

## LCB File No. R132-08

### PROPOSED REGULATION OF THE COMMISSIONER OF FINANCIAL INSTITUTIONS

**Explanation:** Material in *bold italics* is new material; material lined out within ~~bold brackets~~ is material to be omitted.

**Purpose:** To adopt regulations under chapter 649 of the Nevada Administrative Code relating to collection agencies, establishing standards and procedures for the licensing and regulation of collection agencies, collection agents, qualified managers and foreign collection agencies; establishing the amount of certain fees; and providing other matters properly relating thereto.

**General Authority:** NRS 649.075, 649.053, 649.295

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**Sec. 1.** Chapter 649 of the NAC is hereby amended by adding thereto the provisions set forth as sections 2 through 9, inclusive, of this regulation.

**Sec. 2.** NAC 649.060 is hereby amended as follows:

**NAC 649.060 Fee for supervision and related activities: Amount; collection; failure to pay.** (NRS 649.053, 649.295)

1. The Commissioner of Financial Institutions will charge and collect a fee of ~~[\$60]~~ ***\$100*** per hour from each collection agency for any supervision, examination, audit, investigation or hearing conducted pursuant to chapter 649 of NRS.

2. The Commissioner will bill each collection agency upon the completion of the activity for the fee established in subsection 1. The fee must be paid within 30 days after the date on which the bill is received. In addition to any other fee allowed by this chapter or chapter 649 of NRS, and except as otherwise provided in this subsection, any payment received after that date must include a penalty of 10 percent of the fee plus an additional 1 percent of the fee for each month, or portion of a month, that the fee is not paid. The Commissioner may waive the penalty for good cause.

3. Failure of a collection agency to pay the fee required in subsection 1 as provided in this section constitutes grounds for revocation of its license.

**Sec. 3.** NAC 649.120 is hereby amended as follows:

**NAC 649.120 Collection agencies: Fees.** (NRS 649.053, 649.295)

1. An application for licensure as a collection agency must be accompanied by a nonrefundable application fee of ~~[\$375]~~ **\$500**

2. The applicant must pay an additional application fee of ~~[\$300]~~ **\$600** for each original license issued, of which not more than \$150 may be refunded by the Commissioner of Financial Institutions on a prorated basis if:

(a) The applicant withdraws his application before the Commissioner takes action on the application;

(b) The Commissioner deems the application withdrawn pursuant to NRS 649.196 because the applicant did not submit all required information and fees within the time specified; or

(c) The licensee surrenders his license during his first year of licensure.

3. A collection agency shall pay the following fees:

(a) To renew a license, ~~[\$375]~~ **\$500**

(b) For a duplicate license or a license for a transfer of location, ~~[\$15]~~ **\$20**;

(c) For each application for a permit to operate a branch office of a licensed collection agency, ~~[\$190]~~ **\$250**; and

(d) To renew a permit to operate a branch office of a licensed collection agency, ~~[\$150]~~ **\$500**.

**Sec. 4.** NAC 649.105 is hereby repealed.

**Sec. 5.** NAC 649.151 is hereby amended as follows:

**NAC 649.151 Managers: Fees.** (NRS 649.053, 649.205, 649.295)

1. An application for a manager's certificate must be accompanied by:

(a) A nonrefundable fee of ~~[\$190]~~ **\$500**; and

(b) A nonrefundable investigation fee of ~~[\$115]~~ **\$150**.

2. An applicant must pay an additional application fee of ~~[\$30]~~ **\$40** for issuance of the certificate.

3. The annual renewal fee for a manager's certificate is ~~[\$30]~~ **\$40**.

4. For each manager's certificate that is reinstated, the holder of the certificate shall pay a fee of ~~[\$45]~~ **\$60**.

5. An applicant who does not pass the examination and wishes to reapply must pay a reexamination fee of \$100 for each subsequent examination.

**Sec. 6.** NAC 649.160 is hereby amended as follows:

**NAC 649.160 Foreign collection agencies: Fees; reinstatement of expired or revoked certificate; transferability of certificate.** (NRS 649.053, 649.171)

1. An application for a certificate of registration as a foreign collection agency must be accompanied by ~~an~~ *a nonrefundable* application fee of ~~[\$500]~~ *\$600*. The Commissioner of Financial Institutions may refund not more than ~~[\$300]~~ *\$150* of the fee on a prorated basis if:

(a) The applicant withdraws his application before the Commissioner takes action on the application;

(b) The Commissioner withdraws the application because the applicant did not submit all information and fees within the time specified; or

(c) The foreign collection agency surrenders its certificate of registration during its first year of registration.

2. The holder of a certificate of registration as a foreign collection agency must pay a fee of ~~[\$200]~~ *\$500* to renew the certificate of registration.

3. A certificate of registration as a foreign collection agency must not be reinstated after it expires or has been revoked by the Commissioner.

4. A certificate of registration as a foreign collection agency is not transferable.

**Sec. 7. *Confidentiality of Financial Records, Applications and Examinations (NRS 649.056 and 649.205)***

*The application and financial records submitted by a person pursuant to the provision of this chapter, any financial records or other documents submitted by a licensee pursuant to an audit or examination conducted by the Division and any report of examination by the Division are confidential and may be disclosed only to:*

*1. The Division;*

*2. An authorized employee of the Division who needs the records for purposes relating to the administration of this chapter; or*

*3. A person or governmental entity that is authorized to obtain the records pursuant to an order issued by a court of competent jurisdiction.*

**Sec. 8. *Violation of federal Fair Debt Collection Practices Act. (NRS 649.370)*** *A violation of any provision of the federal Fair Debt Collection Practices Act, 15 U.S.C. §§ 1682 et seq., shall be deemed to be a violation of this chapter.*

**Sec. 9. *Handling trust funds and accounts. (NRS 649.355)***

*1. Every licensee or holder of a certificate of foreign registration shall at all times maintain a separate account in a bank or credit union in which must be deposited all money collected. The account must be maintained in a bank or credit union with a physical presence in this State and bear some title sufficient to distinguish it from the licensee's personal or general checking account and to designate it as a trust account, such as "customer's trust fund account." The trust account must at all times contain sufficient money to pay all money due or owing to all customers, and no disbursement may be made from the account except to customers or to pay costs advanced for those customers, except that a licensee may periodically withdraw from the account such money as may accrue to the licensee from collections deposited or from adjustments resulting from costs advanced and payments made directly to customers.*

*2. Every licensee or holder of a certificate of foreign registration maintaining a separate custodial or trust account shall keep a record of all money deposited in the account, which*

*must indicate clearly the date and from whom the money was received, the date deposited, the dates of withdrawals and other pertinent information concerning the transaction, and must show clearly for whose account the money is deposited and to whom the money belongs. The money must be remitted to the creditors respectively entitled thereto within 30 days following the end of the month in which payment is received. The records and money are subject to inspection by the Commissioner or his authorized representative. The records must be maintained at the premises in this State at which the licensee is authorized to conduct business.*

*3. If the Commissioner finds that a licensee or certificate of foreign registration records are not maintained pursuant to subsections 2 and 3, he may require the licensee or certificate of foreign registration to deliver an audited financial statement prepared from his records by a certified public accountant who is in good standing in the state where the report is prepared who holds a certificate to engage in the practice of public accounting. The statement must be submitted within 60 days of the Commissioner's request. The Commissioner may grant a reasonable extension for the submission of the financial statement if an extension is requested, in writing, before the statement is due.*

**Sec. 10. Collection agency and debt purchasers. (NRS 649.020)** *A person who purchases an assignment of a claim is a collection agency pursuant to this chapter if:*

*(1) the person purchasing the claim has any obligation to make payments to the seller of the claim after the assignment is made; and*

*(2) the person purchasing the claim seeks to make collection or obtain payment of the claim.*

**Sec. 11. Collection of interest where the contract is silent. (NRS 649.334 and 649.375)** *If a licensee intends to charge interest authorized by law when the contract is silent as to the intent to charge interest, the licensee must;*

*(1) maintain a complete copy of the contract creating the debt in its files prior to the collection of any interest;*

*(2) state in clear and unambiguous language that interest will be collected in the contract with the customer and must state how that interest is to be distributed; and*

*(3) disclose the amount of interest collected on the claim to the customer in its written accounting pursuant to NRS 649.334.*

**Sec. 12. "Foreign Collection Agency" Defined. (NRS 649.171)** *"Foreign Collection Agency" means a collection agency registered in this State and is a resident of a state and territory of the United State of America.*