

45-601

Act, how cited; collection agency; license required; violation; penalty; foreign agency; communication authorized.

Sections 45-601 to 45-622 shall be known and may be cited as the Collection Agency Act.

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

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

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

Source:

Laws 1963, c. 500, § 1, p. 1592; Laws 1977, LB 39, § 299; R.S.1943, (1981), § 81-8,158; Laws 1984, LB 471, § 1; Laws 1993, LB 261, § 1.

Cross Reference:

Exemptions from Credit Services Organization Act, see section 45-803.

Annotations:

Failure to report and pay collections made within specified time justified revocation of license. State ex rel. Hartman v. Weiss, 181 Neb. 685, 150 N.W.2d 264 (1967).

45-602

Terms, defined.

For purposes of the Collection Agency Act:

(1) Board shall mean the Collection Agency Licensing Board;

(2) Collection agency shall mean and include:

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

(b) Any person, firm, corporation, or association which, in attempting to collect or in collecting his, her, or its own accounts or claims, uses a fictitious name or any name other

than his, her, or its own name which would indicate to the debtor that a third person is collecting or attempting to collect such account or claim; and

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

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

Source:

Laws 1963, c. 500, § 2, p. 1593; R.S.1943, (1981), § 81-8,159; Laws 1984, LB 471, § 2; Laws 1993, LB 261, § 2.

45-603

Collection Agency Licensing Board; created; members; term; expenses; employees; Secretary of State; duties.

(1) There is hereby created the Collection Agency Licensing Board which shall consist of the Secretary of State, who shall be chairperson of the board, and four members appointed by the Governor. Three of the members appointed by the Governor shall be licensees actively engaged in the collection business in this state, one of whom shall reside in each of the state's three congressional districts. The remaining member shall be appointed at large as a representative of the public. Such person shall not be a licensee actively engaged in the collection business in this state.

(2) The term of office of each appointed member shall be for four years, except that of the members of the first board appointed under this section, two shall be appointed for a term of two years. Before a member's term expires, the Governor shall appoint a successor to take office on the expiration of the member's term. A member shall continue to serve after the expiration of his or her term until a successor is appointed and qualified. A vacancy in the office of a member shall be filled by appointment for the unexpired term.

(3) The members of the board shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

(4) The board may employ such persons as may be necessary to carry out the Collection Agency Act, fix the salaries of such employees, and make such other expenditures as are necessary to properly carry out the act, except that all remuneration, expenses, salaries, and expenditures provided for in the act shall be paid out of the Nebraska Collection Agency Fund.

(5) The Secretary of State shall keep a record of all the proceedings, transactions, communications, and official acts performed pursuant to the act and perform such other duties as may be necessary to carry out the intent and purpose of the act.

Source:

Laws 1963, c. 500, § 8, p. 1595; R.S.1943, (1981), § 81-8,165; Laws 1984, LB 471, § 4; Laws 1989, LB 3, § 1; Laws 1993, LB 261, § 3.

45-604

Board; adopt rules and regulations.

The board may enact rules and regulations relating to the administration of, but not inconsistent with, the Collection Agency Act.

Source:

Laws 1963, c. 500, § 8, p. 1595; R.S.1943, (1981), § 81-8,165; Laws 1984, LB 471, § 4; Laws 1993, LB 261, § 4.

Cross Reference:

For promulgation of rules and regulations, see Chapter 84, article 9.

45-605

Board; duties; application for license; filing; issuance; denial; appeal.

The board shall be responsible for the administration of the Collection Agency Act. All applications for licenses provided for in the act shall be made to the board. If the applicant is an individual, the application shall include the applicant's social security number. The board shall investigate the qualifications of each applicant for a license. Based on the results of the investigation, the board may either issue a license to the applicant upon the payment of the license fee and the furnishing of the bond provided for in section 45-608 or refuse to issue such license. The action of the board may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

Source:

Laws 1963, c. 500, § 9, p. 1595; R.S.1943, (1981), § 81-8,166; Laws 1984, LB 471, § 5; Laws 1988, LB 352, § 75; Laws 1993, LB 261, § 5; Laws 1997, LB 752, § 117.

Cross Reference:

Administrative Procedure Act, see section 84-920.

45-606

License; application; fee; financial statement; form.

Any person, firm, corporation, or association desiring to engage in this state in the collection business as defined in the Collection Agency Act shall make written and sworn application for a license therefor to the board upon a form to be prescribed by the board, which application shall be accompanied by an investigation fee of not to exceed two hundred fifty dollars. The amount of the fee shall be fixed by the board and shall not exceed the amount actually necessary to sustain the administration and enforcement of the act. Such application shall be accompanied by a duly verified financial statement of the applicant in form prescribed by the board.

Source:

Laws 1963, c. 500, § 10, p. 1596; Laws 1974, LB 639, § 2; R.S.1943, (1981), § 81-8,167; Laws 1984, LB 471, § 6; Laws 1989, LB 206, § 1; Laws 1993, LB 261, § 6.

45-607

License; qualifications of licensee.

(1) The license provided for by section 45-606 shall be granted only to applicants who are trustworthy, who have a good reputation for honesty and fair dealings, who are financially responsible, and who are, in the opinion of the board, competent to engage in the collection of accounts and claims of others. No license shall be issued to a partnership, limited liability company, corporation, or association unless the manager or executive officer thereof has been engaged in the collection business either as owner, officer, partner, member, or employee of an established reputable collection agency for a period of at least two years, except that the board may, if satisfied that the applicant or the manager or executive officer thereof has had sufficient business experience to be fully competent to engage in the collection business without such previous collection experience, approve such application.

(2) No such license shall be issued to any person, firm, limited liability company, corporation, or association who or which is not a resident of this state or does not keep and maintain a regular office in this state in which are kept complete records of collections and claims handled by such person, firm, limited liability company, corporation, or association for creditors residing in this state and against debtors residing in this state, except that a foreign corporation or limited liability company duly authorized, admitted, and licensed to do business in this state may be issued such a license if it complies with all requirements of the Collection Agency Act, nor shall any license be issued to any person, firm, limited liability company, corporation, or association who or which or the principal officers of which have, within the past five years, been convicted in any court of fraud or have been

convicted of or had judgment entered against them in any court for failure to account to their client or customer for money or property collected by them for such client or customer.

Source:

Laws 1963, c. 500, § 11, p. 1596; R.S.1943, (1981), § 81-8,168; Laws 1984, LB 471, § 7; Laws 1993, LB 121, § 273; Laws 1993, LB 261, § 7.

45-608

Licensee; bond; conditions.

No license shall be issued under section 45-607 until the applicant has furnished a good and sufficient corporate surety bond in the sum of fifteen thousand dollars for those agencies or foreign corporations having sixteen or more licensed solicitors, ten thousand dollars for any agency having five to fifteen licensed solicitors, and five thousand dollars for any agency having less than five solicitors, payable to and approved by the board and conditioned that the licensee shall faithfully and truly perform all agreements entered into with the licensee's clients or customers and shall, within forty-five days after the close of each calendar month, report to and pay to his, her, or its client or customer the net proceeds of all collections made during the preceding calendar month and due to each client or customer, which bond shall be in such form as approved by the board and shall be filed in the office of the Secretary of State. No person shall be required to post a bond in excess of one hundred thousand dollars.

An action may be brought in any court of competent jurisdiction upon such bond by any person to whom the licensee fails to account and pay as set forth in such bond or who has been damaged by failure of the licensee to comply with all agreements entered into with such person, except that the aggregate liability of the surety to all such persons shall, in no event, exceed the sum of such bond.

Source:

Laws 1963, c. 500, § 12, p. 1597; R.S.1943, (1981), § 81-8,169; Laws 1984, LB 471, § 8; Laws 1993, LB 261, § 8.

45-609

License; form; display.

The license provided for in section 45-607 shall be in such form as prescribed by the board. If the licensee maintains a branch office, he, she, or it shall not do a collection agency business in such branch office until he, she, or it has secured a branch office certificate therefor. A licensee, so long as his, her, or its license is in full force and effect and in good standing, shall be entitled to branch office certificates for any branch offices operated by such licensee upon payment of the fee therefor provided in section 45-620. A licensee shall display his, her, or its license in a conspicuous place in his, her, or its principal place of business, and if he, she, or it conducts a branch office, the branch office certificate shall be conspicuously displayed in the branch office.

Source:

Laws 1963, c. 500, § 13, p. 1598; R.S.1943, (1981), § 81-8,170; Laws 1984, LB 471, § 9; Laws 1993, LB 261, § 9.

45-610**Licensee; employees; solicitor's certificates; form.**

The board shall, upon written application by a licensee and the payment of the fee therefor provided in section 45-620, issue solicitor's certificates to employees of the licensee who solicit or collect accounts, which certificates shall be in such form as determined by the board. Such certificates shall entitle the solicitor named in the certificate to solicit and handle, for the licensee named in the certificate, collection agency business, accounts, and claims. Upon the termination of the employment of the solicitor by the licensee, such certificate shall become null and void and shall be returned by such solicitor to the licensee for cancellation by the board.

Source:

Laws 1963, c. 500, § 14, p. 1598; R.S.1943, (1981), § 81-8,171; Laws 1984, LB 471, § 10; Laws 1993, LB 261, § 10.

45-611**Licenses; certificates; expiration; renewal; application; time.**

All licenses and certificates issued under the Collection Agency Act shall expire on December 31 following the date of issuance unless renewed as provided in this section prior to such date. All branch office certificates and solicitor's certificates shall continue in full force and effect only so long as the license under which they are issued is in full force and effect.

Each licensee shall, if he or she desires to have his or her license renewed, make application to the board for such renewal on or before December 1 of each year and shall, with such application, furnish the bond required by section 45-608 or furnish evidence of the continuation in effect of the prior bond so furnished and pay the renewal fee provided for in section 45-620.

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

Upon renewal of a license, the board shall issue to the licensee a new license or a certificate of renewal of the previous license in such form as the board determines. Upon the renewal of a license, the licensee may, if he, she, or it maintains a branch office, secure a renewal of his, her, or its branch office certificate upon payment of the renewal fee provided for in such section. Such licensee may also secure renewals of his, her, or its solicitor's certificates upon payment of the renewal fee provided for in such section.

Source:

Laws 1963, c. 500, § 15, p. 1598; R.S.1943, (1981), § 81-8,172; Laws 1984, LB 471, § 11; Laws 1993, LB 261, § 11.

45-612

Licensee; solicitor; violation; conviction; revocation; hearing; order.

Upon final conviction of any licensee or solicitor by any court in Nebraska of fraud or embezzlement or upon final judgment against such licensee or solicitor in any court in Nebraska for fraud or embezzlement or for failure to account to his, her, or its client or customer within the time provided for in section 45-608 or upon the termination of the bond furnished by the licensee under such section without another sufficient bond being substituted therefor, the board shall forthwith revoke such license or, in the case of a solicitor, such solicitor's certificate. Such license shall also be revoked by the board at any time a licensee fails to maintain a regular office in this state in which are kept complete records of all collections and claims handled and being handled by such licensee or at any time the licensee becomes a nonresident of this state or, in the case of a foreign corporation, is no longer licensed to do business in this state. Such license or solicitor's certificate shall also be revoked if after a hearing, as provided in sections 45-613 and 45-614, the board finds that such license or certificate should be revoked.

Source:

Laws 1963, c. 500, § 16, p. 1599; Laws 1969, c. 778, § 5, p. 2952; R.S.1943, (1981), § 81-8,173; Laws 1984, LB 471, § 12; Laws 1993, LB 261, § 12.

Cross Reference:

Additional cause for revocation or suspension of license as collection **agency**, see section 71-3205.

45-613

Licensee; solicitor; complaint; citation; notice; hearing.

The board may, upon its own motion, and shall, upon the sworn complaint of any customer or client of a licensee, cite such licensee or solicitor of such licensee to appear before it at a time and place as set forth in such citation to show cause, if any, why such license or certificate should not be suspended or revoked. Such citation shall be in writing and shall set forth the exact charges against the licensee or solicitor, and a true copy thereof shall be served on such licensee or solicitor at least twenty days prior to the day of hearing in the same manner as summons of the district courts are served. If the citation is against a solicitor, a true copy of the citation shall also be served upon the licensee under whose license the solicitor's certificate has been issued.

Source:

Laws 1963, c. 500, § 17, p. 1600; R.S.1943, (1981), § 81-8,174; Laws 1984, LB 471, § 13; Laws 1993, LB 261, § 13.

45-614

Licensee; solicitor; citation; power to issue subpoenas; depositions.

In the preparation for and the conduct of a hearing held pursuant to section 45-613, the board may issue subpoenas to require the attendance and testimony of witnesses and the production of any pertinent records, papers, books, and documents and may administer oaths, examine witnesses, and take any evidence it deems pertinent to a proper determination of the charge. The party against whom such citation is issued shall have the right to obtain from the Secretary of State subpoenas for witnesses such party may desire to have at such hearing. Depositions may be taken and used at such hearings the same as taken and used in civil actions in the district courts of this state. Witnesses so subpoenaed shall receive the same fees as witnesses in the district courts of this state.

Source:

Laws 1963, c. 500, § 18, p. 1600; R.S.1943, (1981), § 81-8,175; Laws 1984, LB 471, § 14; Laws 1993, LB 261, § 14.

45-615

Licensee; solicitor; citation; hearing; board; findings; powers.

After a hearing held pursuant to sections 45-613 and 45-614, the board shall state in writing its findings in the matter. If the board finds that the cited licensee or solicitor has failed to comply with the intent and purposes of the Collection Agency Act or, in the case of a licensee, has failed to account to a customer or client as provided for in section 45-608 or is not financially responsible, the board may suspend or revoke such license or certificate. A certified copy of the findings of the board shall be served upon the cited licensee or solicitor by certified mail within five days of the issuance of such findings.

Source:

Laws 1963, c. 500, § 19, p. 1600; Laws 1969, c. 778, § 6, p. 2952; R.S.1943, (1981), § 81-8,176; Laws 1984, LB 471, § 15; Laws 1993, LB 261, § 15.

Annotations:

Failure to report and pay collections made within specified time justified revocation of license. *State ex rel. Hartman v. Weiss*, 181 Neb. 685, 150 N.W.2d 264 (1967).

45-616

License; solicitor's certificate; appeals; procedure.

Any refusal to grant a license or solicitor's certificate under the Collection Agency Act or the suspension or revocation of a license or solicitor's certificate may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

Source:

Laws 1963, c. 500, § 20, p. 1601; R.S.1943, (1981), § 81-8,177; Laws 1984, LB 471, § 16; Laws 1988, LB 352, § 76; Laws 1993, LB 261, § 16.

Cross Reference:

Administrative Procedure Act, see section 84-920.

45-617

Licensee; solicitor's certificate; appeal; effect.

Pending final determination of an appeal as provided in section 45-616, the holder of a license or the holder of a solicitor's certificate shall be permitted to do business as a collection agency or as a collection agency solicitor the same as though such license or certificate was in full force and effect.

Source:

Laws 1963, c. 500, § 21, p. 1602; R.S.1943, (1981), § 81-8,178; Laws 1984, LB 471, § 17.

45-618

Licensee; change place of business; notify Secretary of State; new license; issuance; solicitor; employment terminated; return certificate.

If a licensed collection agency or its branch office changes the location of its place of business, the licensee shall forthwith notify the Secretary of State of such change and the Secretary of State shall thereupon issue a new license or branch office certificate, as the case may be, setting forth the new address. If the employment, by a licensee, of a solicitor holding a certificate is terminated, such certificate shall be forthwith turned over to the licensee by such solicitor and the licensee shall forthwith turn such certificate over to the Secretary of State for cancellation.

Source:

Laws 1963, c. 500, § 22, p. 1602; R.S.1943, (1981), § 81-8,179; Laws 1984, LB 471, § 18.

45-619

Licensee; board; require financial statement; confidential.

The board may, at any time, require a licensee to submit a verified financial statement for examination so that it may determine whether the licensee is financially

responsible to carry on a collection agency business within the intents and purposes of the Collection Agency Act. Any financial statement submitted by a licensee shall be confidential and not a public record unless introduced in evidence at a hearing conducted by the board.

Source:

Laws 1963, c. 500, § 23, p. 1602; R.S.1943, (1981), § 81-8,180; Laws 1984, LB 471, § 19; Laws 1993, LB 261, § 17.

45-620

License; certificates; fees.

No license, renewal of license, branch office certificate, or solicitor's certificate, as provided for in the Collection Agency Act, shall be issued by the board until the following fees have been paid to the Secretary of State: For a license, not to exceed two hundred dollars; for renewal of a license, not to exceed one hundred dollars; for a branch office certificate, not to exceed fifty dollars; for renewal of a branch office certificate, not to exceed thirty-five dollars; for a solicitor's certificate and for renewal of a solicitor's certificate, not to exceed ten dollars. The amount of the fees shall be fixed by the board and shall not exceed the amounts actually necessary to sustain the administration and enforcement of the act.

Source:

Laws 1963, c. 500, § 24, p. 1603; Laws 1974, LB 639, § 3; R.S.1943, (1981), § 81-8,181; Laws 1984, LB 471, § 20; Laws 1989, LB 206, § 2; Laws 1993, LB 261, § 18.

45-621

Nebraska Collection Agency Fund; created; use; investment.

(1) All fees collected under the Collection Agency Act shall be remitted to the State Treasurer for credit to a special fund to be known as the Nebraska Collection Agency Fund. The board may use the fund as may be necessary for the proper administration and enforcement of the act. The fund shall be paid out only on proper vouchers approved by the board and upon warrants issued by the Director of Administrative Services and countersigned by the State Treasurer as provided by law. All fees and expenses of the Attorney General in representing the board pursuant to the act shall be paid out of such fund. Transfers from the fund to the General Fund may be made at the direction of the Legislature. Any money in the Nebraska Collection Agency Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) On or before July 5, 2001, the State Treasurer shall transfer four hundred thousand dollars from the Nebraska Collection Agency Fund to the General Fund.

Source:

Laws 1963, c. 500, § 25, p. 1603; Laws 1971, LB 53, § 2; R.S.1943, (1981), § 81-8,182; Laws 1984, LB 471, § 21; Laws 1989, LB 206, § 3; Laws 1993, LB 261, § 19; Laws 1994, LB 1066, § 31; Laws 2001, LB 541, § 3.

Cross References:

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

45-622

Licensee; solicitor; prohibited from practice of law.

Nothing in the Collection Agency Act shall be construed to authorize or permit the holder of a license or the holder of a solicitor's certificate, as provided for in the act, to engage in the practice of law.

Source:

Laws 1963, c. 500, § 26, p. 1603; R.S.1943, (1981), § 81-8,183; Laws 1984, LB 471, § 22; Laws 1993, LB 261, § 20.

45-623

Collection of public debts; contracts authorized; requirements.

(1) Any state agency, county, city, village, or other political subdivision may contract to retain a collection agency licensed pursuant to sections 45-601 to 45-622, within or without this state, for the purpose of collecting public debts owed by any person to such state agency, county, city, village, or other political subdivision.

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

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

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

Source:

Laws 1993, LB 161, § 1.