

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

LCB File No. R132-08

September 13, 2010

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

AUTHORITY: §§1, 8 and 11, NRS 649.053; §§2 and 5, NRS 649.020 and 649.053, §3, NRS 649.053, 649.056 and 649.065; §§4 and 6, NRS 649.053 and 649.056; §7, NRS 649.053, 649.105 and 649.119; §9, NRS 649.053, 649.300, 649.395 and 658.098; §11, NRS 649.053, 649.056 and 649.345.

A REGULATION relating to collection agencies; defining the circumstances under which an attorney is exempt from provisions of law governing collection agencies; providing requirements for the confidentiality of certain financial records; enacting provisions concerning certain accounts, books and records maintained by foreign collection agencies; providing that persons who purchase claims are collection agencies under certain circumstances; providing requirements for the collection of interest; establishing provisions concerning the surety bond obtained by collection agencies; revising certain definitions relating to collection agencies; requiring collection agencies to pay the assessment to cover the cost of certain legal services furnished by the Attorney General; revising provisions concerning the annual report on financial standing submitted by collection agencies; repealing provisions requiring certain persons to obtain an exemption from the requirement to obtain a license; and providing other matters properly relating thereto.

Section 1. Chapter 649 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 7, inclusive, of this regulation.

Sec. 2. 1. *An attorney licensed to practice law in this State is exempt from the provisions of this chapter and chapter 649 of NRS only if:*

- (a) The attorney collects, solicits or obtains payment of a client's claim as part of a legal action or potential legal action for which a client has retained the attorney; and*
- (b) The attorney and the client have entered into and signed a retainer agreement.*

2. Upon the request of the Commissioner, an attorney shall provide to the Commissioner a copy of any retainer agreement which is requested by the Commissioner for the purpose of establishing that the attorney is exempt from the provisions of this chapter and chapter 649 of NRS pursuant to subsection 1.

Sec. 3. *Except as otherwise provided in this section and notwithstanding the provisions of NAC 649.086, any application and financial records submitted by a person pursuant to the provisions of this chapter or chapter 649 of NRS, any financial records or other documents submitted by a licensee pursuant to an audit or examination conducted by the Division of Financial Institutions of the Department of Business and Industry and any report of examination by the Division are confidential and may be disclosed only to:*

1. The Division, an authorized employee of the Division and an agency of this State, any other state or the Federal Government that is investigating the activities of an applicant for a license or a licensee; and

2. Any other person if the Commissioner determines, in the Commissioner's sole discretion, that the public interest in disclosure of the information outweighs the interest of the applicant or licensee.

Sec. 4. *In addition to the requirements of paragraph (g) of subsection 2 of NRS 649.171, all holders of a certificate of registration as a foreign collection agency shall maintain their accounts, books and records in accordance with the requirements of subsections 2, 3 and 4 of NRS 649.355.*

Sec. 5. *A person who purchases a claim is a collection agency pursuant to this chapter if the person purchasing the claim:*

1. Has any obligation to make payments to the seller of the claim after the purchase is made; and

2. Directly engages in collecting or obtaining payment of the claim.

Sec. 6. *If a licensee intends to charge interest authorized by law when the contract with the debtor 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 before the collection of any interest;

2. State in the collection contract with the customer in clear and unambiguous language that interest will be collected and how that interest is to be distributed; and

3. Disclose to the customer in the written accounting required pursuant to NRS 649.334 the amount of interest collected on the claim.

Sec. 7. *The surety bond required pursuant to NRS 649.105 or a substitute for that surety bond deposited pursuant to NRS 649.119, whichever is applicable, must cover any damages caused to any person as a result of a violation of this chapter or chapter 649 of NRS.*

Sec. 8. NAC 649.017 is hereby amended to read as follows:

649.017 “Foreign collection agency” means a person or entity which holds a certificate of registration pursuant to NRS 649.171 ~~and~~ *and is a citizen of the United States or lawfully entitled to remain and work in the United States.*

Sec. 9. NAC 649.070 is hereby amended to read as follows:

649.070 1. Except as otherwise provided in NAC 658.030, each primary and secondary collection agency 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 ~~[]~~ *pursuant to NRS 658.055.*

2. *Each primary and secondary collection agency shall pay to the Division the assessment which is imposed pursuant to NRS 658.098 to cover the costs of legal services provided by the Attorney General to the Commissioner and the Division.*

3. The Division shall bill each collection agency for the ~~[assessment.]~~ *assessments described in subsections 1 and 2.* The ~~[assessment]~~ *assessments* must be paid within 30 days after the date on which the bill is received.

~~[3.]~~ 4. In addition to any other fee allowed by this chapter or chapter 649 of NRS, a charge of 10 percent of the assessment will be imposed on any collection agency ~~[whose]~~ *if payment for an assessment described in subsection 1 or 2* is received by the Division after the date on which the assessment is due.

5. *The failure of a primary or secondary collection agency to pay an assessment described in subsection 1 or 2 constitutes grounds for the revocation of its license.*

Sec. 10. NAC 649.081 is hereby amended to read as follows:

649.081 ~~[Each]~~

1. *Before February 1 of each year, unless an extension is granted by the Commissioner, each* collection agency and foreign collection agency shall provide to the Commissioner ~~[of Financial Institutions, annually and before renewal of its license or certificate, as applicable,]~~ a copy of all trust account statements and a report of its financial standing *as of December 31 of the previous year* which must be prepared by a licensed certified public accountant who is in good standing in the state where the report is prepared.

2. The Commissioner will not renew the license of a collection agency or the certificate of registration of a foreign collection agency if the Commissioner has not received the information described in subsection 1.

Sec. 11. NAC 649.105 is hereby repealed.

TEXT OF REPEALED SECTION

649.105 Exemption from requirement to obtain license. A person who is not required to obtain a license as set forth in NRS 649.075 must obtain an exemption from the Commissioner of Financial Institutions certifying that he is not required to obtain a license. The exemption must be obtained before he engages in collection activities governed by chapter 649 of NRS.