

DEBT COLLECTORS LICENSING.

13° Elizabeth II., No. CVIII.

No. 108 of 1964

AN ACT to provide for the Licensing of Debt Collectors, and for incidental and other purposes.

[Assented to 23rd December, 1964.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title. 1. This Act may be cited as the *Debt Collectors Licensing Act, 1964.*

Commencement. 2. This Act shall come into operation on a date to be fixed by proclamation.

3. In this Act unless the contrary intention appears— Interpre-
tation.

“Court” means a Local Court established under the Local Courts Act, 1904;

“debt collector” means a person (whether or not he carries on any other business) who on behalf of any other person and for or in expectation of any gain, fee or reward whatever, by whomsoever paid or payable and either on his own account or in conjunction with another, carries on the business of collecting, requesting or demanding payment of debts or who advertises or notifies that he carries on that business;

“licence” means a valid and current licence issued under this Act authorising the holder thereof to act as a debt collector;

“licensee” means the holder of a licence;

“money” includes any instrument for the payment of money in any case where the instrument may be paid into an account with a bank;

“money received for or on behalf of any person” includes money that is held for or on behalf of any person whether originally received for or on his behalf or not;

“to pay into a trust account” means to pay into a bank as defined in section five of the Banking Act, 1959 of the Parliament of the Commonwealth as amended from time to time, carrying on business in the State, to the credit of an account—

(a) that is kept by the bank; and

(b) the designation of which includes the words, “trust account of” and the name of the debt collector concerned;

“trust account” means a record of accounts relating to trust money;

“trust money” means any money collected or received by a person in the capacity of debt collector as agent for another person.

Application
of Act.

4. The provisions of this Act do not apply to any of the following persons, that is to say—

- (a) a legal practitioner within the meaning of the Legal Practitioners Act, 1893, who holds a current and valid practice certificate under that Act;
- (b) a public accountant acting in the ordinary course of his profession or calling as such;
- (c) the Sheriff, or any deputy Sheriff or other officer appointed to assist the Sheriff in the execution of his duties appointed pursuant to Part IX of the Supreme Court Act, 1935, acting in pursuance of his duties as Sheriff, deputy Sheriff or officer;
- (d) a bailiff appointed pursuant to section sixteen of the Local Courts Act, 1904, or an officer appointed under that section to assist the bailiff acting in pursuance of his duties as a bailiff or officer;
- (e) a liquidator, receiver, or trustee acting in pursuance of his duties as such;
- (f) any bank, life insurance company, trustee company, friendly society or building society carrying on business pursuant to any Act of the Parliament or of the Commonwealth Parliament;
- (g) a person who is an officer, employee or clerk of any person, body or authority referred to in the preceding paragraphs of this section and who is acting in the ordinary course of the profession, calling or business of, and on behalf of that person, body or authority; and

- (h) a person, body or authority and his or its officers or employees acting in pursuance of his duties as such exempted by the regulations from the application of this Act, who or which does anything pursuant to any Act or law that but for an exemption granted under this paragraph would constitute him or it a debt collector.

5. (1) After the expiration of three months after the coming into operation of this Act a person shall not—

Licensing
of debt
collectors.

- (a) exercise or carry on;
- (b) advertise, notify or state that he carries on or is willing to exercise or carry on; or
- (c) in any way hold himself out to the public as ready to exercise or carry on,

the business or any of the functions of a debt collector, unless he is the holder of a licence under this Act.

(2) A person who contravenes or fails to comply with any of the provisions of subsection (1) of this section is guilty of an offence against this Act and is liable, in the case of a corporation, to a penalty of two hundred pounds and, in the case of a natural person, to a penalty of one hundred pounds or six months imprisonment.

6. (1) A licensee does not by virtue of his being the holder of a licence have any power or authority that he would not have had if this Act had not come into operation.

Licensees
not to assume
additional
powers.

(2) A licensee who suggests or implies that any power or authority, other than the power or authority to exercise or carry on the business or any of the functions of a debt collector, is conferred upon him by this Act or by his licence is guilty of an offence against this Act.

"This Act"
includes
regulation
S. 4 Act
No. 30 of 1918.

Licences.

7. (1) A licence shall be in the form prescribed.

(2) Where a licence is issued to—

(a) a natural person, the licence shall set forth the name, place of business and place of abode of the licensee;

(b) a corporation, the licence shall set forth the name of the corporation and the address of its sole or principal place of business in the State.

(3) The fee payable for a licence shall be such amount as may be prescribed.

(4) Subject to this Act, a licence shall be in force for a period of twelve months from the date specified in the licence as the day on which it takes effect.

(5) A licence may be renewed at any time within a period of thirty days before it is due to expire, and on each renewal shall, subject to this Act, be in force for a further period of twelve months.

Application
for licences.

8. (1) A person who desires to obtain a licence or renewal thereof shall make application in the form prescribed.

(2) (a) The application shall be accompanied by—

(i) testimonials as to the character of the applicant signed by not less than three reputable persons; and

(ii) the prescribed fee.

(b) The prescribed fee shall be refunded to the applicant if the application is withdrawn or refused.

Vide s. 28
Act No. 30
of 1918.

(3) The application shall be lodged with the Clerk of the Court held nearest to the place where the applicant proposes to carry on the business or functions of a debt collector and if there is more than one such place, the Court nearest to the principal place where the applicant proposes to so carry on.

(4) Upon the receipt of an application for the grant or renewal of a licence the Clerk of the Court shall as soon as practicable thereafter notify the officer in charge of police at the police station nearest to the Court of the fact and that officer—

(a) shall inquire into the character and suitability of the applicant to be a licensee; and

(b) shall report in writing thereon to the Court.

(5) (a) The officer in charge referred to in subsection (4) of this section, may object to the granting of the application and if he proposes to so object he shall include in his report a statement setting out that he so proposes and the grounds for his objection.

(b) Any objection made under paragraph (a) of this subsection, may be made only on one or more of the grounds upon which the Court may refuse the grant or renewal of a licence under section nine of this Act.

(c) Where a report of an officer in charge of police contains a statement that an objection will be made, the Clerk of the Court to which the report is made shall notify the applicant concerned in the form prescribed that the application will be objected to and of the date on which it is proposed that the application will be heard by the Court.

(6) The Court in hearing an application for the grant or renewal of a licence under this Act may call and receive evidence as to the character and suitability of the applicant to be a licensee and shall take into consideration the report referred to in subsection (4) of this section and may grant or refuse the application.

(7) An application for a licence or renewal thereof shall not be heard by the Court until after the expiration of seven days from the lodging of the application with the Clerk of the Court.

(8) Every such application shall be heard in open Court and the consideration of the application is a judicial proceeding.

(9) Where an application is made for the renewal of a licence the applicant is not required to attend before the Court hearing the application unless the applicant has been served at least three days before the hearing with a notice from the Clerk of the Court advising him that the application will be objected to.

Grounds
on which
licence
refused.

9. (1) The Court hearing an application for the grant or renewal of a licence shall refuse the application unless it is satisfied that the applicant named therein—

- (a) is of good fame and character;
- (b) is a fit and proper person to be a licensee;
and
- (c) is of the age of twenty-one years or more.

(2) Where an applicant is a corporation any reference in subsection (1) of this section to an applicant shall be read and construed as a reference to the directors of that corporation.

(3) The Court may from time to time adjourn the hearing of an application for a licence or renewal thereof and shall adjourn the hearing if—

- (a) an objection to the grant or renewal of the licence is made by an officer in charge of police pursuant to subsection (5) of section eight of this Act;
- (b) notification of the objection has not been served on the applicant in accordance with that subsection; and
- (c) the applicant has not consented in writing to the hearing of the application without that notification being so served.

(4) Subject to section twenty of this Act, where the Court grants an application for a licence or renewal thereof, the Clerk of the Court shall, on payment to him of the fee prescribed, issue the licence.

(5) Where proof of the loss or destruction of a licence is given to the satisfaction of a Stipendiary Magistrate, he may order the issue of a duplicate licence on payment of the fee prescribed.

10. (1) Any licensee may be summoned by the Commissioner of Police appointed under the Police Act, 1892 before the Court held nearest to the place where the licensee carries on business as such as referred to in subsection (3) of section eight of this Act, to show cause why his licence should not be cancelled and why he should not be disqualified either permanently or temporarily from holding a licence—

Cancellation
of licence.

- (a) on the ground that he improperly obtained his licence contrary to the provisions of this Act;
- (b) on the ground that he has been convicted of any offence against this Act; or
- (c) on any of the grounds on which the Court may refuse the grant or renewal of a licence under section nine of this Act.

"This Act"
includes
regulations.
Vide s. 4,
Act No. 30
of 1918.

(2) Where the Court is satisfied that any of those grounds is proved, the Court may order that the licence be delivered up to the Clerk of the Court and cancelled and that the licensee be disqualified either permanently or for such period as the Court specifies in the order from holding a licence.

(3) A debt collector who fails to deliver up his licence to the Clerk of the Court in accordance with the terms of an order made in that behalf by the Court commits an offence against this Act.

(4) Where a Court makes an order under subsection (2) of this section, the Clerk of the Court shall, as soon as practicable after the order is made, send a copy of the order to the Commissioner of Police.

(5) During the period for which a licensee is disqualified from holding a licence he shall be deemed not to be the holder of a licence.

Appeal from
order of
Local Court.

11. (1) Where a Court refuses to grant an application under section eight of this Act or makes an order under subsection (2) of section ten of this Act, the applicant or the licensee against whom the order is made as the case may be, may within twenty-one days after the date the application is refused or the order made, appeal to the Supreme Court against the refusal to grant the application or the making of the order.

(2) An appeal under this section shall be in the nature of a re-hearing and the Supreme Court may, on the hearing of the appeal, confirm or reverse the refusal to grant the application or confirm or cancel the order appealed against or make such order in the case as may seem just.

Vide s. 40
Act No. 30
of 1918.

(3) An appeal under this section shall be made in the manner provided by Rules of Court.

Register
to be kept
by Clerk of
Court.

12. (1) Each Clerk of a Court shall keep a register of all licences, renewals of licences and cancellation of licences granted or made by the Court of which he is the Clerk.

(2) The register shall be available for inspection by any member of the public during the hours that the office of the Clerk is open to the public on payment of the fee prescribed.

Unlicensed
persons not
to recover
fees, etc.

13. (1) Subject to this Act, a person is not entitled to sue for or recover or retain any commission, fees, charges, reward or other remuneration for or in respect of any service done by him as a debt collector, unless—

(a) he was a licensee at the time of the doing of that service;

- (b) his engagement or appointment to act as debt collector in respect of the service is in writing signed by the person on whose behalf the service is to be done or his agent or representative; and
- (c) the commission, fees, charges, reward or other remuneration for, or in respect of, the service are included in and not in excess of the commission, fees, charges, reward or other remuneration agreed upon by the person acting as a debt collector and the person on whose behalf the service is done.

(2) This section does not apply in relation to any such service done by a debt collector before the expiration of three months after the coming into operation of this Act.

14. (1) A person who in any application or other document or statement made under or for the purposes of this Act, knowingly makes any statement that is not correct or furnishes any particulars that are not correct or knowingly omits to furnish any particulars that are required by this Act to be furnished, is guilty of an offence against this Act.

Offence of furnishing incorrect information in applications, etc.

(2) Where the fees, charges, commission, reward or other remuneration that a licensee is entitled to receive for or in respect of any service done by him are agreed upon between the licensee and the person on whose behalf the service is done, any licensee who for or in respect of that service, demands, receives or retains from any moneys received by him for and on behalf of any person, an amount by way of fees, charges, commission, reward or other remuneration that is in excess of or not included in the fees, charges, commission, reward or other remuneration as the case may be, so agreed upon, is guilty of an offence against this Act.

"This Act" includes regulations. Vide s. 4 Act No. 30 of 1918.

Penalty: Fifty pounds.

(3) Upon conviction for an offence against subsection (2) of this section, the Court convicting the licensee shall order him to refund any fees, charges, commission, reward or other remuneration received or retained by him, that are in excess of or not included in the fees, charges, commission, reward or other remuneration so agreed upon.

Duty
of debt
collectors
in respect of
trust
money.

15. (1) Where a debt collector in respect of any service or transaction in the course of his business as such receives or collects an amount of trust money, for or on behalf of any person—

- (a) he shall, before the expiration of the day next following the day of the receipt or collection of the amount being a day on which the banks in the State are open for business—
 - (i) record the amount, or cause the amount to be recorded in his record of accounts so as to show particulars of the receipt or collection separately from records of money received, collected, or held on his own account or for or on behalf of any other person; and
 - (ii) pay the whole of the amount, or cause the whole of the amount to be paid into a trust account; and
- (b) shall not withdraw, or permit the withdrawal of the whole or any part of the amount except in payment of—
 - (i) the expenses, commission, fees and other charges of or incidental to the service or transaction; and
 - (ii) any moneys owing to the debt collector by the person on whose behalf the service or transaction was carried out to which the debt collector is lawfully entitled.

(2) Every debt collector shall within fourteen days of demand in writing made by the person on whose behalf the service or transaction was carried out, and in any event unless the person otherwise agrees in writing, within forty-five days of receipt of the trust money in respect of the service or transaction, pay the balance of that money, if any, to the person on whose behalf the service or transaction was carried out, or as he may direct in writing.

(3) A debt collector shall not draw against or cause any payment to be made from a trust account unless the drawing or payment is made by or on his cheque, and where the cheque is in respect of a payment referred to in subsection (2) of this section, that cheque requires payment to be made to or to the order of the person to whom the sum for which that cheque is drawn is payable under or in pursuance of that subsection, is crossed and bears across its face the words "not negotiable".

(4) A debt collector, shall within fourteen days after—

- (a) any trust account is opened by him notify in writing the Clerk of the Court that granted his licence, of the name of the trust account and the name and address of the bank where the account is kept; and
- (b) any change of the name of that trust account or in the bank where the trust account is kept, so notify the Clerk of the new name of the trust account and the name and address of that bank.

(5) A debt collector who neglects or fails to comply with this section commits an offence against this Act.

Penalty: One hundred pounds.

(6) Money paid into a trust account in accordance with this section is not—

- (a) available for payment of the debts of a debt collector or to any other creditor of the debt collector; or

(b) liable to be attached or taken into execution under the order or process of any court whatsoever at the instance of any other creditor.

(7) Nothing in this section takes away or affects any lawful claim or lien that any licensee may have against or upon any money standing to the credit of a trust account.

Duty of
Bank
Manager.

16. (1) The Manager or other principal officer of a bank with which a licensee has deposited any money whether in his own account or in any trust account, shall disclose each such account to any person authorised in writing by the Minister to examine the account, upon demand in writing delivered to him personally by the person so authorised and to permit that person to inspect and make and take with him a copy of or extract from each account and of or from any book, account, document or writing in the possession of the Manager or principal officer that relates to any of those accounts.

(2) For the purposes of this section the expression "licensee" includes a person whose licence has expired or has been cancelled, suspended or surrendered.

Duty of
debt collector
as to
accounts.

17. (1) A debt collector—

(a) shall keep or cause to be kept full and accurate records of accounts —

(i) of particulars of all trust money; and

(ii) of particulars of withdrawals and payments of trust money made by him or any one employed by him;

(b) shall keep the accounts mentioned in paragraph (a) of this section in such manner that they can be conveniently and properly audited; and

(c) shall correctly balance those accounts at the end of each month.

(2) Every entry in the records of accounts referred to in subsection (1) of this section kept at any place of business of the licensee shall be deemed, unless the contrary is proved, to have been made by or with the authority of the debt collector.

(3) A person who contravenes any of the provisions of this section is guilty of an offence against this Act.

18. (1) All books and records of accounts or other written records that are required to be kept under this Act by a licensee, shall at all reasonable times be open to inspection by any person duly authorised in writing in that behalf by the Minister either generally or in any particular case. Inspection
of records.

(2) Upon the production of his written authority a person authorised as provided in subsection (1) of this section, may require any licensee or in his absence any employee or agent of the licensee for the time being having the apparent control or charge of the office or place of business of the licensee—

- (a) to produce for inspection—
 - (i) all books, papers, accounts or other documents relating to the trust account of the licensee;
 - (ii) all records of accounts required to be kept by the licensee in accordance with section seventeen of this Act; and
 - (iii) all contracts, agreements or other documents relating to any transaction by or with the licensee in connection with his business as a debt collector, in the possession, custody or control of the licensee;
- (b) to furnish all authorities and orders to bankers as may be reasonably required of him; and
- (c) to answer any questions or supply any information with respect to any of those books, papers, accounts, written records, contracts, agreements or other documents or any entry in any of them.

(3) Any person authorised as referred to in subsection (2) of this section, may make notes, copies or extracts of or from any of those books, papers, accounts, written records, contracts, agreements or other documents so referred to.

(4) A person who—

- (a) wilfully delays or obstructs any person so authorised in the exercise of his powers or functions under this section;
- (b) on demand refuses or fails to produce any books, papers, accounts, written records, contracts, agreements or other documents required for inspection under this section in his possession, custody or control;
- (c) on demand refuses or fails to furnish any authorities and orders to bankers as may be reasonably required of him under this section; or
- (d) on demand refuses or fails without lawful excuse to answer truthfully any questions relating to any books, papers, accounts, written records, contracts, agreements or other documents required for inspection under this section,

is guilty of an offence against this Act.

(5) A person is not required under this section to answer any question or give any information that tends to incriminate him.

Power to
Minister
to direct
audit of
trust
accounts.

19. (1) The Minister may, in any case where he is of opinion that for the protection of the public, or the creditor of a licensee, it is desirable so to do, by notice in writing appoint an auditor, at the expense of the licensee, to arrange for the audit of the trust account of the licensee in respect of the period specified in the notice and to prepare and deliver to the Minister a report on the audit of the trust account.

(2) The auditor so appointed has, in respect of the trust account, the powers conferred upon the Auditor General by the Audit Act, 1904.

Fidelity
bond.

20. (1) Where the Court grants an application for, or renewal of, a licence, the Clerk of the Court shall not issue the licence or renewal unless the fidelity bond or approved security referred to in subsection (2) of this section has been lodged with him and is in force.

(2) The fidelity bond shall be a bond in the form prescribed in the sum—

- (a) in the case of a corporation whether in partnership or otherwise, of five thousand pounds, or such greater sum as may be prescribed;
- (b) in the case of a natural person who proposes to act as or carry on the business of a debt collector on his own account or in partnership with another natural person or natural persons, of three thousand pounds, or such greater sum as may be prescribed,

from some insurance company approved by the Minister and the security referred to in subsection (1) of this section shall be to the same amount as would be required in the case of a fidelity bond and in a form approved by the Minister, and the fidelity bond and security shall be conditioned for duly accounting to the persons entitled thereto for any trust money.

21. (1) (a) A fidelity bond given pursuant to this Act may be terminated by the insurance company that executed it by notice in writing served upon the licensee to whom the bond relates, the Commissioner of Police and the Clerk of the Court with whom the bond is lodged.

Termination
of fidelity
bond.

(b) The notice shall specify the date, being a date not earlier than thirty days after the date of the service of the notice, upon which the bond is to terminate.

(c) The obligation of the insurance company that executed the bond shall as from that date so specified be determined but notwithstanding such determination the insurance company shall continue to be liable—

- (i) in respect of all penalties, damages and costs adjudged against the licensee to whom the bond relates in respect of any act, done or omitted before the date of the determination of the bond; and

- (ii) for the due accounting after the specified date by the licensee to the persons entitled thereto, of all trust money received by the licensee before the specified date.

(2) When a fidelity bond given in respect of a licensee is so terminated during the currency of the licence held by the licensee, then, as from the date the bond is terminated, and until a further bond has been duly lodged with the appropriate Clerk of the Court and is in force, the licence held by the licensee is suspended and the debt collector to whom the licence was issued shall be deemed not to be a licensee.

(3) Any person may, with the written approval of the Minister, sue upon any fidelity bond or approved security lodged pursuant to this Act for indemnity in respect of any loss covered by the bond or approved security.

(4) Any action taken pursuant to subsection (3) of this section shall be taken within two years after the date upon which the cause of the action arose.

Penalty
for offences
generally.

22. (1) A person who—

- (a) does that which by or under this Act he is forbidden to do; or
- (b) does not do that which by or under this Act he is required or directed to do; or
- (c) otherwise contravenes or fails to comply with any provision of this Act,

is guilty of an offence against this Act.

(2) A person who is guilty of an offence against this Act is liable on conviction to a penalty or punishment not exceeding the penalty or punishment expressly mentioned as the penalty or punishment for the offence, or if a penalty or punishment is not so mentioned, to a penalty not exceeding one hundred pounds.

23. Where an offence against this Act is committed by a corporation any person who at the time of the commission of the offence was a director or manager of the corporation is liable to the penalty or punishment provided by this Act for the offence, unless he proves that the offence was committed without his knowledge or that he used all due diligence to prevent the commission of the offence.

Offence by company.

24. In any proceedings for an offence against this Act a certificate purporting to be signed by the Minister and stating that any person described in the certificate was not at the date specified in the certificate licensed under this Act, is evidence of the matter stated in the certificate.

Evidentiary provision.

25. No proceeding for an offence against this Act or conviction therefor affects any civil right or remedy to which any person aggrieved by the offence may be entitled.

Saving of remedies.

26. The Governor may make any regulations necessary or convenient for carrying this Act into effect and in particular may make regulations for all or any of the following purposes—

Regulations.

- (a) the issue of licences and the fees to be paid for licences;
- (b) the transfer and surrendering of licences;
- (c) the form, manner and place of registration of licences, renewals, cancellations and other matters requiring registration under this Act, where not specially provided for in this Act;
- (d) prescribing the charges that a debt collector is entitled to charge, recover or receive from any debtor of a creditor for or in connection with the collection of a debt from the debtor on behalf of the creditor

where the debt is paid by instalments and prescribing that the maximum amount thereof shall not exceed two and one-half per centum of the amount of the debt and providing for a minimum charge;

- (e) providing that any auditor or authorised person auditing or examining any documents, books, accounts, or records of a licensee shall be subject to an obligation not to divulge, otherwise than prescribed, any matter of which he shall be informed in the course of any such audit or inspection;
 - (f) exempting any person, body or authority from the application of this Act in accordance with paragraph (h) of section four of this Act and exempting wholly or to the extent prescribed any other person, body or authority or class of persons, bodies or authorities from the operation of this Act and specifying what provisions, if any, of this Act and the regulations are, with such modifications as are necessary or seem desirable and are specified in the regulations, to apply to the person, body or authority or any class thereof so exempted;
 - (g) regulating and prohibiting the method and manner in which a debt collector may make known the place where, and the fact that he is a debt collector;
 - (h) imposing penalties not exceeding one hundred pounds for breach of any regulation; and
 - (i) prescribing all matters and things required or permitted by this Act to be prescribed.
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