

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 939

Introduced by Williams, 36.

Read first time January 13, 2020

Committee: Banking, Commerce and Insurance

1 A BILL FOR AN ACT relating to the Collection Agency Act; to amend
2 sections 45-601, 45-602, 45-605, 45-606, 45-609, 45-610, 45-611,
3 45-620, and 45-623, Reissue Revised Statutes of Nebraska; to
4 authorize licensees under the act to be licensed and registered
5 through the Nationwide Mortgage Licensing System and Registry; to
6 define and redefine terms; to change certain fee and license renewal
7 provisions; to harmonize provisions; and to repeal the original
8 sections.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 45-601, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 45-601 Sections 45-601 to 45-622 and section 9 of this act shall be
4 known and may be cited as the Collection Agency Act.

5 No person, firm, corporation, or association shall conduct or
6 operate a collection agency or do a collection agency business as defined
7 in the act until he, she, or it has secured a license as provided in the
8 act. Any person, firm, corporation, or association conducting or
9 operating such a collection agency or doing such a collection agency
10 business without a license shall be guilty of a Class III misdemeanor for
11 each day that such unlawful business is conducted. Any officer or agent
12 of a firm, corporation, or association who personally participates in any
13 violation of the act shall be guilty of a Class III misdemeanor.

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

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

21 Sec. 2. Section 45-602, Reissue Revised Statutes of Nebraska, is
22 amended to read:

23 45-602 For purposes of the Collection Agency Act:

24 (1) Board means ~~shall mean~~ the Collection Agency Licensing Board;

25 (2) Collection agency means ~~shall mean~~ and includes ~~include~~:

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

1 such claims;

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

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

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

30 (4) Nationwide Mortgage Licensing System and Registry means a
31 licensing system developed and maintained by the Conference of State Bank

1 Supervisors and the American Association of Residential Mortgage
2 Regulators for the licensing and registration of mortgage loan
3 originators, mortgage bankers, installment loan companies, and other
4 state-regulated financial services entities and industries.

5 Sec. 3. Section 45-605, Reissue Revised Statutes of Nebraska, is
6 amended to read:

7 45-605 The board shall be responsible for the administration of the
8 Collection Agency Act. All applications for licenses provided for in the
9 act shall be made to the board. If the applicant is an individual, the
10 application shall include the applicant's social security number. The
11 board shall investigate the qualifications of each applicant for a
12 license. Based on the results of the investigation, the board may either
13 issue a license to the applicant upon the payment of the license fee and
14 any processing fee allowed under section 9 of this act and the furnishing
15 of the bond provided for in section 45-608 or refuse to issue such
16 license. The action of the board may be appealed, and the appeal shall be
17 in accordance with the Administrative Procedure Act.

18 Sec. 4. Section 45-606, Reissue Revised Statutes of Nebraska, is
19 amended to read:

20 45-606 (1) Any person, firm, corporation, or association desiring
21 to engage in this state in the collection business under ~~as defined in~~
22 the Collection Agency Act shall make written and sworn application for
23 such a license ~~therefor~~ to the board upon a form to be prescribed by the
24 board, which application shall be accompanied by an investigation fee of
25 not to exceed two hundred fifty dollars and any processing fee allowed
26 under section 9 of this act. The amount of the investigation fee shall be
27 fixed by the board and shall not exceed the amount actually necessary to
28 sustain the administration and enforcement of the act. Such application
29 shall be accompanied by a duly verified financial statement of the
30 applicant in form prescribed by the board.

31 (2) The board may require applicants to utilize the Nationwide

1 Mortgage Licensing System and Registry or an entity designated by the
2 Nationwide Mortgage Licensing System and Registry for the processing of
3 applications and fees.

4 Sec. 5. Section 45-609, Reissue Revised Statutes of Nebraska, is
5 amended to read:

6 45-609 The license provided for in section 45-607 shall be in such
7 form as prescribed by the board. If the licensee maintains a branch
8 office, the licensee ~~he, she, or it~~ shall not do a collection agency
9 business in such branch office until the licensee ~~he, she, or it~~ has
10 secured a branch office certificate for such branch office ~~therefor~~. A
11 licensee, so long as his, her, or its license is in full force and effect
12 and in good standing, shall be entitled to branch office certificates for
13 any branch offices operated by such licensee upon payment of the fee as
14 set forth therefor ~~provided~~ in section 45-620 and any processing fee
15 allowed under section 9 of this act. A licensee shall display his, her,
16 or its license in a conspicuous place in his, her, or its principal place
17 of business, and if the licensee ~~he, she, or it~~ conducts a branch office,
18 the branch office certificate shall be conspicuously displayed in the
19 branch office.

20 Sec. 6. Section 45-610, Reissue Revised Statutes of Nebraska, is
21 amended to read:

22 45-610 The board shall, upon written application by a licensee and
23 the payment of the fee as set forth therefor ~~provided~~ in section 45-620
24 and any processing fee allowed under section 9 of this act, issue
25 solicitor's certificates to employees of the licensee who solicit or
26 collect accounts, which certificates shall be in such form as determined
27 by the board. Such certificates shall entitle the solicitor named in the
28 certificate to solicit and handle, for the licensee named in the
29 certificate, collection agency business, accounts, and claims. Upon the
30 termination of the employment of the solicitor by the licensee, such
31 certificate shall become null and void and shall be returned by such

1 solicitor to the licensee for cancellation by the board.

2 Sec. 7. Section 45-611, Reissue Revised Statutes of Nebraska, is
3 amended to read:

4 45-611 (1) All licenses and certificates issued under the
5 Collection Agency Act shall expire on December 31 following the date of
6 issuance unless renewed as provided in this section prior to such date.
7 All branch office certificates and solicitor's certificates shall
8 continue in full force and effect only so long as the license under which
9 they are issued is in full force and effect.

10 (2) Each licensee shall, if he or she desires to have his or her
11 license renewed, make application to the board for such renewal on or
12 before December 31 ~~1~~ of each year and shall, with such application,
13 furnish the bond required by section 45-608 or furnish evidence of the
14 continuation in effect of the prior bond so furnished and pay the renewal
15 fee provided for in section 45-620 and any processing fee allowed under
16 section 9 of this act.

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

20 (4) Upon renewal of a license, the board shall issue to the licensee
21 a new license or a certificate of renewal of the previous license in such
22 form as the board determines. Upon the renewal of a license, the licensee
23 may, if the licensee ~~he, she, or it~~ maintains a branch office, secure a
24 renewal of his, her, or its branch office certificate upon payment of the
25 renewal fee provided for in ~~such~~ section 45-620 and any processing fee
26 allowed under section 9 of this act. Such licensee may also secure
27 renewals of his, her, or its solicitor's certificates upon payment of the
28 renewal fee provided for in ~~such~~ section 45-620 and any processing fee
29 allowed under section 9 of this act.

30 Sec. 8. Section 45-620, Reissue Revised Statutes of Nebraska, is
31 amended to read:

1 45-620 No license, renewal of license, branch office certificate, or
2 solicitor's certificate, as provided for in the Collection Agency Act,
3 shall be issued by the board until any processing fee allowed under
4 section 9 of this act has been paid and the following fees have been paid
5 to the Secretary of State: For a license, not to exceed two hundred
6 dollars; for renewal of a license, not to exceed one hundred dollars; for
7 a branch office certificate, not to exceed fifty dollars; for renewal of
8 a branch office certificate, not to exceed thirty-five dollars; for a
9 solicitor's certificate and for renewal of a solicitor's certificate, not
10 to exceed ten dollars. The amount of the fees to be paid to the Secretary
11 of State shall be fixed by the board and shall not exceed the amounts
12 actually necessary to sustain the administration and enforcement of the
13 act.

14 Sec. 9. (1) Effective October 1, 2020, or within one year after the
15 Nationwide Mortgage Licensing System and Registry is capable of
16 processing licenses issued under the Collection Agency Act, whichever is
17 later, the board, upon its discretion, may require licensees under the
18 act to be licensed and registered through the Nationwide Mortgage
19 Licensing System and Registry. In order to carry out this requirement,
20 the board may participate in the Nationwide Mortgage Licensing System and
21 Registry. For this purpose, the board may establish, by adopting and
22 promulgating rules and regulations or by order, requirements as
23 necessary. The requirements may include, but not be limited to:

24 (a) Any information as deemed necessary by the Nationwide Mortgage
25 Licensing System and Registry;

26 (b) The payment of fees to apply for or renew a license provided for
27 in sections 45-606 and 45-620 and any processing fee allowed under
28 section 9 of this act through the Nationwide Mortgage Licensing System
29 and Registry;

30 (c) The setting or resetting, as necessary, of renewal processing or
31 reporting dates; and

1 (d) Amending or surrendering a license or any other such activities
2 as the board deems necessary for participation in the Nationwide Mortgage
3 Licensing System and Registry.

4 (2) In order to fulfill the purposes of the Nebraska Collection
5 Agency Act, the board may establish relationships or contracts with the
6 Nationwide Mortgage Licensing System and Registry or other entities
7 designated by the Nationwide Mortgage Licensing System and Registry to
8 collect and maintain records and process transaction fees or other fees
9 related to licensees or other persons subject to the act. The board may
10 allow such system to collect licensing fees on behalf of the board and
11 allow such system to collect a processing fee for the services of the
12 system directly from each licensee or applicant for a license.

13 (3) The board shall regularly report enforcement actions and other
14 relevant information to the Nationwide Mortgage Licensing System and
15 Registry.

16 (4) The board shall establish a process whereby applicants and
17 licensees may challenge information entered into the Nationwide Mortgage
18 Licensing System and Registry by the board.

19 (5) The board shall ensure that the Nationwide Mortgage Licensing
20 System and Registry adopts a privacy, data security, and breach of
21 security of the system notification policy. The board shall make
22 available upon written request a copy of the contract between the board
23 and the Nationwide Mortgage Licensing System and Registry pertaining to
24 the breach of security of the system provisions.

25 (6) Upon written request, the board shall provide the most recently
26 available audited financial report of the Nationwide Mortgage Licensing
27 System and Registry.

28 Sec. 10. Section 45-623, Reissue Revised Statutes of Nebraska, is
29 amended to read:

30 45-623 (1) Any state agency, county, city, village, or other
31 political subdivision may contract to retain a collection agency licensed

1 pursuant to the Collection Agency Act sections 45-601 to 45-622, within
2 or without this state, for the purpose of collecting public debts owed by
3 any person to such state agency, county, city, village, or other
4 political subdivision.

5 (2) No debt owed pursuant to subsection (1) of this section may be
6 assigned to a collection agency unless (a) there has been an attempt to
7 advise the debtor by first-class mail, postage prepaid, at the last-known
8 address of the debtor (i) of the existence of the debt and (ii) that the
9 debt may be assigned to a collection agency for collection if the debt is
10 not paid and (b) at least thirty days have elapsed from the time the
11 notice was sent, except that in the case of an order for support being
12 enforced by a county attorney, authorized attorney, or prosecuting
13 attorney pursuant to Chapter 42 or 43, this notice requirement shall not
14 apply and Title IV-D of the federal Social Security Act, as amended,
15 shall be complied with.

16 (3) A collection agency which is assigned a debt under this section
17 shall have only those remedies and powers which would be available to it
18 as an assignee of a private creditor. This subsection shall not be
19 construed to in any way limit the remedies and powers available to an
20 authorized attorney as defined in section 43-512.

21 (4) For purposes of this section, debt shall include all delinquent
22 fees or payments except delinquent property taxes on real estate. In the
23 case of debt arising as a result of an order or judgment of a court in a
24 criminal or traffic matter, a collection fee may be added to the debt.
25 The collection fee shall be twenty-five dollars or four and one-half
26 percent of the debt, whichever is greater. The collection fee shall be
27 paid by the person who owes the debt directly to the person or agency
28 providing the collection service.

29 Sec. 11. Original sections 45-601, 45-602, 45-605, 45-606, 45-609,
30 45-610, 45-611, 45-620, and 45-623, Reissue Revised Statutes of Nebraska,
31 are repealed.