCATION OF A LICENSE AND TO MAKE A TECHNICAL CORRECTION;
11 AMENDING SECTION 26-2229A, IDAHO CODE, TO PROVIDE THAT CERTAIN PRAC-
12 TICES SHALL BE PROHIBITED AND TO MAKE TECHNICAL CORRECTIONS; AMENDING
13 SECTION 26-2230, IDAHO CODE, TO PROVIDE FOR A FEE FOR REGISTRATION OF
14 A BRANCH LOCATION; AMENDING SECTION 26-2231, IDAHO CODE, TO PROVIDE
15 FOR RENEWAL OF REGISTRATION, TO REVISE PROVISIONS REGARDING RENEWAL,
16 TO PROVIDE FOR EXPIRATION OF A LICENSE OR REGISTRATION IN CERTAIN IN-
17 STANCES, AND TO PROVIDE FOR REINSTATEMENT OF A LICENSE OR REGISTRATION
18 IN CERTAIN INSTANCES; AMENDING SECTION 26-2240, IDAHO CODE, TO REMOVE
19 PROVISIONS REGARDING AN AGENT LIST AND AN AGENT FEE AND TO MAKE A TECH-
20 NICAL CORRECTION; AND AMENDING SECTION 26-2246, IDAHO CODE, TO PROVIDE
21 FOR A REGISTERED BRANCH LOCATION AND TO MAKE TECHNICAL CORRECTIONS.
22

23 Be It Enacted by the Legislature of the State of Idaho:

24 SECTION 1. That Section 26-2222, Idaho Code, be, and the same is hereby
25 amended to read as follows:

26 26-2222. DEFINITIONS. As used in this act:

27 (1) "Agent" means any person who, for compensation or gain, or in the
28 expectation of compensation or gain, contacts persons in Idaho in connection
29 with the business activities of a licensee or person required to be licensed
30 under this act.

31 (2) "Business funds" means all moneys belonging to or due a licensee or
32 person required to be licensed in connection with the business activities
33 authorized under this act.

34 (3) "Collection activities" means the activities enumerated in subsec-
35 tions (2) through (6) of section 26-2223, Idaho Code.

36 (4) "Collection agency" means a person who engages in any of the activ-
37 ities enumerated in subsections (2) through (6) of section 26-2223, Idaho
38 Code.

39 (5) "Credit repair organization" means any person engaged in any of the
40 activities enumerated in subsection (8) of section 26-2223, Idaho Code. A
41 credit repair organization does not include:

1 (a) A consumer reporting agency, as defined in 15 U.S.C. ~~section~~
 2 1681a(f), that provides consumer reports based on information fur-
 3 nished by creditors or any affiliate or subsidiary of such consumer
 4 reporting agency as defined by rule promulgated by the director;

5 (b) A person who has an ongoing contractual arrangement with a consumer
 6 reporting agency, as described in ~~subsection (5) paragraph~~ (a) of this
 7 subsection, to obtain consumer reports from a consumer reporting agency
 8 for the purposes of:

9 (i) Reselling such report, or any information contained in or de-
 10 rived from such report, to a consumer; or

11 (ii) Monitoring information in such report on behalf of a con-
 12 sumer; or

13 (c) A person to the extent that such person advertises, markets,
 14 provides or facilitates consumer access to the products or services
 15 offered or provided by:

16 (i) An entity described in ~~subsection (5) paragraph~~ (a) of this
 17 subsection; or

18 (ii) A person described in ~~subsection (5) paragraph~~ (b) of this
 19 subsection.

20 (6) "Creditor" means any person who offers or extends credit creating a
 21 debt or to whom a debt is owed.

22 (7) "Creditor client" means any person who transfers or assigns to a
 23 collection agency licensee or person required to be so licensed under this
 24 act, any account, bill, claim or other indebtedness for collection purposes.

25 (8) "Creditor funds" means all funds due and owing a creditor by a li-
 26 censee or person required to be licensed under this act.

27 (9) "Debt counselor" or "credit counselor" means any person engaged in
 28 any of the activities enumerated in subsection (7) of section 26-2223, Idaho
 29 Code.

30 (10) "Department" means the Idaho department of finance.

31 (11) "Director" means the director of the Idaho department of finance.

32 (12) "Licensee" means a person who has obtained a license under this
 33 act.

34 (13) "Nationwide multistate licensing system and registry" or "NMLS"
 35 means a licensing system for all entities required to be licensed under this
 36 chapter developed and maintained by the conference of state bank supervisors
 37 and the American association of residential mortgage regulators.

38 (14) "Net collections" means all funds that are due to creditors from
 39 the licensee pursuant to the contract between the licensee and creditor, or
 40 licensee and debtor without taking into account any offset or funds due from
 41 the creditor to the licensee, because of the creditor having collected any
 42 part of the account due, plus all funds that the licensee agreed to return to
 43 debtors or that were not to be applied to debts.

44 (145) "Person" means any individual, corporation, association, part-
 45 nership, limited liability partnership, trust, company, limited liability
 46 company, or unincorporated association.

47 SECTION 2. That Section 26-2223A, Idaho Code, be, and the same is hereby
 48 amended to read as follows:

1 26-2223A. COLLECTION AGENCY OFFICE REQUIREMENTS ~~--- DESIGNATION OF RE-~~
 2 ~~SPONSIBLE PERSON.~~ (1) Each licensee shall maintain a home office licensed
 3 under this act as the licensee's principal location for collection activi-
 4 ties. Each licensee must maintain a listed telephone number and must be open
 5 to the public during normal business hours on each business day, provided,
 6 however, that the director may in his discretion approve a request for open-
 7 ing during hours other than normal business hours or a portion of a business
 8 day. A business day within the meaning of this section does not include Sat-
 9 urdays, Sundays, or legal holidays.

10 ~~(2) Each licensee shall designate a natural person, who meets the ex-~~
 11 ~~perience requirement of section 26-2224(6), Idaho Code, to be responsible~~
 12 ~~for the collection activities carried on at each office of the licensee. If~~
 13 ~~the person designated by the licensee for such purpose is not normally avail-~~
 14 ~~able at the licensee's designated location, then the licensee's collection~~
 15 ~~activities in Idaho must begin with a written notice to each debtor setting~~
 16 ~~forth a mailing address and a toll-free telephone number whereby a debtor may~~
 17 ~~contact the designated responsible person during normal business hours.~~

18 SECTION 3. That Section 26-2224, Idaho Code, be, and the same is hereby
 19 amended to read as follows:

20 26-2224. LICENSE APPLICATION. (1) Every applicant for a license un-
 21 der this act shall file ~~with the director~~ an application ~~in a form~~ through an
 22 electronic system of licensing as prescribed by the director that shall in-
 23 clude:

24 (1a) The name of the applicant; if the applicant is a corporation, a
 25 list of its officers and directors and their addresses; if the applicant
 26 is a partnership, a list of the partners and their addresses; or if the
 27 applicant is a limited liability company, a list of its members or man-
 28 agers and their addresses.

29 (2b) The street address of the applicant's principal location.

30 (3c) All names by which the applicant engages in collection activities.

31 (4d) The names of all persons and organizations with which the appli-
 32 cant is affiliated, and the location of the principal office or place of
 33 business of each such affiliate.

34 (5e) A complete description of the business to be conducted, or plan of
 35 operation contemplated, by the applicant in this state.

36 ~~(6) The name, address and qualifications of a natural person possess-~~
 37 ~~ing a minimum of three (3) years of experience related to the business to be~~
 38 ~~conducted under this act who will supervise the applicant's office locations~~
 39 ~~from which business activities in this state will be conducted.~~

40 (7f) Copies of all contracts, forms, form letters, and advertisements
 41 or solicitations to be used by the applicant in its business activities
 42 under this act, which must accompany the application and be identified
 43 as exhibits by number.

44 (8g) If the applicant is a corporation, a limited liability company,
 45 partnership, or limited liability partnership, a copy of its articles
 46 of incorporation, articles of organization, partnership agreement, or
 47 operating agreement, duly authenticated.

1 (9h) A list of the names, business addresses and telephone numbers of
 2 all agents who will contact persons or solicit business for the appli-
 3 cant in this state.

4 (10i) The name and business address of the applicant's agent for ser-
 5 vice of process located in this state.

6 (11j) A nonrefundable application fee of ~~one~~ three hundred fifty dol-
 7 lars (\$~~1~~350).

8 (12k) An agreement of consent authorizing the director to examine any
 9 and all of the applicant's financial accounts used for business activi-
 10 ties under this act.

11 (13l) Such other information concerning the applicant as the director
 12 may reasonably require. Such application shall be executed and veri-
 13 fied on oath by the applicant. Information required at the time of ap-
 14 plication, except for advertisements and solicitations, shall be up-
 15 dated and filed with the director as necessary to keep the information
 16 current.

17 (2) A license application shall be deemed withdrawn and void if an ap-
 18 plicant submits an incomplete license application and, after receipt of a
 19 written notice of the application deficiency, fails to provide the direc-
 20 tor with information necessary to complete the application within sixty (60)
 21 days of receipt of the deficiency notice. A written deficiency notice shall
 22 be deemed received by a license applicant when:

23 (a) Placed in regular U.S. mail by the director or his agent using an
 24 address provided by the applicant on the license application;

25 (b) E-mailed to the applicant using an e-mail address provided by the
 26 applicant on the license application; or

27 (c) Posted by the director or his agent on the NMLS.

28 SECTION 4. That Section 26-2227, Idaho Code, be, and the same is hereby
 29 amended to read as follows:

30 26-2227. DENIAL, SUSPENSION OR REVOCATION OF LICENSE. (1) An applica-
 31 tion for a license may be denied or, after notice and the opportunity for a
 32 hearing, a license may be suspended or revoked by the director if he finds
 33 that facts or conditions exist ~~which that~~ which would have justified the director
 34 in refusing to grant a license had such facts or conditions been known to ex-
 35 ist at the time the license was issued, or that the licensee or the applicant,
 36 or any officer, member, owner, manager or agent of a licensee or applicant:

37 (a) Has violated any provision of this act, the federal fair debt col-
 38 lection practices act, 15 U.S.C. 1692 et seq., as amended, or any rule or
 39 order of the director under this act;

40 (b) Is not legally qualified to do business in this state;

41 (c) ~~Has failed to retain a natural person with three (3) years of ex-~~
 42 ~~perience related to the type of business conducted by the licensee un-~~
 43 ~~der this act to supervise each office from which business activities are~~
 44 ~~conducted under this act;~~

45 (d) Has failed, refused or neglected to pay or remit to any creditor
 46 client the agreed portion of any sum collected by the applicant or li-
 47 censee on any bill, claim, account or other indebtedness entrusted to
 48 such applicant or licensee for collection;

1 (ed) Has failed to return to a debtor an amount that was not owed on his
2 debt;

3 (~~fe~~) Has made a material misstatement in the application for such li-
4 cense or renewal;

5 (~~gf~~) Has obtained or attempted to obtain a license or renewal by fraud
6 or misrepresentation;

7 (~~hg~~) Has misappropriated or converted to his own use or improperly
8 withheld moneys collected or held for any other person, except that a
9 collection agency licensee may convert into business funds his portion
10 of any moneys collected on behalf of a creditor client, pursuant to a
11 written agreement with the creditor client and in compliance with this
12 act;

13 (~~ih~~) Has falsely represented himself as a licensee for the purpose of
14 soliciting for or representing any business covered in this act;

15 (~~ji~~) Has been convicted of, or a court of competent jurisdiction has en-
16 tered a withheld judgment for, a crime that is deemed relevant in accor-
17 dance with section 67-9411(1), Idaho Code, including a crime involving
18 financial wrongdoing;

19 (~~kj~~) Has had a license substantially equivalent to a license under this
20 act issued by another state revoked, suspended or denied; or

21 (~~lk~~) Demonstrates a lack of fitness to engage in business activities
22 authorized for a licensee under this act.

23 (2) The director may, after notice and the opportunity for a hearing,
24 impose upon any licensee, or person required to be licensed under this act, a
25 civil penalty of not more than five thousand dollars (\$5,000) for each viola-
26 tion of this act.

27 (3) The director may, after notice and the opportunity for a hearing,
28 impose upon a licensee, or person required to be licensed under this act, any
29 sanction authorized by this section if the director finds that an agent of
30 the licensee, or person required to be licensed under this act, has violated
31 any provision of this act.

32 (4) The director may, in his discretion and by an order issued in ac-
33 cordance with chapter 52, title 67, Idaho Code, prohibit a licensee from us-
34 ing an individual as an agent if the individual has violated any provision of
35 this act, or any similar statute or rule of another state.

36 (5) Any denial, suspension or revocation of any license issued under
37 this act shall be governed by chapter 52, title 67, Idaho Code.

38 SECTION 5. That Section 26-2229A, Idaho Code, be, and the same is hereby
39 amended to read as follows:

40 26-2229A. REQUIREMENT OF FAIR, OPEN AND HONEST DEALING -- PROHIBITED
41 PRACTICES. (1) Every licensee or person required to be licensed under this
42 act and its agents shall deal openly, fairly, and honestly without deception
43 in the conduct of its business activities in this state under this act.

44 (2) When not inconsistent with the statutes of this state, the provi-
45 sions of the federal fair debt collection practices act, 15 U.S.C. ~~section~~
46 1692, et seq., as amended, may be enforced by the director against collection
47 agencies licensed or required to be licensed under the provisions of this
48 act.

1 (3) In every instance where a collection agency licensee has a manage-
 2 rial or financial interest in a creditor client, or where a creditor client
 3 has a managerial or financial interest in a collection agency licensee, dis-
 4 closure of such interest must be made on each and every contact with a debtor
 5 in seeking to make a collection of any account, claim, or other indebtedness.

6 (4) No collection agency licensee, or collection agency required to be
 7 licensed under this act, or agent of such collection agency shall collect or
 8 attempt to collect any interest or other charges, fees, or expenses inci-
 9 dental to the principal obligation unless such interest or incidental fees,
 10 charges, or expenses:

11 (a) Are expressly authorized by statute;

12 (b) Are allowed by court ruling against the debtor;

13 (c) Are expressly authorized by the agreement creating the debt, ex-
 14 cept as otherwise prohibited by law. Provided, however, that no person
 15 licensed or required to be licensed under this chapter, or his agents,
 16 shall collect, attempt to collect, or threaten to collect or assess any
 17 attorney's fees or litigation costs:

18 (i) Prior to obtaining a judgment on an account, unless such at-
 19 torney's fees or litigation costs are reasonable and for actual
 20 attorney services performed as prescribed by the director in rule
 21 and are limited to those costs actually incurred and allowed as a
 22 matter of right pursuant to rule 54 of the Idaho rules of civil pro-
 23 cedure; or

24 (ii) Upon obtaining a judgment, unless such attorney's fees and
 25 litigation costs have been awarded by a court of competent juris-
 26 isdiction in accordance with applicable court rules and statutes
 27 governing the award of attorney's fees and litigation costs;

28 (d) Have been judicially determined;

29 (de) Are provided for in a written form agreement, signed by both the
 30 debtor and the licensee, and which has the prior approval of the direc-
 31 tor with respect to the terms of the agreement and amounts of the fees,
 32 interest, charges and expenses; or

33 (ef) Reasonably relate to the actual cost associated with processing a
 34 demand draft or other form of electronic payment on behalf of a debtor
 35 for a debt payment, provided that the debtor has preauthorized the
 36 method of payment and has been notified in advance that such payment may
 37 be made by reasonable alternative means that will not result in addi-
 38 tional charges, fees or expenses to the debtor.

39 (5) No person shall sell, distribute or make use of solicitations, col-
 40 lection letters, demand forms or other printed matter ~~which~~ that are made
 41 similar to or resemble governmental forms or documents, or legal forms used
 42 in civil or criminal proceedings.

43 (6) No person shall use any trade name, address, insignia, picture, em-
 44 blem or any other means ~~which~~ that creates any impression that such person is
 45 connected with or is an agency of government.

46 (7) No person licensed, or required to be licensed under this act, shall
 47 misappropriate, transfer, or convert to his own use or benefit, funds be-
 48 longing to or held for another person in connection with business activities
 49 authorized under this act.

1 (8) No credit repair organization licensed, or required to be licensed,
 2 under this act, shall charge or receive money or other valuable considera-
 3 tion for the performance of any service ~~which~~ that the credit repair organ-
 4 ization has agreed to perform for any consumer before such service is fully
 5 performed.

6 (9) No person licensed or required to be licensed under this act shall
 7 make a representation or statement of material fact, or omit to state a mate-
 8 rial fact, in connection with the offer, sale or performance of any service
 9 authorized under this act, if the representation, statement or omission is
 10 false or misleading or has the tendency or capacity to be misleading.

11 SECTION 6. That Section 26-2230, Idaho Code, be, and the same is hereby
 12 amended to read as follows:

13 26-2230. BRANCH OFFICES. A licensee must register, in a manner pre-
 14 scribed by the director, each additional place of business from which activ-
 15 ities authorized under this act are directly or indirectly conducted in this
 16 state. Registered locations shall be considered branches of the licensee.
 17 A registration of a branch location must be accompanied by a nonrefundable
 18 registration fee of three hundred fifty dollars (\$350). The licensee shall
 19 inform the director of the opening of a branch location at least thirty (30)
 20 days prior thereto, and no later than thirty (30) days after the closing of
 21 any branch location.

22 SECTION 7. That Section 26-2231, Idaho Code, be, and the same is hereby
 23 amended to read as follows:

24 26-2231. RENEWAL OF LICENSE OR REGISTRATION. (1) For each location
 25 licensed by or registered with the director, on or before the fifteenth day
 26 of March December 31 of each year, each licensee shall pay to the director
 27 a nonrefundable license renewal fee of one hundred fifty dollars (\$1050)
 28 and shall file with the director a license renewal form and registration
 29 renewal form providing complete information as required by the director.
 30 Notwithstanding the provisions of section 67-5254, Idaho Code, a license
 31 issued under this chapter automatically expires if not timely renewed ac-
 32 ording to the requirements of this section. Notwithstanding the provisions
 33 of section 67-5254, Idaho Code, a branch registration under this chapter
 34 shall also expire upon the expiration, relinquishment, or revocation of an
 35 associated license issued under this chapter.

36 (2) ~~Failure to fully comply with the license renewal requirements of~~
 37 ~~this section by the fifteenth day of March of each year shall result in auto-~~
 38 ~~matic expiration of the license as of that date~~ The director may reinstate an
 39 expired license or registration during the time period of January 1 through
 40 February 28, immediately following expiration of a license, if the direc-
 41 tor finds that the applicant meets the requirements for licensure under this
 42 chapter and after submission to the director of:

43 (a) A complete application for renewal;

44 (b) The fees required to apply for licensure or registration renewal,
 45 unless previously paid; and

46 (c) A reinstatement fee of two hundred dollars (\$200).

1 SECTION 8. That Section 26-2240, Idaho Code, be, and the same is hereby
2 amended to read as follows:

3 26-2240. AGENT IDENTIFICATION -- ~~QUARTERLY NOTICE~~ FEE. Each appli-
4 cant for a license under this act, with its initial license application, and
5 each licensee at annual renewal, shall file with the director a list of all
6 agents including the name of each agent and any other identifying informa-
7 tion the director may require. A fee of twenty dollars (\$20.00) for each
8 listed agent shall accompany the list. ~~Each licensee shall notify the di-~~
9 ~~rector in writing of any additions to its agent list no less often than ev-~~
10 ~~ery calendar quarter. A fee of twenty dollars (\$20.00) shall be paid to the~~
11 ~~director for each additionally identified agent in the quarterly notifica-~~
12 ~~tion of additions to a licensee's agent list. An agent is not required to be~~
13 listed, nor the fee paid therefor, unless the agent acted for the licensee
14 for more than thirty (30) business days.

15 SECTION 9. That Section 26-2246, Idaho Code, be, and the same is hereby
16 amended to read as follows:

17 26-2246. CLOSURE OR DISCONTINUANCE OF OPERATIONS -- REQUIREMENTS. (1)
18 Whenever the operations of a collection agency licensee or of a registered
19 branch location under this act are closed or discontinued due to revocation,
20 termination, or relinquishment of a collection agency license, or for any
21 other reason, the collection agency shall, within thirty (30) days following
22 the closure or discontinuance of operations, furnish the director with suf-
23 ficient proof in a form to be determined by the director that:

24 (a) The collection agency has remitted to all of its creditor clients
25 all moneys collected on their behalf and due such creditor clients;

26 (b) All collection accounts, judgments obtained, and other accounts
27 have been returned to the creditor clients or other proper parties,
28 and, if appropriate, assigned by the collection agency to its creditor
29 clients or other proper parties; and

30 (c) All valuable papers, documents, judgments and other property pro-
31 vided to the collection agency by its creditor clients or other parties
32 in connection with the collection agency's collection activities have
33 been returned to the creditor clients or other proper parties.

34 (2) A collection agency ~~which~~ that holds a license issued pursuant to
35 this act, upon closure or discontinuance of its operations, shall maintain
36 the bonds required of such licensee to conduct a collection agency business
37 until a final accounting of its affairs, as set forth in subsection (1) of
38 this section, has been filed with and approved by the director.

39 (3) Whenever the operations of a collection agency are closed or dis-
40 continued as set forth in subsection (1) of this section, in the event the
41 collection agency does not complete all requirements of such subsection
42 within thirty (30) days following the closure or discontinuance of opera-
43 tions, upon demand by the director, the collection agency shall permit the
44 director to take possession of its business records, bank accounts, includ-
45 ing creditor client trust accounts, other property belonging to its creditor
46 clients or third parties, and its assets. The director may then liquidate
47 the collection agency's business, return any moneys owed to the collection
48 agency's creditor clients, return the collection agency's accounts to its

1 creditor clients, return or assign any judgments to the agency's creditor
2 clients, and take any other actions ~~which are~~ reasonably necessary to cause
3 the collection agency to liquidate its assets and to comply with subsection
4 (1) of this section.

5 (4) If a collection agency refuses to permit the director to take pos-
6 session of its business records, bank accounts, creditor client trust ac-
7 counts, other property belonging to its creditor clients or third parties,
8 and its assets, as set forth in subsection (3) of this section, the director
9 may apply to a court of competent jurisdiction in the county of the collec-
10 tion agency's principal place of business for the appointment of a receiver
11 or conservator as set forth in section 26-2245(1), Idaho Code. Such receiver
12 or conservator may be the director.

13 (5) The expenses of the receiver or conservator and attorney's fees,
14 and all expenses necessarily incurred in liquidation of the collection
15 agency, shall be paid out of the funds in the control of the director or
16 conservator, to the extent those funds exceed any sums due and owing to the
17 collection agency's creditor clients or other proper parties. To the extent
18 funds in the control of the receiver are not sufficient to pay all sums due
19 and owing to the collection agency's creditor clients or other proper par-
20 ties and to pay the costs of a receiver or conservator and of liquidation of
21 the collection agency, the collection agency and its owners, shareholders,
22 or interest holders shall be responsible for the balance of any reasonably
23 necessary costs and fees of liquidation.