

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

LCB File No. R140-08

October 20, 2008

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

AUTHORITY: §§1-10 and 13-16, NRS 677.380; §11, NRS 677.160 and 677.380; §12, NRS 677.360 and 677.380; §17, NRS 677.380 and 677.510.

A REGULATION relating to thrift companies; requiring certain information maintained by the Division of Financial Institutions of the Department of Business and Industry to be confidential; authorizing the Commissioner of Financial Institutions to impose administrative fines for and issue orders to cease and desist from certain activities; establishing provisions relating to contested hearings; increasing certain fees; and providing other matters properly relating thereto.

Section 1. Chapter 677 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 9, inclusive, of this regulation.

Sec. 2. *“Division” means the Division of Financial Institutions of the Department of Business and Industry.*

Sec. 3. *An application for a license and financial records, if any, submitted by an applicant pursuant to the provisions of this chapter and chapter 677 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. An authorized employee of the Division who needs the records for purposes relating to the administration of the provisions of this chapter; or

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

Sec. 4. *1. If a person engages in an activity in violation of the provisions of this chapter or chapter 677 of NRS, the Commissioner may issue an order to the person imposing an administrative fine pursuant to NRS 677.805 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 677 of NRS;

or

(2) In a manner that violates the provisions of this chapter or chapter 677 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 677 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 contested 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. 5. *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. 6. *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. 7. *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. 8. *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. 9. *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. 10. NAC 677.010 is hereby amended to read as follows:

677.010 As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 677.020 to 677.110, inclusive, *and section 2 of this regulation* have the meanings ascribed to them in those sections.

Sec. 11. NAC 677.131 is hereby amended to read as follows:

677.131 1. An original application submitted pursuant to NRS 677.160 must be accompanied by:

(a) A fee of ~~[\$1,500]~~ *\$2,000* for the principal office; and

(b) A fee of ~~[\$225]~~ *\$300* for each branch office.

2. Upon approval of the license and before issuance, the applicant shall pay:

(a) A fee of ~~[\$750]~~ *\$1,000* for the principal office; and

(b) A fee of ~~[\$150]~~ \$200 for each branch office.

Sec. 12. NAC 677.135 is hereby amended to read as follows:

677.135 1. A licensee shall pay annually to the Division ~~[of Financial Institutions of the Department of Business and Industry]~~ a fee of ~~[\$750]~~ \$1,000 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. 13. NAC 677.310 is hereby amended to read as follows:

677.310 1. On or before June 30 of each year, the Commissioner ~~[of Financial Institutions]~~ will collect a fee from each thrift company for the supervision and examination of the thrift company pursuant to chapter 677 of NRS.

2. The fee is based on the portion of the annual appropriation from the State General Fund to the Division ~~[of Financial Institutions]~~ that is attributable to the supervision and examination of thrift companies. Each thrift company shall pay a share of that amount as determined by the following schedule:

| <u>Total Assets</u> | <u>Base Fee</u> | <u>+ Fee Exceeding Base</u> |
|--|-----------------|--|
| Less than \$5,000,000 | \$5,000 | N/A |
| \$5,000,000 or more, but less than \$10,000,000 | 5,000 | \$.25 per thousand of assets exceeding \$5,000,000 |

| | | |
|---|---------|--|
| \$10,000,000 or more, but less than \$50,000,000 | 6,250 | \$.19 per thousand of assets exceeding \$10,000,000 |
| \$50,000,000 or more, but less than \$100,000,000 | 13,850 | \$.12 per thousand of assets exceeding \$50,000,000 |
| \$100,000,000 or more, but less than \$500,000,000 | 19,850 | \$.10 per thousand of assets exceeding \$100,000,000 |
| \$500,000,000 or more, but less than \$1,000,000,000 | 59,850 | \$.07 per thousand of assets exceeding \$500,000,000 |
| \$1,000,000,000 or more, but less than \$3,000,000,000 | 94,850 | \$.05 per thousand of assets exceeding \$1,000,000,000 |
| \$3,000,000,000 or more, but less than | 194,850 | \$.03 per thousand of assets exceeding |

\$10,000,000,000

\$3,000,000,000

\$10,000,000,000 or more,

404,850

\$.02 per thousand of

but less than

assets exceeding

\$20,000,000,000

\$10,000,000,000

Any adjustment to the fee required to account for the distribution of unused portions of or increases in the annual appropriation from the State General Fund must be made in a proportionate amount that is based on the relationship that the fee determined for each thrift company ~~[pursuant to paragraph (a)]~~ bears to the total fee imposed on all thrift companies licensed pursuant to chapter 677 of NRS.

3. If the fee is not paid on or before June 30, the Commissioner will assess a penalty of 10 percent of the amount of the fee and 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.

4. The fee does not include the cost of any extraordinary examination, audit, investigation or hearing conducted by the Division. The cost of any such examination, audit, investigation or hearing is \$60 per hour.

Sec. 14. NAC 677.315 is hereby amended to read as follows:

677.315 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 ~~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 after the date on which the assessment is due.

Sec. 15. NAC 677.530 is hereby amended to read as follows:

677.530 1. A licensee who has obtained a contract for the insurance of deposits that is issued by a private insurer pursuant to subsection 2 of NRS 677.247 shall, before accepting a deposit from a person, require that person to sign and date a form which contains a disclosure written in substantially the following form:

Your deposit is not insured by the Federal Deposit Insurance Corporation or any other federal or state entity. The deposits with this thrift company are insured only by a private insurer. The name of the private insurer that is insuring your deposit is.....(insert name of private insurer). You are advised to fully consider this issue before depositing money with this company.

2. The disclosure set forth in subsection 1 must be printed in at least 8-point bold type. The licensee may place the disclosure on a form that contains other information if the block for the signature and date are in close proximity to the text of the disclosure.

3. The licensee shall:

(a) Provide a copy of the form with the signed disclosure to each person who deposits money with the thrift company of the licensee;

(b) Retain the original form with the signed disclosure for at least 6 years after the form is signed;

(c) Present the original or a copy of the disclosure upon request by the Commissioner or an employee of the Division ~~[of Financial Institutions]~~ designated by the Commissioner;

(d) Post a placard with the disclosure printed on it in at least 14-point bold type:

(1) At the main entrance to the principal office and each branch office of the thrift company of the licensee; and

(2) In a conspicuous place at each teller's window located at the principal office and each branch office of the thrift company of the licensee; and

(e) Comply with any other applicable disclosure requirements set forth in federal law.

Sec. 16. NAC 677.610 is hereby amended to read as follows:

677.610 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.

3. Reports of investigations and examinations and any document or record relating thereto, other than those described in subsection 2, are confidential. This subsection does not

preclude any party to an administrative or judicial proceeding from introducing into evidence any information or document otherwise available or admissible.

Sec. 17. NAC 677.620 is hereby amended to read as follows:

677.620 The Commissioner ~~{of Financial Institutions}~~ may *deny*, suspend or revoke a license in accordance with NRS 677.480 to 677.570, inclusive, if the licensee violates any provision of this chapter or chapter 677 of NRS, including, without limitation, a provision that imposes a fee or assessment on a licensee.