

2011 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1080

2011 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee Peace Garden Room, State Capitol

HB 1080
January 5, 2011
12588

☐ Conference Committee

Committee Clerk Signature

Ellen LeTang

Explanation or reason for introduction of bill/resolution:

Surety bonds, minimum net worth, notice regarding change of name & address, prohibited acts & practices of licensed collection agencies, definition of creditor, branch offices, entities exempt from licensing, forms for application for licensing, powers of the Department of Financial Institutions, suspension & removal of agency officers & employees, investigations & subpoenas, agency recordkeeping & revocation of licenses for collection agencies.

Minutes:

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Chairman Keiser: Opens the hearing on HB 1080.

Bob Entringer~Commissioner for the Department of Financial Institution: (see testimony and amendment attachment).

Chairman Keiser: Committee members, any questions.

Representative Clark: Do federal rules also govern the activity of a collection agency?

Bob Entringer: Yes, the fair dept collection practices act does pertain to a collection agency.

Representative Clark: This is in compliance with those?

Bob Entringer: It allows us to enforce that section of the federal law, it wasn't clear in statue and that's why we added the language giving us the ability to enforce state and federal laws.

Representative Ruby: On page 4, the reference for the ability to raise surety bond to see fit, but previously, that was pretty much in statue where it was brought before the legislature to raise the bond. This basically gives the commissioner the ability. Could you justify that please?

Bob Entringer: The reason we are asking for that authority is that recently we had a collection agency applied for a license renewal. In reviewing their financial statements, it was determined that they were using funds from the trust account. Funds from the trust

account are used specifically for the entity that they are collecting the monies for. They were not to use those monies. It's not their money and they were using the money that money to operate that business. We found that in two cases. Explained the two cases.

Representative Ruby: Just a follow up, in the instances where you want to raise up when the situation allows, is one thing, but if it's raised up for everybody as the floor, that's my idea why a limit was set by statue.

Bob Entringer: The intent is that we will draft rules regarding that. We told the collection agency association we would not increase the bond beyond 50,000. We will still maintain the 20,000 bond and unless we feel it's necessary to increase the bond for an individual collection agency, it will stay at 20,000.

Chairman Keiser: Following up on questioning, we are giving the authority for the department to enact rules and pass them. Why don't we have language that says you may not use trust fund?

Entringer: It is in our administrative rules that they can't use those funds and also it is in statue.

Chairman Keiser: So, they can't do it, but they did it. Take action against them.

Bob Entringer: We did.

Chairman Keiser: We don't have to worry about the bond, you took the action.

Bob Entringer: We have no authority to increase the bond so, what we entered with this particular company, was negotiated settlement to increase the bond. Without this authority, we can't increase unless they agree to it. Our position is it's only going to be done if it's necessary to protect the public interests.

Vice Chairman Kasper: We have a collection agency that violates the statue by using their trust fund which is a clear violation both by rules and statue. Yet you slap them on the wrist and let them stay in business and all you do is increase the bond. Why don't you revoke their license if they are violating the statue?

Bob Entringer: We did revoke one of the company's licenses. The other company took actions to increase their line of credit, so they no longer needed to borrow those trust funds. We did issue a 10,000 penalty and increased their bond and commercial liability bond. In addition, they are providing monthly financial information and copies of their trust fund statements, so we can review that information. If they do do it, we will revoke their license immediately and that's part of the settlement.

Representative M Nelson: Question on page 1, line 22, of changing the shall to may, why is it felt that it should be optional for the collection once they recover the monies to give it back to the original creditor?

Bob Entringer: I felt it was easier to give them the opportunity. They were already contracting for high amounts than what was set in statue, which in my view, was a violation of the statue.

Representative M Nelson: Not talking about the two fee, but by changing to "may", it's affecting the original holder of the check as well as those funds. So, potentially, if we change it to "may", the collection agency would not necessarily have to pay the original holder the check.

Bob Entringer: That correct. That would be your ability the collection agency. Most of them do it. It's making it permissive rather than required in my views. The checks they are collecting are for businesses, they want that money back.

Vice Chairman Kasper: On page 5 line 15, you requiring you be notified in within 10 days of a change of address or name, is that a little short. Is that short for the business owner to give you that information, isn't there any reason you couldn't go 30 as opposed to 10 days? Is there a penalty it they don't comply with this section?

Bob Entringer: We could access a penalty but I wouldn't. Going to 30 days isn't a big deal for me. Typically we don't find out about it until they renew their license and that's when we find out. We are trying to get them to let us know.

Chairman Keiser: To follow up, this committee likes to work with working days, any problem with that?

Bob Entringer: I would prefer the word business days.

Chairman Keiser: We can live with that.

Representative M Nelson: On page 2, section 2 amendment "creditor", it's pretty straight forward to know when credit changes hands but then, you added solely for the purpose of facilitating collection, now we are into to why the people did it. It becomes much harder to tell. Is there a time when credit would be moved from one person to the other, that you would still want them to be considered the creditor?

Bob Entringer: The key in my mind is if it's transferred to another entity, it is not in default, I don't have an issue with that. That's why it's excluded. If the debt is in default at the time it's transferred, and then we think you're a debt buyer. If I have a loan for 10,000 and I want to sell it to you and it's current, I don't view that as requiring licensing under this statue. That's why we specifically included that language when we this.

Representative Gruchalla: Why did you decide in the initial bill draft, to include the word attorneys, to have your own attorneys and now amended it out?

Bob Entringer: That came out of another statue that has the same language and passed in the last session; we will be amending that out on the senate side.

Chairman Keiser: Further questions? You have in section 3 the provision that the department will general rules. In section 8, the commissioner will generate rules and

section 7; will give authority to the commissioner to increase the amount for licensee. I understand for need of rules but, just a personal frustration, the reason we have legislative session is look at the law, not to generate the law after secession is over through administrative rules. If we have the opportunity to put into statute what the rule would be, can we get the rule and put it in here?

Bob Entringer: We currently have rules to amend; I would have to come up with the language for the net worth and bonding requirement. I haven't done that yet.

Chairman Keiser: That's the problem I have, we have the opportunity and address it in a public forum and have people respond. I want to see that language, this is our opportunity. If you wouldn't mind drafting that language for those three sections where you are suggesting that rules be developed. We've talked about the number of days, page 6, line 19, if the commissioner determines a licensee is insolvent, how do we do that?

Bob Entringer: That is based on net worth of the company.

Chairman Keiser: On the bottom of that new language, lines 26-27, the reasonable and necessary expenses of the receivership shall constitute the first claim on the on the bond, if bond is 25,000, what's the maximum that could be prepaid out of that bond for this that the other parties would not have access to.

Bob Entringer: If the bond is 25,000, you could potentially have a claim for 25,000 against the bond for the receivership.

Chairman Keiser: Another question on page 10, "all records controlled by the commissioner under the authority of this subsection shall be exempt under the open records law", companies are providing records, is there any penalty? Should there be a violation wherein that information becomes public when it should not been public? Is there any penalty to the department?

Bob Entringer: I don't know. I would have to look at the open records law. I would guess that there would probably is. To expand on that, that language was added specifically to address the concern of a collection agency association because they are subject to HIPPA. We wanted to make sure that it's exempt record under the open record law.

Chairman Keiser: Going back to page 5, section 8, lines 8-11, I saw that as inconsistent, potentially could be a legal challenge. Very specifically, in subsection 1, minimum net worth must be maintained in the amount of 25,000, so I do that. Then it says in subsection 2, the commissioner may promulgate rules, these are the rules process that I have a concern about, why do we need 25,000, it just has to be one or the other?

Bob Entringer: I'm not following your question.

Chairman Keiser: You say in one hand I need to have a 25,000 bond, I do that and then you come back and say, no, you need 40,000. So 25,000 is irrelevant.

Bob Entringer: It sets a floor. What I'm trying to address is companies that come with a 1,000 or negative net worth. I don't want to license those companies. There has to be some protection for the consumer. My intention in rules under number two is if you fall below 25,000, am I going to yank license? No, my intention is that you will come in with a capital plan to restore that in a reasonable amount of time. If you can't, yes, then I will revoke your license.

Representative Ruby: In section seven, your changing section six, where you have that ability, you are going to be able to write rules requiring different amount or a higher amount of net worth. Basically, with needing that ability in section seven, to raise it to see fit, your answer to a previous question, you show you already have that ability because you either you revoked their license or they agree to raise it on their own. So, you have the ability to raise it without this change and this language here, you also have that ability.

Bob Entringer: You're correct. It's a roundabout way to getting at it.

Vice Chairman Kasper: Going back page 5, lines 9-11, wouldn't it be better to say something like this in that area that if a licensee falls behind below the 25,000, the commissioner's may at the discretion, work out a plan to bring the licensee up to minimum, and if they don't comply, give you the right to revoke license.

Bob Entringer: That would probably work, but my intention, again with the rules, is to define that word in statue.

Vice Chairman Kasper: What is the definition of intangible compared to tangible assets?

Bob Entringer: Intangible asset is essentially good will. You just can't just book an intangible asset. You have to have some basis for that intangible asset and my reason for wanting to exclude them is because we do it on the banking side. It doesn't get to count towards capital. In that case you lose one client, all of a sudden your net worth drops to a negative 10 million dollars. I don't want to include that. I don't have any language that says that I can exclude that specifically.

Vice Chairman Kasper: Couldn't you, in this section, define tangible and intangible assets and give you the authority to exclude intangible assets to solve the dilemma you're under?

Bob Entringer: I can.

Representative Frantsvog: I want to go back to page 6, number 6, you stated on the first line of 19, if the commissioner determines a licensee is insolvent, is the definition of insolvent in your rules or is that a call you make?

Bob Entringer: No it is not the rules or statue for collection agencies.

Representative Clark: At what point in time do you find somebody's net worth falls below the 25,000?

Bob Entringer: Generally at renewal time which is once a year.

Representative Amerman: Going back to Representative M Nelson concern for the "shall make", the original language under shall pays the original holder. If that didn't happen, as I read on in section one, there is penalties, the original holder can take civil penalties against the collection agency. Now if you change that to may, are those penalties mute? There is no reason to take civil action because it's permissive now? What does the original holder do now?

Bob Entringer: That word specifically deals with the reimbursement of the bank fees. It doesn't address the civil action to my knowledge. If you have problems with that, I can take it out. I don't have an issue with that, I was trying to make life easier for the collection agency.

Chairman Keiser: Further questions? Anyone else here in support of HB 1080? Opposition? Neutral? I believe there is some work on HB 1080. I will ask Representative Clark to chair a subcommittee with Representative M Nelson and Representative Ruby to work with Bob on the committee's comments.

Chairman Keiser: Closes on the hearing on HB 1080.

2011 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee
Peace Garden Room, State Capitol

HB 1080
January 25, 2011
13364

☐ Conference Committee

Committee Clerk Signature

Ellen Litang

Explanation or reason for introduction of bill/resolution:

Surety bonds, minimum net worth, notice regarding change of name & address, prohibited acts & practices of licensed collection agencies, definition of creditor, branch offices, entities exempt from licensing, forms for application for licensing, powers of the Department of Financial Institutions, suspension & removal of agency officers & employees, investigations & subpoenas, agency recordkeeping & revocation of licenses for collection agencies

Minutes:

Chairman Keiser: Opens the work committee session on HB 1080.

Representative Clark: Passes out amendments (go over amendments handout, numbered accordingly).

Vice Chairman Kasper: Moves the motion for the 2 amendments.

Representative N Johnson: Second.

Voice vote was taken, motion carried.

Representative Clark: Continues on amendment number 3, see attached amendment.

Representative M Nelson: Moves to adopt amendment 3.

Representative N Johnson: Second.

Voice vote was taken, motion carried.

Representative Clark: Continues on amendment number 4, see attached amendment.

Representative M Nelson: Moves to adopt amendment 4.

Representative N Johnson: Second.

Voice vote was taken, motion carried.

Representative Ruby: Moves for a Do Pass as Amended.

Vice Chairman Kasper: Second.

Roll Call was taken on HB 1080 for a Do Pass as Amended with 14 yeas, 0 nays, 0 absent and Representative Clark is the carrier.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1080

Page 10, line 4, remove "attorneys."

Renumber accordingly

January 11, 2011

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1080

Page 12, line 13, after "twenty" insert "business"

Renumber accordingly

Date: Jan 25 - 2011

Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1080

House House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

Motion Made By Rep Kasper Seconded By Rep Johnson

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser			Representative Amerman		
Vice Chairman Kasper			Representative Boe		
Representative Clark			Representative Gruchalla		
Representative Frantsvog			Representative M Nelson		
Representative N Johnson					
Representative Kreun					
Representative Nathe					
Representative Ruby					
Representative Sukut					
Representative Vigesaa					

voice vote, motion carried

Total Yes _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

2 amendments
1st - p. 10, line 4, remove "attorney"
2nd - after twenty insert business

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1080

Page 1, line 1, after “enact” insert “a new subsection to section 13-05-01.1, and”

Page 1, line 2, after “to” insert “the definition of insolvent,”

Page 1, line 22, remove the overstrike over “~~shall~~” and remove “may”

Page 2, after line 10, insert:

SECTION 2. A new subsection to section 13-05-01.1 of the North Dakota Century Code is created and enacted as follows:

“Insolvent” means the point where a licensed entity’s liabilities exceed their tangible assets. For the purpose of this definition, tangible assets shall only include assets that have a physical existence and are capable of being assigned a value.

Page 4, remove lines 23 through 28

Page 5, after line 8, insert:

2. If the net worth of a licensee falls below the minimum net worth as set forth in subsection 1, the licensee must provide a plan, subject to the approval of the commissioner, to increase the licensee’s net worth to an amount in conformance with this section. Submission of a plan under this section must be made within twenty business days of a notice from the commissioner that the licensee is not in compliance with subsection 1. If the licensee does not submit a plan under this section, fails to comply with an approved plan, or has repeated violations of subsection 1, the commissioner may revoke the license.

Page 5, remove lines 9 through 11

Page 5, line 15, replace “ten” with “twenty business”

Page 10, line 17, remove “and willfully”

Renumber accordingly

Date: Jan 25 - 2011

Roll Call Vote # 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1080

House House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

Motion Made By Rep M Nelson Seconded By Rep Nathe

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser			Representative Amerman		
Vice Chairman Kasper			Representative Boe		
Representative Clark			Representative Gruchalla		
Representative Frantsvog			Representative M Nelson		
Representative N Johnson					
Representative Kreun					
Representative Nathe					
Representative Ruby					
Representative Sukut					
Representative Vigesaa					

voice vote - motion carried

Total Yes _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Amendment 3

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1080

Page 2, line 26, after "granted" insert ", but shall not include a virtual office. When used in this chapter, "virtual office" means a remote location from which employees can work under the full control and monitoring of the collection agency through telecommunications and computer links, no records may be maintained at this location and it may not be held open to the public as a place of business."

Page 6, line 19, remove "or has collected accounts but"

Page 6, remove line 20

Page 6, line 21, remove "rule,", and remove "when"

Re-number accordingly

Date: Jan 25-2011

Roll Call Vote # 3

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1080

House House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

Motion Made By Rep M Nelson Seconded By Rep Johnson

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser			Representative Amerman		
Vice Chairman Kasper			Representative Boe		
Representative Clark			Representative Gruchalla		
Representative Frantsvog			Representative M Nelson		
Representative N Johnson					
Representative Kreun					
Representative Nathe					
Representative Ruby					
Representative Sukut					
Representative Vigesaa					

Total Yes _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Amendment #4

January 28, 2011

VK
1/28/11
1072

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1080

Page 1, line 4, remove ", subsection 4 of"

Page 1, line 5, remove "section 13-05-01.1,"

Page 1, line 5, after "sections" insert "13-05-01.1,"

Page 1, line 7, replace "definition" with "the definitions"

Page 1, line 7, after "creditor" insert "and insolvent"

Page 1, line 22, remove the overstrike over "shall"

Page 1, line 22, remove "may"

Page 2, replace lines 11 through 16 with:

"SECTION 2. AMENDMENT. Section 13-05-01.1 of the North Dakota Century Code is amended and reenacted as follows:

13-05-01.1. Definitions.

As used in this chapter, unless the context or subject matter otherwise requires:

1. "Collection agency" means a person or entity who, in the ordinary course of business, engages in debt collection.
2. "Commissioner" means the commissioner of financial institutions.
3. "Communication" means the conveyance or receipt of information regarding or facilitating the collection of a debt, directly or indirectly, to or from any person through any medium.
4. "Creditor" means a person who offers or extends credit creating a debt or to whom a debt is owed, but that term does not include a person to the extent that that person receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of that debt for another.
5. "Debt" means an obligation or alleged obligation to pay money arising out of a transaction, whether or not the obligation has been reduced to a judgment.
6. "Debt collection" means the act of collecting or attempting to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. As used in this chapter, this term also includes solicitation of debts for the purpose of collection and accepting assignment of debts for the purpose of collection.
7. "Insolvent" means the point at which a licensed entity's liabilities exceed the entity's tangible assets. For the purpose of this definition, tangible

assets only include assets that have a physical existence and are capable of being assigned a value.

8. "Mortgage servicing company" means a company performing the required duties of a mortgage seller, such as collecting payments, releasing the lien on full payment, and confirming that taxes are paid and insurance is in force."

Page 2, line 26, after "site" insert ", but does not include a virtual office. As used in this chapter, "virtual office" means a remote location from which employees can work under the full control and monitoring of the collection agency through telecommunications and computer links. Records may not be maintained at a virtual office and a virtual office may not be held open to the public as a place of business"

Page 4, remove lines 23 through 28

Page 5, line 9, remove "The commissioner may promulgate rules or regulations with respect to the"

Page 5, replace lines 10 and 11 with "If the net worth of a licensee falls below the minimum net worth as set forth in subsection 1, the licensee shall provide a plan, subject to the approval of the commissioner, to increase the licensee's net worth to an amount in conformance with this section. Submission of a plan under this section must be made within twenty business days of a notice from the commissioner that the licensee is not in compliance with subsection 1. If the licensee does not submit a plan under this section, fails to comply with an approved plan, or has repeated violations of subsection 1, the commissioner may revoke the license."

Page 5, line 15, replace "ten" with "twenty business"

Page 6, line 19, remove "or has collected accounts but"

Page 6, remove line 20

Page 6, line 21, remove "rule"

Page 6, line 21, remove "when"

Page 7, line 17, after "twenty" insert "business"

Page 10, line 4, remove "attorneys,"

Page 10, line 4, remove the second underscored comma

Page 10, line 17, remove "and willfully"

Page 11, line 5, after "ten" insert "business"

Page 12, line 13, after "twenty" insert "business"

Renumber accordingly

Date: Jan 25-2011

Roll Call Vote # 4

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1080

House House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment

Motion Made By Rep Ruby Seconded By Rep Kasper

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Representative Amerman	✓	
Vice Chairman Kasper	✓		Representative Boe	✓	
Representative Clark	✓		Representative Gruchalla	✓	
Representative Frantsvog	✓		Representative M Nelson	✓	
Representative N Johnson	✓				
Representative Kreun	✓				
Representative Nathe	✓				
Representative Ruby	✓				
Representative Sukut	✓				
Representative Vigesaa	✓				

Total Yes 14 No 0

Absent 0

Floor Assignment Rep Clark

If the vote is on an amendment, briefly indicate intent:

10-008

REPORT OF STANDING COMMITTEE

HB 1080: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1080 was placed on the Sixth order on the calendar.

Page 1, line 4, remove ", subsection 4 of"

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Page 1, line 5, after "sections" insert "13-05-01.1,"

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Page 1, line 7, after "creditor" insert "and insolvent"

Page 1, line 22, remove the overstrike over "shall"

Page 1, line 22, remove "may"

Page 2, replace lines 11 through 16 with:

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4. "Creditor" means a person who offers or extends credit creating a debt or to whom a debt is owed, but that term does not include a person to the extent that that person receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of that debt for another.
5. "Debt" means an obligation or alleged obligation to pay money arising out of a transaction, whether or not the obligation has been reduced to a judgment.
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Page 2, line 26, after "site" insert ", but does not include a virtual office. As used in this chapter, "virtual office" means a remote location from which employees can work under the full control and monitoring of the collection agency through telecommunications and computer links. Records may not be maintained at a virtual office and a virtual office may not be held open to the public as a place of business"

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Page 11, line 5, after "ten" insert "business"

Page 12, line 13, after "twenty" insert "business"

Renumber accordingly

2011 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1080

2011 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

HB 1080
February 14, 2011
Job Number 14466

☐ Conference Committee

Committee Clerk Signature

Eva L. Leth

Explanation or reason for introduction of bill/resolution:

Engrossed; relating to surety bonds, minimum net worth, notice regarding change of name and address, and prohibited acts and practices of licensed collection agencies

Minutes:

Amendments and Vote

Chairman Klein: Opened the hearing on Engrossed House Bill 1080.

Robert J. Entringer, Assistant Commissioner, North Dakota Department of Financial Institutions: Testimony and Proposed Amendment attached.

Chairman Klein: Asked where the twenty five thousand dollars came from, how was it determined and if before they had nothing?

Bob: No, there was no minimum set, it was basically one dollar. They had companies with negative net worth that they continued to license. They decided that twenty five thousand dollars shouldn't be too much to ask a company to come in and get licensed. They would work with the Collectors Association of North Dakota and asked them what if they said they could establish a plan to restore your net worth. If it is reasonable they could restore their net worth through earnings in a year.

Chairman Klein: Asked if that was reviewed annually.

Bob: Yes. Typically the only time they will see a financial statement of a collection agency is at renewal or during an exam. The examinations have been every two plus years.

Senator Murphy: This has nothing to do with collections from Banks? What kind of entities are we talking about in this bill?

Bob: We're talking about Banks, Credit Unions and other entities that are exempt. Basically if you are the original creditor you're not subject to this. A collection agency is a company that has been hired to collect a bill for you. They are paid by you to collect as the creditor to collect that debt for them.

Senator Murphy: What size business are they? How do they generally work in North Dakota?

Bob: There are some smaller ones, one to twenty five collectors. On a nationwide basis there are companies that employ hundreds of collectors.

Bob: Continues going over his testimony.

Senator Nodland: The rules and regulations, can you give us a detail of how collectors over the years have used tactics, are they regulated to what kind of tactics they can use?

Bob: They are regulated with respect to their tactics. The Fair Debt Collection Practices Act, which is a Federal Law, is incorporated in our administrative rules. So we enforce it and in this bill it makes it clear that we can enforce the Federal Law. The FDCPA includes prohibited acts and practices section.

Senator Nodland: Where do the Attorneys fall into this; there are some that are involved in collecting.

Bob: Attorneys are exempt if they are licensed in North Dakota. The staff of an attorney is not exempt from this.

Senator Nodland: How many of these businesses do we have in North Dakota?

Bob: Over four hundred.

Senator Andrist: Asked if they required out of state firms to be licensed to collect in North Dakota and if they were able to take action against them.

Bob: They would issue a cease and assist order and if they ignore that, there would be a civil money penalty.

Senator Andrist: Asked if they were able to collect the civil money penalty?

Bob: It is limited to five thousand dollars per violation and so if it a single violation it would cost them more to collect it.

Chairman Klein: Asked if he received a lot of complaints.

Bob: Out of state collection agencies are the highest volume of complaints they receive.

Senator Larsen: Asked if the collection agency is just money collection or if it includes repossession.

Bob: No they don't license repo companies unless they are collecting the money.

Chairman Klein: Said that at the end of Bob's testimony he said that most of the concerns of the collection agencies were addressed, and asked if they would here more concerns that were not addressed or if this was a team effort.

Bob: His objective was to come and not have opposition by their group. On the House side they did not testify, they were neutral on the bill.

Senator Schneider: Are there current collection agencies that reimburse the original holders checks, more than two dollars?

Bob: Yes, they have contracted for more than two dollars. That is why we took the two dollar limitation out. They felt it was a violation of the statute.

Senator Schneider: Asked if it would make sense to put another cap into law instead of just striking it.

Bob: He said he didn't think that was necessary because the Banks can change those fees as they see fit, it is not regulated.

Senator Schneider: Asked why a cap was put into law before.

Bob: At the time, two dollars was what most Banks were charging, so the Commissioner at that time put the cap at two dollars.

Kim Granfor, North Dakota Collectors Association: Said that they worked closely with DFI and are in support of the bill.

Chairman Klein: Asked how many collection agencies are in North Dakota.

Kim: Fourteen to Fifteen members and another five that are not members.

Chairman Klein: So we have twenty in North Dakota but are licensing four hundred?

Kim: That is correct. It is due to the out of state agencies.

Chairman Klein: Closed the hearing.

Senator Andrist: Move to adopt the two amendments.

Senator Murphy: Seconded the motion.

Roll Call Vote: Yes-7 No-0

Senator Andrist: Moved a do pass as amended.

Senator Nodland: Seconded the motion.

Roll Call Vote: Yes-7 No-0

Senator Murphy to carry the bill

11.8083.02001
Title.03000

Adopted by the Industry, Business and Labor
Committee

February 14, 2011

93
2-14-11

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1080

Page 2, line 24, overstrike "for another"

Page 3, line 17, replace "do" with "does"

Renumber accordingly

Date: 2/14/2011
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB1080

Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Andrist Seconded By Senator Murphy

[illegible]

Total (Yes) 7 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 2/14/2011
Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB1080

Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Andrist Seconded By Senator Nodland

Senators	Yes	No	Senators	Yes	No
Chairman Jerry Klein	✓		Senator Mac Schneider	✓	
VC George L. Nodland	✓		Senator Philip Murphy	✓	
Senator John Andrist	✓				
Senator Lonnie J. Laffen	✓				
Senator Oley Larsen	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Murphy

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1080, as engrossed: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1080 was placed on the Sixth order on the calendar.

Page 2, line 24, overstrike "for another"

Page 3, line 17, replace "do" with "does"

Renumber accordingly

2011 TESTIMONY

HB 1080



State of North Dakota

DEPARTMENT
of FINANCIAL
INSTITUTIONS

Timothy J. Karsky
Commissioner

Robert J. Entringer
Assistant Commissioner

Douglas D. Grenz
Chief Examiner - Banks

Corey J. Krebs
Chief Examiner - Credit Unions

CSBS ACCREDITED 1993
NASCUS ACCREDITED 2000

MEMORANDUM

DATE: January 5, 2011
TO: House Industry, Business and Labor Committee
FROM: Robert J. Entringer, Commissioner
SUBJECT: Testimony in Support of House Bill No. 1080

Chairman Keiser and members of the House Industry, Business and Labor Committee, thank you for the opportunity to testify in support of House Bill No. 1080.

Mr. Chairman and members of the Committee, House Bill No. 1080 deals primarily with Chapter 13-05 of the North Dakota Century Code as it relates to the regulation of collection agencies by the Department of Financial Institutions.

As you will note, Section 1 amends Subsection 2 of Section 6-08-16 of North Dakota Century Code as it relates to a collection agency's ability to reimburse the original holder of a check by making it permissive rather than required and eliminates the apparent limitation of a \$2.00 reimbursement.

This amendment appeared to the Department to be necessary since many collection agencies were contracting for reimbursement in excess of the \$2.00 limitation.

Section 2 of the Bill amends the definition of credit by striking the last two words of the definition. The reason we are proposing to strike the words "for another" is that a number of the entities we regulate are known as debt buyers and as you will see in this definition a creditor excludes a person who receives an assignment or transfer of a debt in default for purposes of facilitating collection. By including the words "for another" we encountered arguments from companies that are debt buyers, claiming that they were a creditor by virtue of the fact that they were seeking to collect the debt for themselves. The Department, through its attorney, has long held that a debt buyer is not a creditor because they were not the original entity that offered or extended the credit. We feel this amendment will clear up and eliminate that argument for debt buyers.

The amendment in Section 3 eliminates the limitation to only authorize branch applications for North Dakota licensed locations and also clarifies that the branch office includes a physical location where collection activity is carried out. I do understand there are times when a manager or collector will work remotely and access the agency's network i.e. a virtual

office. In the rule making process we will address this issue so a virtual office is not considered a branch.

Section 4 eliminates an exemption which the Department originally introduced in the 1991 Legislative Session and was based on a recommendation from the American Collectors Association (ACA). Over the last several years we have found that this exemption is essentially ineffective as many states do not have similar legislation and therefore our ability to protect a North Dakota consumer from an entity claiming an exemption under this provision has been futile. The original thought behind this exemption was that if a North Dakota consumer had a complaint on an entity exempt under this provision we would refer that complaint to the State in which the collection agency was domiciled and they would handle the complaint. As you might imagine, a State agency from another State has little incentive to assist a North Dakota consumer in resolving a complaint.

Section 5 merely changes the word "blanks" on line 25 of page 3 to the word "forms", and Section 6 removes the reference to a surety bond to a new Section found in Section 7.

Section 7 expands the surety bond requirement to allow the Commissioner to increase the amount of the surety bond if it is determined

that an increase is necessary to protect the public interest, and it provides the collection agency the opportunity for due process in the event that the Commissioner does seek to increase the bond. This Section further enables the Department to request a new bond in the event that there is an action commenced against a licensee's bond.

Section 8 is a new Section to the Chapter and sets a minimum net worth of \$25,000 in order to be granted a license and subsequently retain the license. However, Subsection 2 provides that the Department may promulgate a rule with respect to the minimum net worth. It is my expectation that we will include a provision in the rules to enable a currently licensed entity that has fallen below the minimum net worth of \$25,000 an opportunity to provide a reasonable plan to restore its net worth to the minimum established in this Section.

Section 9 merely institutes a requirement that the collection agency submit a change of address or name within 10 days of the occurrence.

The proposed amendments in Section 10 clarify that the Department has the authority to enforce compliance with state and federal rules and regulations, and sets in statute the ability of the Commissioner to place a collection agency in receivership if it is deemed to be insolvent or collected monies and failed to remit those monies to the claimant within time frames

as required by rule. This Section also specifies that the expenses of the receivership are the first claim on the bond.

Section 11 enables the Commissioner to suspend or remove current or former officers and employees of collection agencies for engaging in conduct enumerated in the statute and provide that the term of the suspension or removal must be included in the Order. This Section also enables the individual suspended or removed to request termination of the Final Order after no less than three years have expired.

Section 12 adds a new Subsection which enables the Department to control access to the documents and records of a licensee under investigation or examination but does permits the licensee to have access to the records in order to conduct its business. Two additional Subsections are proposed to allow the Department to retain attorneys, accountants, or other professionals necessary to assist in the examination or investigation of a collection agency and to use analytical systems or methods to examine the collection agencies. In addition it provides that the authority in this Section of the North Dakota Century Code is in effect whether or not they are acting under the laws of this State or claiming to act without such authority.

Section 13 adds a prohibited acts and practices Section which essentially adds to the Department's enforcement capabilities against a licensee.

Section 14 adds a provision that requires a licensee to inform the Department of the location of records when they cease operations and that those records are required to be maintained in accordance with statute.

Section 15 enables the Commissioner to issue an Order suspending or revoking a license if the licensee has failed to pay the annual fee or an examination fee imposed under authority of the Chapter, if the licensee has failed to maintain a bond, or failed to maintain registration with the North Dakota Secretary of State's Office. This Section does provide due process under Chapter 28-32 of the North Dakota Administrative Agencies Practices Act. In addition, we are extending the time frame from 30 to 60 days for the suspension in order to schedule a hearing if the suspension was immediate.

Mr. Chairman, it is my understanding the Attorney General's will be introducing an amendment to remove the word "attorney's" on page 10 line 4 of the bill; I understand the reasoning for the amendment and certainly would support it's adoption. Also I would add Department staff met with the North Dakota Collectors Association and as a result of that meeting did

make changes to the bill prior to prefiling in order to address most of their concerns.

Mr. Chairman, I would be happy to answer any questions the Committee may have.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1080

Page 3, line 17, replace "do" with "does"

Renumber accordingly



State of North Dakota

**DEPARTMENT
of FINANCIAL
INSTITUTIONS**

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Commissioner

Robert J. Entringer
Assistant Commissioner

Douglas D. Grenz
Chief Examiner - Banks

Corey J. Krebs
Chief Examiner - Credit Unions

CSBS ACCREDITED 1993
NASCUS ACCREDITED 2000

MEMORANDUM

DATE: February 14, 2011

TO: Senate Industry, Business and Labor Committee

FROM: Robert J. Entringer, Commissioner

SUBJECT: Testimony in Support of Engrossed House Bill No. 1080

Chairman Klein and members of the Senate Industry, Business and Labor Committee, thank you for the opportunity to testify in support of Engrossed House Bill No. 1080.

Mr. Chairman and members of the Committee, Engrossed House Bill No. 1080 deals primarily with Chapter 13-05 of the North Dakota Century Code as it relates to the regulation of collection agencies by the Department of Financial Institutions.

As you will note, Section 1 amends Subsection 2 of Section 6-08-16 of the North Dakota Century Code to remove the \$2.00 cap on collection agency reimbursements to the original holders of a check. This amendment appeared to the Department to be necessary since many

collection agencies were contracting for reimbursements in excess of the \$2.00 limitation.

Section 2 of the Bill, as originally submitted by the Department of Financial Institutions, amended the definition of "creditor" by striking the last two words of the definition. However, it appears, upon discussions with legislative counsel that this change has been inadvertently left out of the Engrossed Bill passed by the House. Based on this apparent oversight, the Department would like to submit a proposed amendment to the current engrossed version of HB 1080 to re-insert this proposed change to the definition of "creditor". The reason we are proposing to strike the words "for another" specifically relates to an issue regarding entities we regulate that are known as debt buyers. By including the words "for another" we encountered arguments from debt buyers, claiming that they were a creditor by virtue of the fact that they were seeking to collect the debt for themselves, and not for another. The Department, through its attorney, has long held that a debt buyer is not a creditor because they are not the original entity that offered or extended the credit. We feel this amendment will clear up and eliminate this issue regarding debt buyers.

Section 2 of the bill also adds a definition for "insolvent". This definition will clarify the criteria used by the commissioner in making a

determination of insolvency for the purpose of appointing a receiver under subsection 6 of NDCC § 13-05-06. Specifically, the definition clarifies that only tangible assets are to be taken into account when determining whether a licensee is insolvent.

The amendment in Section 3 removes a limitation that only authorizes branch applications for North Dakota licensed locations. This section also clarifies that a branch office includes any physical location where collection activity is carried out, other than the location where the collection agency license was granted. Since there are times when a manager or collector will work remotely and access the agency's network, this section clarifies that a "branch office" will not include a "virtual office". In order to assure that work done from a virtual office is still subject to regulatory oversight, the proposed amendment provides that a collection agency is required to maintain full control and monitoring of the virtual office by way of telecommunications and computer links. In addition, virtual offices are prohibited from maintaining records onsite or being held open to the public as a place of business.

Section 4 eliminates an exemption which the Department originally introduced in the 1991 Legislative Session and was based on a recommendation from the American Collectors Association (ACA). Over

the last several years we have found that this exemption is ineffective because many states do not have similar legislation and therefore our ability to protect North Dakota consumers from entities claiming this exemption have been futile. The original thought behind this exemption was that if a North Dakota consumer had a complaint on an entity exempt under this provision, we would refer that complaint to the State in which the collection agency was domiciled and they would handle the complaint. As you might imagine, an agency from another State has little incentive to assist a North Dakota consumer in resolving a complaint.

Section 5 merely changes the word "blanks" on line 18 of page 4 to the word "forms".

Section 6 removes the reference to a surety bond, which under the proposed Bill is now addressed under Section 7.

Section 7 creates a new Section to Chapter 13-05 addressing the surety bond requirement. This new section maintains the surety bond requirement at twenty thousand dollars. This Section further enables the Department to request a new bond in the event that there is an action commenced against a licensee's bond.

Section 8 creates a new Section to Chapter 13-05 requiring a minimum net worth of \$25,000 to be maintained in order to be granted a

license and to subsequently retain the license. However, Subsection 2 also provides a method by which a licensed entity that has fallen below the minimum net worth of \$25,000 has an opportunity to submit a reasonable plan, subject to approval of the commissioner, to restore its net worth to the minimum established in this Section. Further, it gives the commissioner the authority to revoke a license for a licensed entity's failure to submit a plan under the section, failure to comply with an approved plan, or repeated violations under the section.

Section 9 merely institutes a requirement that the collection agency submit a change of address or name within 20 business days of the occurrence.

The proposed amendments in Section 10 makes clear that the Department has the authority to enforce compliance with state and federal rules and regulations, and sets in statute the ability of the Commissioner to place a collection agency in receivership if it is deemed to be insolvent or the license has expired or terminated for any reason. This Section also specifies that the expenses of the receivership are the first claim on the surety bond.

Section 11 clarifies how the Commissioner may suspend or remove current or former officers and employees of collection agencies from

employment with any entity licensed by the Department of Financial Institutions for willfully engaging in conduct prohibited under subsection 1 of section 13-05-06.1. In addition, this section provides that the term of the suspension or removal must be included in the Order and that the Order is subject to an administrative appeal under section 28-32. Finally, this Section enables the individual suspended or removed to request termination of the Final Order after no less than three years have expired (if applicable).

Section 12 adds a new Subsection to section 13-05-06.2 which enables the Department to control access to the documents and records of a licensee under investigation or examination, but does permit the licensee to continue to have access to the records in order to conduct its business. Two additional Subsections are proposed to allow the Department to retain accountants or other professionals necessary to assist in the examination or investigation of a collection agency and to use analytical systems or methods to examine the collection agencies. In addition it provides that the authority in this Section of the North Dakota Century Code is in effect whether or not they are acting under the laws of this State or claiming to act without such authority.

Section 13 incorporates a prohibited acts and practices Section to Chapter 13-05, which essentially adds to the Department's enforcement capabilities against a licensee.

Section 14 adds a provision that requires a licensee to inform the Department of the location of records when they cease operations and that those records are required to be maintained in accordance with statute.

Section 15 enables the Commissioner to issue an Order suspending or revoking a license if the licensee has failed to pay the annual fee or an examination fee imposed under authority of the Chapter, if the licensee has failed to maintain a bond, or failed to maintain registration with the North Dakota Secretary of State's Office. This Section provides due process under Chapter 28-32 of the North Dakota Administrative Agencies Practices Act. In addition, we are proposing to extend the time frame from 30 to 60 days for an immediate suspension pending investigation, in order to allow adequate time for the scheduling of a hearing.

Also I would add Department staff met with the North Dakota Collectors Association and as a result of that meeting did make changes to the bill prior to prefiling in order to address most of their concerns.

Mr. Chairman, I would be happy to answer any questions the Committee may have.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1080

Page 2, line 24, overstrike "for another"

Renumber accordingly