

**PROPOSED REGULATION OF  
THE COMMISSIONER OF FINANCIAL INSTITUTIONS**

**LCB File No. R137-08**

September 9, 2008

EXPLANATION – Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: §§1-6, 8-13 and 18-21, NRS 671.030; §7, NRS 671.030 and 671.185; §14, NRS 658.101, 671.030 and 671.120; §15, NRS 671.030 and 671.050; §16, NRS 671.030 and 671.070; §17, NRS 671.030 and 671.090.

A REGULATION relating to issuers of instruments for transmission or payment of money; requiring certain information maintained by the Division of Financial Institutions of the Department of Business and Industry to be confidential; requiring a licensee to maintain a separate account for certain money; authorizing the Commissioner of Financial Institutions to impose administrative fines and to issue orders to cease and desist for certain activities; establishing provisions relating to contested hearings; increasing certain fees; and providing other matters properly relating thereto.

**Section 1.** Chapter 671 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 12, inclusive, of this regulation.

**Sec. 2.** *As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 671.005 and sections 3 and 4 of this regulation have the meanings ascribed to them in those sections.*

**Sec. 3.** *“Commissioner” means the Commissioner of Financial Institutions.*

**Sec. 4.** *“Division” means the Division of Financial Institutions of the Department of Business and Industry.*

**Sec. 5.** *An application for a license and financial records, if any, submitted by an applicant pursuant to the provisions of this chapter and chapter 671 of NRS, financial records or other documents submitted by a licensee pursuant to an audit or examination conducted by*

*the Division and any report of examination made by the Division are confidential and may be disclosed only to:*

- 1. A member of the Division;*
- 2. An authorized employee of the Division who needs the records for purposes relating to the administration of the provisions 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. 6.** *1. Every licensee 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 located 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 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 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. The licensee shall reconcile each custodial or trust account established pursuant to subsection 1 on a monthly basis.*

*4. If the Commissioner finds that a licensee's records are not maintained pursuant to subsections 2 and 3, he may require the licensee to deliver an audited financial statement prepared from his records by a certified public accountant who holds a certificate to engage in the practice of public accounting in this State. The statement must be submitted within 60 days after the Commissioner requests it. The Commissioner may grant a reasonable extension for the submission of the financial statement if an extension is requested before the statement is due.*

**Sec. 7.** *1. If a person engages in an activity in violation of the provisions of this chapter or chapter 671 of NRS, the Commissioner may issue an order to the person imposing an administrative fine pursuant to NRS 671.185 and directing the person to cease and desist from engaging in the activity.*

*2. The order to cease and desist must:*

- (a) Be in writing;*
- (b) Be delivered by certified mail to the person ordered to cease and desist;*
- (c) State that the person has 30 days from the date of the order to request an administrative hearing and that the order shall be deemed final if the Division does not receive a verified petition for a hearing within the prescribed time; and*
- (d) State that, in the opinion of the Commissioner, the person has engaged in an activity:*

*(1) For which the person has not received a license as required by chapter 671 of NRS;*  
*or*

*(2) In a manner that violates the provisions of this chapter or chapter 671 of NRS.*

*3. A person who receives an order to cease and desist pursuant to this section shall not engage in any activity governed by chapter 671 of NRS after he receives the order unless the order is suspended or rescinded.*

*4. If a verified petition for a hearing is received by the Division within the prescribed time, the Commissioner or his designee shall hold a contested hearing.*

*5. An order to cease and desist may be amended or rescinded at any time before or during the hearing. Subject to the discretion of the Commissioner or his designee, the hearing may be continued if an amendment to the order materially alters the facts or legal issues relating to the order or the respondent demonstrates an inability to prepare for the hearing as a result of the amendment.*

*6. The decision of the Commissioner or his designee is final for the purposes of judicial review.*

**Sec. 8.** *1. A party to a hearing may compel the attendance of witnesses in his behalf at the hearing upon making a request to the Commissioner or his designee and designating the name and address of the person to be served with a subpoena.*

*2. A witness required to appear at a hearing before the Commissioner or his designee is entitled to receive from the party calling him the fees and reimbursement for mileage provided to witnesses in civil cases pursuant to NRS 50.225.*

**Sec. 9.** *1. The Commissioner or his designee has the burden of proof in a contested hearing.*

*2. The Commissioner or his designee is not bound by strict rules of procedure or rules of evidence when conducting the hearing, except that the hearing must be conducted pursuant to the provisions of chapter 233B of NRS.*

*3. A record of the alleged acts which constitute grounds for issuing the order and a copy of any evidence introduced before or during the hearing must be filed with the Division.*

**Sec. 10.** *The Commissioner or his designee may:*

- 1. Conduct hearings;*
- 2. Question witnesses;*
- 3. Make rulings on motions and objections; and*
- 4. Issue findings of fact or conclusions of law at the conclusion of the case.*

**Sec. 11.** *If a party fails to appear at a hearing scheduled by the Commissioner or his designee and a continuance has not been requested or granted, upon an offer of proof by the Division that the absent party was given proper notice and upon a determination by the Commissioner or his designee that proper notice was given, the Commissioner or his designee may proceed to consider the case without the participation of the absent party and may dispose of the matter on the basis of the evidence before it. If the respondent fails to appear at the hearing or fails to reply to the notice, the charges specified in the order may be considered as true.*

**Sec. 12.** *1. A party may call any other party or witness as an adverse witness. The party may question such a witness as if conducting a cross-examination.*

*2. Any party who is surprised by the testimony of a witness, called in good faith as a witness on his behalf, may question the witness as if conducting a cross-examination.*

**Sec. 13.** NAC 671.005 is hereby amended to read as follows:

671.005 ~~{As used in this chapter, unless the context otherwise requires, “licensee”}~~

*“Licensee”* means any person licensed pursuant to this chapter and chapter 671 of NRS.

**Sec. 14.** NAC 671.010 is hereby amended to read as follows:

671.010 1. The Commissioner ~~{of Financial Institutions}~~ will charge and collect a fee of ~~[\$30]~~ \$100 per hour from each money order company for any supervision, examination, audit, investigation or hearing conducted pursuant to chapter 671 of NRS.

2. The Commissioner will bill each money order company upon the completion of the activity for the fee established in subsection 1. The fee must be paid within 30 days after the date the bill is received. 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 money order company to pay the fee required in subsection 1 as provided in this section constitutes grounds for revocation of its license.

4. For the purposes of this section, “money order company” means any person licensed pursuant to chapter 671 of NRS.

**Sec. 15.** NAC 671.020 is hereby amended to read as follows:

671.020 An application for a license submitted pursuant to NRS 671.050 must be accompanied by:

1. A nonrefundable fee of ~~[\$375;]~~ \$500; and
2. A fee of ~~[\$300;]~~ \$400, prorated by the Commissioner . ~~{of Financial Institutions.}~~

**Sec. 16.** NAC 671.030 is hereby amended to read as follows:

671.030 1. A licensee shall pay annually to the Division ~~[of Financial Institutions of the Department of Business and Industry]~~ a fee of ~~[\$300]~~ \$400 for the renewal of his license.

2. If the Commissioner ~~[of Financial Institutions]~~ reinstates an expired license, the licensee shall pay a reinstatement fee of ~~[\$300]~~ \$400 in addition to the renewal fee prescribed in subsection 1.

**Sec. 17.** NAC 671.040 is hereby amended to read as follows:

671.040 An agent who must be licensed pursuant to NRS 671.090 shall pay to the Division ~~[of Financial Institutions of the Department of Business and Industry:]~~ :

1. An application fee of ~~[\$250:]~~ \$500; and
2. A license fee of ~~[\$250:]~~ \$500.

**Sec. 18.** NAC 671.060 is hereby amended to read as follows:

671.060 1. Except as otherwise provided in NAC 658.030, each licensee shall pay to the Division ~~[of Financial Institutions of the Department of Business and Industry]~~ an annual assessment of \$300 to cover the costs related to the employment of a certified public accountant and the performance of audits and examinations conducted by the Division.

2. The Division ~~[of Financial Institutions of the Department of Business and Industry will]~~ *shall* bill each licensee for the assessment. The assessment must be paid within 30 days after the date the bill is received.

3. A charge of 10 percent of the assessment will be imposed on any licensee whose assessment is received by the Division ~~[of Financial Institutions of the Department of Business and Industry]~~ after the date on which the assessment is due.

**Sec. 19.** NAC 671.080 is hereby amended to read as follows:

671.080 The Commissioner ~~[of Financial Institutions]~~ may revoke, suspend or refuse to renew a license in accordance with NRS 671.180 if a licensee violates any provision of this chapter or chapter 671 of NRS, including, without limitation, a provision that imposes a fee or assessment on a licensee.

**Sec. 20.** NAC 671.090 is hereby amended to read as follows:

671.090 Except as otherwise provided in NAC 671.100 and NRS 671.170 ~~[.]~~ *and section 5 of this regulation*, all papers, documents, reports and other written instruments filed with the Division ~~[of Financial Institutions of the Department of Business and Industry]~~ pursuant to this chapter and chapter 671 of NRS are open to public inspection unless the Commissioner ~~[of Financial Institutions]~~ determines that the information is required to be withheld to protect the public welfare or the welfare of a licensee.

**Sec. 21.** NAC 671.100 is hereby amended to read as follows:

671.100 1. If a licensee, or an authorized representative of that licensee, fails to respond to the Commissioner ~~[of Financial Institutions]~~ within 20 business days after receipt of a written notice that a complaint has been filed against the licensee, the licensee is deemed to have admitted to the allegations contained in the complaint.

2. Subject to the discretion of the Commissioner ~~[of Financial Institutions]~~ and except as otherwise provided by specific statute, a complaint filed with the Division, ~~[of Financial Institutions of the Department of Business and Industry,]~~ any documents filed with the complaint, and any report or information resulting from an investigation of the complaint are confidential.