

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 610

BY BUSINESS COMMITTEE

AN ACT

1 RELATING TO COLLECTION AGENCIES; AMENDING SECTION 26-2223A, IDAHO CODE, TO  
2 REMOVE PROVISIONS REGARDING THE DESIGNATION OF A RESPONSIBLE PERSON AND  
3 TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 26-2224, IDAHO CODE,  
4 TO REVISE PROVISIONS REGARDING LICENSE APPLICATIONS, TO PROVIDE THAT  
5 A DEFICIENT APPLICATION SHALL BE DEEMED WITHDRAWN AND VOID IN CERTAIN  
6 INSTANCES, TO PROVIDE FOR WRITTEN NOTICE OF A DEFICIENT APPLICATION,  
7 AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 26-2227, IDAHO  
8 CODE, TO REMOVE A PROVISION REGARDING DENIAL, SUSPENSION, OR REVOCATION  
9 OF A LICENSE AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION  
10 26-2229A, IDAHO CODE, TO AUTHORIZE THE COLLECTION OF CERTAIN FEES AND  
11 TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 26-2231, IDAHO CODE,  
12 TO REVISE PROVISIONS REGARDING RENEWAL OF A LICENSE AND TO PROVIDE FOR  
13 REINSTATEMENT OF AN EXPIRED LICENSE IN CERTAIN INSTANCES; AND DECLARING  
14 AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.  
15

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

17 SECTION 1. That Section 26-2223A, Idaho Code, be, and the same is hereby  
18 amended to read as follows:

19 26-2223A. COLLECTION AGENCY OFFICE REQUIREMENTS ~~— DESIGNATION OF RE-~~  
20 ~~SPONSIBLE PERSON.~~ (1) Each licensee shall maintain a home office licensed  
21 under this ~~act~~ chapter as the licensee's principal location for collection  
22 activities. Each licensee must maintain a listed telephone number and must  
23 be open to the public during normal business hours on each business day, pro-  
24 vided, however, that the director may in his discretion approve a request for  
25 opening during hours other than normal business hours or a portion of a busi-  
26 ness day. A business day within the meaning of this section does not include  
27 Saturdays, Sundays, or legal holidays.

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

36 SECTION 2. That Section 26-2224, Idaho Code, be, and the same is hereby  
37 amended to read as follows:

38 26-2224. LICENSE APPLICATION. (1) Every applicant for a license un-  
39 der this ~~act~~ chapter shall file ~~with the director~~ an application ~~in a form~~

1 through an electronic system of licensing prescribed by the director that  
2 shall include:

3 (1a) The name of the applicant; if the applicant is a corporation, a  
4 list of its officers and directors and their addresses; if the applicant  
5 is a partnership, a list of the partners and their addresses; or if the  
6 applicant is a limited liability company, a list of its members or man-  
7 agers and their addresses.

8 (2b) The street address of the applicant's principal location.

9 (3c) All names by which the applicant engages in collection activities.

10 (4d) The names of all persons and organizations with which the appli-  
11 cant is affiliated, and the location of the principal office or place of  
12 business of each such affiliate.

13 (5e) A complete description of the business to be conducted, or plan of  
14 operation contemplated, by the applicant in this state.

15 ~~(6) The name, address and qualifications of a natural person possessing~~  
16 ~~a minimum of three (3) years of experience related to the business to be~~  
17 ~~conducted under this act who will supervise the applicant's office lo-~~  
18 ~~cations from which business activities in this state will be conducted.~~

19 (7f) Copies of all contracts, forms, form letters, and advertisements  
20 or solicitations to be used by the applicant in its business activities  
21 under this ~~act~~ chapter, which must accompany the application and be  
22 identified as exhibits by number.

23 (8g) If the applicant is a corporation, a limited liability company,  
24 partnership, or limited liability partnership, a copy of its articles  
25 of incorporation, articles of organization, partnership agreement, or  
26 operating agreement, duly authenticated.

27 (9h) A list of the names, business addresses, and telephone numbers of  
28 all agents who will contact persons or solicit business for the appli-  
29 cant in this state.

30 (10i) The name and business address of the applicant's agent for ser-  
31 vice of process located in this state.

32 (11j) A nonrefundable application fee of one hundred fifty dollars  
33 (\$150).

34 (12k) An agreement of consent authorizing the director to examine any  
35 and all of the applicant's financial accounts used for business activi-  
36 ties under this ~~act~~ chapter.

37 (13l) Such other information concerning the applicant as the director  
38 may reasonably require. Such application shall be executed and veri-  
39 fied on oath by the applicant. Information required at the time of ap-  
40 plication, except for advertisements and solicitations, shall be up-  
41 dated and filed with the director as necessary to keep the information  
42 current.

43 (2) A license application shall be deemed withdrawn and void if an ap-  
44 plicant submits an incomplete license application and, after receipt of a  
45 written notice of the application deficiency, fails to provide the direc-  
46 tor with information necessary to complete the application within sixty (60)  
47 days of receipt of the deficiency notice. A written deficiency notice shall  
48 be deemed received by a license applicant when:

49 (a) Placed in regular United States mail by the director or his agent  
50 using an address provided by the applicant on the license application;

1 (b) Emailed to the applicant using an email address provided by the ap-  
 2 plicant on the license application; or

3 (c) Posted by the director or his agent on the electronic system of li-  
 4 icensing as prescribed by the director.

5 SECTION 3. That Section 26-2227, Idaho Code, be, and the same is hereby  
 6 amended to read as follows:

7 26-2227. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE. (1) An appli-  
 8 cation for a license may be denied or, after notice and the opportunity for  
 9 a hearing, a license may be suspended or revoked by the director if he finds  
 10 that facts or conditions exist ~~which~~ that would have justified the director  
 11 in refusing to grant a license had such facts or conditions been known to ex-  
 12 ist at the time the license was issued, or that the licensee or the applicant,  
 13 or any officer, member, owner, manager, or agent of a licensee or applicant:

14 (a) Has violated any provision of this ~~act~~ chapter, the federal fair  
 15 debt collection practices act, 15 U.S.C. 1692 et seq., as amended, or  
 16 any rule or order of the director under this ~~act~~ chapter;

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

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

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

26 ~~(e)~~ (e) Has failed to return to a debtor an amount that was not owed on his  
 27 debt;

28 ~~(f)~~ (f) Has made a material misstatement in the application for such li-  
 29 cense or renewal;

30 ~~(g)~~ (g) Has obtained or attempted to obtain a license or renewal by fraud  
 31 or misrepresentation;

32 ~~(h)~~ (h) Has misappropriated or converted to his own use or improperly  
 33 withheld moneys collected or held for any other person, except that a  
 34 collection agency licensee may convert into business funds his portion  
 35 of any moneys collected on behalf of a creditor client, pursuant to a  
 36 written agreement with the creditor client and in compliance with this  
 37 ~~act~~ chapter;

38 ~~(i)~~ (i) Has falsely represented himself as a licensee for the purpose  
 39 of soliciting for or representing any business covered in this ~~act~~  
 40 chapter;

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

45 ~~(k)~~ (k) Has had a license substantially equivalent to a license under this  
 46 ~~act~~ chapter issued by another state revoked, suspended, or denied; or

47 ~~(l)~~ (l) Demonstrates a lack of fitness to engage in business activities  
 48 authorized for a licensee under this ~~act~~ chapter.

1 (2) The director may, after notice and the opportunity for a hearing,  
2 impose upon any licensee, or person required to be licensed under this ~~act~~  
3 chapter, a civil penalty of not more than five thousand dollars (\$5,000) for  
4 each violation of this ~~act~~ chapter.

5 (3) The director may, after notice and the opportunity for a hearing,  
6 impose upon a licensee, or person required to be licensed under this ~~act~~  
7 chapter, any sanction authorized by this section if the director finds that  
8 an agent of the licensee, or person required to be licensed under this ~~act~~  
9 chapter, has violated any provision of this ~~act~~ chapter.

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

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

16 SECTION 4. That Section 26-2229A, Idaho Code, be, and the same is hereby  
17 amended to read as follows:

18 26-2229A. REQUIREMENT OF FAIR, OPEN, AND HONEST DEALING -- PROHIBITED  
19 PRACTICES. (1) Every licensee or person required to be licensed under this  
20 ~~act~~ chapter and its agents shall deal openly, fairly, and honestly without  
21 deception in the conduct of its business activities in this state under this  
22 ~~act~~ chapter.

23 (2) When not inconsistent with the statutes of this state, the provi-  
24 sions of the federal fair debt collection practices act, 15 U.S.C. ~~section~~  
25 1692, et seq., as amended, may be enforced by the director against collection  
26 agencies licensed or required to be licensed under the provisions of this ~~act~~  
27 chapter.

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

33 (4) No collection agency licensee, or collection agency required to be  
34 licensed under this ~~act~~ chapter, or agent of such collection agency shall  
35 collect or attempt to collect any interest or other charges, fees, or ex-  
36 penses incidental to the principal obligation unless such interest or inci-  
37 dental fees, charges, or expenses:

38 (a) Are expressly authorized by statute;

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

40 (c) Are expressly authorized by the agreement creating the debt, except  
41 as otherwise prohibited by law. Provided, however, that no person shall  
42 collect any attorney's fees or litigation costs unless such attorney's  
43 fees or litigation costs are reasonable, are for actual attorney ser-  
44 vices performed, and are limited to those costs actually incurred;

45 (d) Have been judicially determined;

46 (e) ~~Are~~ Are provided for in a written form agreement, that is signed by  
47 both the debtor and the licensee, and which has the prior approval of the  
48 director with respect to the terms of the agreement and amounts of the  
49 fees, interest, charges, and expenses; or

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

7 (5) No person shall sell, distribute, or make use of solicitations,  
 8 collection letters, demand forms, or other printed matter ~~which that~~ are  
 9 made similar to or resemble governmental forms or documents, or legal forms  
 10 used in civil or criminal proceedings.

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

14 (7) No person licensed, or required to be licensed under this ~~act,~~  
 15 chapter shall misappropriate, transfer, or convert to his own use or ben-  
 16 efit, funds belonging to or held for another person in connection with  
 17 business activities authorized under this ~~act~~ chapter.

18 (8) No credit repair organization licensed, or required to be licensed  
 19 under this ~~act,~~ chapter shall charge or receive money or other valuable con-  
 20 sideration for the performance of any service ~~which~~ the credit repair organ-  
 21 ization has agreed to perform for any consumer before such service is fully  
 22 performed.

23 (9) No person licensed or required to be licensed under this ~~act~~ chapter  
 24 shall make a representation or statement of material fact, or omit to state a  
 25 material fact, in connection with the offer, sale, or performance of any ser-  
 26 vice authorized under this ~~act~~ chapter, if the representation, statement, or  
 27 omission is false or misleading or has the tendency or capacity to be mis-  
 28 leading.

29 SECTION 5. That Section 26-2231, Idaho Code, be, and the same is hereby  
 30 amended to read as follows:

31 26-2231. RENEWAL OF LICENSE -- REINSTATEMENT. (1) On or before ~~the~~  
 32 ~~fifteenth day of March~~ December 31 of each year, each licensee shall pay  
 33 to the director a nonrefundable license renewal fee of one hundred dollars  
 34 (\$100) and shall file ~~with,~~ through an electronic system of licensing as  
 35 prescribed by the director, a license renewal ~~form~~ providing complete infor-  
 36 mation as required by the director.

37 (2) Failure to fully comply with the license renewal requirements of  
 38 this section by ~~the fifteenth day of March~~ December 31 of each year shall re-  
 39 sult in automatic expiration of the license as of that date.

40 (3) The director may reinstate an expired license within sixty (60)  
 41 days immediately following license expiration if the director finds that the  
 42 applicant meets the requirements for licensure under this chapter and after  
 43 submission to the director of:

44 (a) A complete application for renewal;

45 (b) The fee required to apply for license renewal, unless previously  
 46 paid; and

47 (c) A reinstatement fee of fifty dollars (\$50.00).

1           SECTION 6. An emergency existing therefor, which emergency is hereby  
2 declared to exist, this act shall be in full force and effect on and after  
3 July 1, 2022.