

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1040

Introduced by Johnson, 23.

Read first time January 20, 2016

Committee:

- 1 A BILL FOR AN ACT relating to travel agencies and agents; to adopt the
- 2 Travel Agency Registration Act.
- 3 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 7 of this act shall be known and may be
2 cited as the Travel Agency Registration Act.

3 Sec. 2. For purposes of the Travel Agency Registration Act, unless
4 the context otherwise requires:

5 (1) Applicant means a person applying for registration under the
6 act;

7 (2) Customer means a person who is offered or who purchases travel
8 services;

9 (3) Doing business in this state means any of the following:

10 (a) Offering to sell or selling travel services if the offer is made
11 or received within the state;

12 (b) Offering to arrange or arranging travel services for a fee or
13 commission if the offer is made or received in this state; and

14 (c) Offering to award or awarding travel services as a prize or
15 award if the offer or award is made in or received in this state;

16 (4) Registrant means a person registered pursuant to the act;

17 (5) Solicitation means contact by a travel agency or travel agent of
18 a customer for the purpose of selling or offering to sell travel
19 services;

20 (6) Travel agency means a person who derives more than fifty percent
21 of such person's income by representing, directly or indirectly, that the
22 person is offering or undertaking, by any means or method, to provide
23 travel services for a fee, commission, or other valuable consideration;

24 (7) Travel agent means a person employed by a travel agency whose
25 principal duties include consulting with and advising persons concerning
26 travel services and whose primary source of income is his or her
27 employment by the travel agency; and

28 (8) Travel services means arranging or booking vacation or travel
29 packages, travel reservations or accommodations, tickets for domestic or
30 foreign travel by air, rail, ship, bus, or other medium of
31 transportation, or hotel or other lodging accommodations. Travel services

1 includes travel-related prizes or awards for which the customer must pay
2 a fee or, in connection with the price or award, expend money for the
3 direct or indirect monetary benefit of the person making the award, in
4 order for the customer to collect or enjoy the benefits of the prize or
5 award.

6 Sec. 3. (1) Beginning July 1, 2017, a travel agency doing business
7 in this state shall register with the Secretary of State as a travel
8 agency if it or its travel agent conducts the solicitation of a Nebraska
9 resident. A travel agency required to register under this subsection
10 shall not permit a travel agent employed by the travel agency to do
11 business in this state unless the agency is registered with the Secretary
12 of State.

13 (2) Beginning July 1, 2017, a travel agent shall not knowingly do
14 business in this state until the travel agency employing the travel agent
15 is registered with the Secretary of State as a travel agency if the
16 travel agency or any of the agency's travel agents conduct the
17 solicitation of a Nebraska resident.

18 (3) This section does not require registration for or prohibit
19 solicitation by mail or telecommunications of a person with whom the
20 travel agency has a previous travel services provider-customer
21 relationship as evidenced by previously arranged travel services for that
22 customer on at least one prior occasion.

23 (4) An applicant shall complete an application for registration on a
24 form provided by the Secretary of State. The application must be
25 accompanied by the required bond or evidence of financial responsibility
26 as provided in section 4 of this act and the annual registration fee as
27 provided in subsection (6) of this section. The application shall include
28 all of the following information:

29 (a) The name and signature of an officer or partner of a business
30 entity or the name and signature of the principal owner and operator if
31 the agency is a sole proprietorship;

1 (b) The name, address, and telephone number of the applicant and the
2 name of all travel agents employed by the applicant travel agency;

3 (c) The name, address, and telephone number of any person who owns
4 or controls, directly or indirectly, ten percent or more of the
5 applicant;

6 (d) If the applicant is a foreign corporation or business, the name
7 and address of the corporation's agent in this state for service of
8 process; and

9 (e) Any additional information required by rules and regulations
10 adopted and promulgated by the Secretary of State.

11 (5) The application shall be accompanied by a written irrevocable
12 consent to service of process. The consent must provide that actions in
13 connection with doing business in this state may be commenced against the
14 registrant in the proper jurisdiction in this state in which the cause of
15 action may arise, or in which the plaintiff may reside, by service of
16 process on the Secretary of State as the registrant's agent and
17 stipulating and agreeing that such service of process shall be taken and
18 held in all courts to be as valid and binding as if service of process
19 had been made upon the person according to the laws of this or any other
20 state. The consent to service of process shall be in such form and
21 supported by such additional information as the Secretary of State may
22 require by rules and regulations adopted and promulgated by the Secretary
23 of State.

24 (6) An applicant or a registrant shall submit an annual registration
25 fee at the time the application is filed with the secretary and on or
26 before the anniversary date of the effective date of registration for
27 each subsequent year. The Secretary of State shall adopt and promulgate
28 rules and regulations to establish the registration fee at a rate deemed
29 reasonably necessary by the secretary to support the administration of
30 the Travel Agency Registration Act, but not to exceed twenty-five dollars
31 per year per agency. If an applicant or a registrant fails to pay the

1 annual registration fee, the application for registration or registration
2 lapses and becomes ineffective.

3 (7) A registrant shall submit to the Secretary of State corrections
4 to the information supplied in the application within a reasonable time
5 after a change in circumstances, which circumstances would be required to
6 be reported in an application, except travel agents' names as required in
7 subdivision (4)(b) of this section. The names of travel agents shall be
8 updated at the time of paying the annual registration fee.

9 (8) The Secretary of State may revoke or suspend a registration for
10 cause. Appeal of such revocation or suspension may be commenced within
11 thirty days after receipt of the notice of revocation or suspension in
12 the district court of Lancaster County.

13 Sec. 4. (1) An applicant shall submit a surety or cash performance
14 bond with the application for registration of a travel agency in
15 conformity with this section. The Secretary of State shall adopt and
16 promulgate rules and regulations for surety or bond in the principal
17 amount of ten thousand dollars, with an aggregate limit of ten thousand
18 dollars. The bond shall be executed by a surety company authorized to do
19 business in this state, and the bond shall be continuous in nature until
20 anceled by the surety with not less than sixty days' written notice to
21 both the travel agency and to the Secretary of State. The notice shall
22 indicate the surety's intent to cancel the bond on a date at least sixty
23 days after the date of the notice.

24 (2)(a) The bond shall be payable to the state for the use and
25 benefit of either:

26 (i) A person who is injured by the fraud, misrepresentation, or
27 financial failure of the travel agency or a travel agent employed by the
28 travel agency; or

29 (ii) The state on behalf of a person or persons under subdivision
30 (2)(a)(i) of this section.

31 (b) The bond shall be conditioned such that the registrant will pay

1 any judgment recovered by a person in a court of this state in a suit for
2 actual damages, including reasonable attorney's fees, or for rescission,
3 resulting from a cause of action involving the sale or offer of sale of
4 travel services. The bond shall be open to successive claims, but the
5 aggregate amount of the claims paid shall not exceed the principal amount
6 of the bond.

7 (3) In lieu of any bond or guarantee required to be provided by this
8 section, an applicant or registrant may do either of the following:

9 (a) File with the Secretary of State proof of professional liability
10 and errors and omissions insurance in an amount of at least one million
11 dollars annually; or

12 (b) Deposit with the Secretary of State cash, securities, or a
13 statement from a federally insured financial institution guaranteeing the
14 performance of the applicant or registrant up to a maximum of ten
15 thousand dollars to be held or applied to the purposes to which the
16 proceeds of the bond would otherwise be applied.

17 Sec. 5. (1) A person required to register as a travel agency under
18 the Travel Agency Registration Act who fails to register, fails to make
19 required corrections to its application for registration, or fails to pay
20 the required fee on or before thirty days after the fee becomes due is
21 guilty of a Class IV misdemeanor.

22 (2) If a person required to be registered or listed upon an
23 application for registration by the Travel Agency Registration Act
24 receives money as a fee, commission, compensation, or profit in
25 connection with doing business in this state in violation of section 3 of
26 this act, the person, in addition to the criminal penalty in subsection
27 (1) of this section, shall be assessed a civil penalty by the Secretary
28 of State of up to two thousand five hundred dollars. Any civil penalty
29 imposed and collected under this subsection shall be remitted to the
30 State Treasurer for distribution in accordance with Article VII, section
31 5, of the Constitution of Nebraska. The remedies provided in this section

1 are not exclusive and shall not preclude an aggrieved person from
2 pursuing any other remedy provided by law.

3 Sec. 6. (1) The Travel Agency Registration Act act does not apply
4 to:

5 (a) A bona fide employee of a travel agency who is engaged solely in
6 the business of the agency and whose principal duties do not include
7 consulting with and advising persons concerning travel services; or

8 (b) A common carrier of passengers or property regulated by an
9 agency of the federal government or employees of a common carrier when
10 engaged solely in the transportation business of the carrier as
11 identified in the carrier's certificate.

12 (2) A travel agency is required to register under the Travel Agency
13 Registration Act even if the customer's name was obtained from the
14 customer as part of a promotion in which the customer signed up to
15 receive a sales presentation or to enter a drawing for a prize prior to
16 the solicitation. Such activity does not constitute a previous travel
17 services provider-customer relationship as described in subsection (3) of
18 section 3 of this act.

19 Sec. 7. The Secretary of State shall adopt and promulgate rules and
20 regulations to carry out the Travel Agency Registration Act.