

**ADOPTED REGULATION OF
THE COMMISSIONER OF FINANCIAL INSTITUTIONS**

LCB File No. R137-08

Effective October 15, 2010

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

AUTHORITY: §§1, 3, 4, 6-14 and 16-18, NRS 671.030; §2, NRS 671.030 and 671.055; §5, NRS 671.030 and 671.185; §15, NRS 658.098, 671.030 and 671.180.

A REGULATION relating to issuers of instruments for transmission or payment of money; requiring each partner, principal officer, director and trustee of a business entity applying for a license to satisfy certain licensing requirements; 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; establishing requirements governing separate accounts maintained by licensees 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; providing for the assessment to cover the costs of legal services provided by the Attorney General to the Commissioner and the Division; 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 10, inclusive, of this regulation.

Sec. 2. *If an application for a license is submitted by a business entity, the Commissioner will not issue a license to the applicant unless each partner, principal officer, director and trustee, whichever are applicable to the business entity, satisfies the requirements of NRS 671.055.*

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

2. Any 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. *1. Every licensee shall at all times maintain a separate custodial or trust account in a bank or credit union in which must be deposited all money collected by the licensee. 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 which must show clearly for whose account the money is deposited and to whom the money belongs. The records and money are subject to

inspection by the Commissioner or an authorized representative of the Commissioner. 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, the Commissioner may require the licensee to deliver an audited financial statement prepared from the records of the licensee 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.

5. If money in a custodial or trust account of a licensee becomes presumed abandoned pursuant to NRS 120A.500, the licensee shall comply with the provisions of chapter 120A of NRS with respect to the money.

Sec. 5. *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. An order issued pursuant to subsection 1 must:

(a) Be in writing.

(b) Be served by certified mail on the person to whom the order is directed. For the purposes of this paragraph, proof of attempted service by certified mail to the last known address of the person is sufficient to establish that service was complete.

(c) State that the person has 30 days after 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.

(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 is served with an order to cease and desist pursuant to this section shall not engage in any activity prohibited by the order after the person is served with 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 the designee of the Commissioner 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 the designee of the Commissioner, 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 the designee of the Commissioner is final for the purposes of judicial review.

Sec. 6. 1. *A party to a hearing may compel the attendance of witnesses in the party's behalf at the hearing upon making a request to the Commissioner or the designee of the Commissioner 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 the designee of the Commissioner is entitled to receive from the party calling the witness the fees and reimbursement for mileage provided to witnesses in civil cases pursuant to NRS 50.225.

Sec. 7. 1. *The Commissioner or the designee of the Commissioner 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.*

2. 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. 8. *The Commissioner or the designee of the Commissioner 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. 9. *If a party fails to appear at a hearing scheduled by the Commissioner or the designee of the Commissioner 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 the designee of the Commissioner that proper notice was given, the Commissioner or the designee of the Commissioner 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 the Commissioner or the designee of the Commissioner. 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. 10. *1. A party to a hearing 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 the party's behalf, may question the witness as if conducting a cross-examination.

Sec. 11. 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 per hour from each ~~[money order company]~~ *licensee* for any supervision, examination, audit, investigation or hearing conducted pursuant to chapter 671 of NRS.

2. The Commissioner will bill each ~~[money order company]~~ *licensee* 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]~~ *licensee* 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. 12. 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; and
2. A fee of \$300, prorated by the Commissioner . ~~[of Financial Institutions.]~~

Sec. 13. 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 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 in addition to the renewal fee prescribed in subsection 1.

Sec. 14. 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; and
2. A license fee of \$250.

Sec. 15. 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. *Each licensee shall pay to the Division the assessment to cover the costs of legal services provided by the Attorney General to the Commissioner and the Division which is imposed pursuant to NRS 658.098.*

3. 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]~~ *assessments described in subsections 1 and 2. The licensee shall pay the assessments* within 30 days after the date *on which the licensee receives* the bill. ~~[is received.]~~

~~—3.]~~ 4. A charge of 10 percent of the assessment will be imposed on any licensee ~~[whose assessment]~~ *if payment for an assessment described in subsection 1 or 2* is received by the Division ~~[of Financial Institutions of the Department of Business and Industry]~~ after the date on which the assessment is due.

5. The failure of a licensee to pay an assessment described in subsection 1 or 2 constitutes grounds for the revocation of the license of the licensee.

Sec. 16. 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. 17. NAC 671.090 is hereby amended to read as follows:

671.090 Except as otherwise provided in NAC 671.100 *and section 6 of this regulation* and NRS 671.170, 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. 18. 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.

NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. 137-08

On July 12, 2010, the Financial Institutions Division, State of Nevada Department of Business and Industry adopted the amendment to the Nevada Administrative Code chapter 671, assigned LCB File No. 137-08.

INFORMATIONAL STATEMENT

The following informational statement is submitted for the amendment of an existing regulation to the Nevada Administrative Code, Chapter 671.

1. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.

Hearings to discuss the new regulations for the recent enactment of Chapter 671 of the Nevada Revised Statutes were conducted on Friday, November 21, 2008, Tuesday, June 29, 2010 and Monday, July 12, 2010. The Division's notice of intent to act upon regulations was posted at the Division's offices in Carson City and Las Vegas, at the Grant Sawyer Building in Las Vegas, the Capital Building in Carson City and the Division's website located at **www.fid.state.nv.us**. In addition, copies of the notice of public hearing and proposed new regulations were delivered to every county main public library, the State Library and Archives.

At the workshop held on November 21, 2008, the only testimony which was provided was from Mr. M.J. Garcia of RCBC of North America, who suggested that the fee increase for investigations by the Division should be more gradual rather than going from \$30 per hour to \$100. He would prefer an increase to \$50 per hour.

On June 29, 2010, a second workshop was held to review further changes to the regulation. No person appeared to present any testimony related to this regulation.

On July 12, 2010, the Division held an adoption hearing regarding the proposed regulation. No person appeared to present any testimony related to this regulation.

Mr. Ezra Levine of Howrey, LLP appeared on behalf of the Money Services Round Table (TMSRT) and submitted two written comments regarding the proposed regulations. Mr. Levine expressed concerns about the requirement to maintain a separate trust account for money held for transmission regarding whether the trust account must be maintained for transactions in other states. He also said that the trust account requirement would conflict with statutory requirements in other states which require accounting for permissible investments. Because other states require such protections, no further regulation in Nevada is required.

On June 24, 2010, Mr. Levine submitted a written comment which stated that the trust account requirement was in excess of statutory authority because no statutory authority exists for the imposition of this requirement. He reiterated his argument that consumers are already

protected by the applicable permissible investment restrictions in other states and is therefore duplicative.

2. The number of persons who:

	November 21, 2008	June 29, 2010	July 12, 2010
a) attended each hearing:	1	0	0
b) testified at each hearing:	1	0	0
c) written comments:	0	1	1

3. Description of how comment was solicited from effected businesses, a summary of their responses, and an explanation how other interested persons may obtain a copy of the summary.

Comments were solicited from affected businesses by delivering notices of the public hearing and copies of the proposed additions to the NAC on the Division's website and distributing notices of the hearing to public libraries throughout the State of Nevada and state government offices. The Division received written input from two businesses that may be affected by the proposed regulations. Written and oral comments were received by the Division as stated above.

The Division removed provisions which increase existing fees and charges for licensing. Further, The Division removed provisions regarding the burden of proof in a contested hearing.

Regarding concerns related to statutory authority for the trust account requirement, the Division states that NRS 671.030 permits the Division to "adopt such reasonable regulations as may be necessary or appropriate for the administration of this chapter." Because of the increased focus on federal laws related to bank secrecy, anti-money laundering and homeland security, the Division determined that in order to insure compliance with federal law, the trust account requirement is necessary. Moreover, compliance with the trust account provision is not excessively burdensome to licensees.

4. If the regulations were adopted without changing any part of the proposed regulations, a summary of the reasons for adopting the regulations without change.

The Division determined that section 10, subsection 1 should be omitted to be consistent with other chapters which state the burden of proof in contested cases. Further, all fee increases have been removed from the regulations.

5. The estimated economic effect of the adopted regulations on the business which it is to regulate and on the public. These must be stated separately, and each case must include:

- a) both adverse and beneficial effects; and**
- b) both immediate and long term effects.**

The proposed regulations are expected to have no negative immediate or long term financial impact on the public. As this regulation would regulate the business of money transmission

services in Nevada, the regulation would have the beneficial impact of providing a regulatory framework and accountability for companies which provide this service to the public. There are no increases in any fees or charges required by the Division in these regulations so no greater impact exists. The institution of the chapter 671 of the NRS has the immediate and long term effect implementing greater compliance with federal laws related to homeland security and discovering money laundering activity.

6. The estimated cost to the agency for enforcement of the adopted regulations.

There is no additional cost to the agency for enforcement of the adopted regulations.

7. A description of any regulations of other state or government agencies which the proposed regulations overlap or duplicate and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

There are no other state or government agency regulations which the board's proposed regulations overlap or duplicate.

8. If the regulation includes provisions which are more stringent than a federal regulation on which regulated the same activity, a summary of such provisions.

There are no federal regulations that regulate the processes or decisions of the Division.

9. If the regulation provides a new fee or increase an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

The Division's regulations provide for the collection of fees. The amount of the fees is dependent on the number of applicants and eventual licensees which are approved by the Division. The fees required to be collected will offset the cost to the Division for processing application and renewals and costs of examination and investigation of complaints.