

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

LCB File No. R137-08

August 10, 2010

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

AUTHORITY: §§1-4, 6, 7, 9-14 and 20-22, NRS 671.030; §5, NRS 671.030 and 671.055; §8, NRS 671.030 and 671.185; §15, NRS 658.101, 671.030 and 671.120; §16, NRS 671.030 and 671.050; §17, NRS 671.070; §18, NRS 671.090; §19, NRS 658.098, 671.030 and 671.180.

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 each partner, principal officer, director and trustee of a business entity applying for a license to satisfy certain licensing requirements; 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; increasing certain fees; enacting provisions concerning 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 13, 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. 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. 6. 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. 7. 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. 8. 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, directing the person to cease and desist from engaging in the activity or both imposing an administrative fine and directing the person to cease and desist.

2. An order issued pursuant to subsection 1 must:

(a) Be in writing.

(b) Be served by certified mail on the person ordered to cease and desist. 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. 9. *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. 10. *1. At a contested hearing, the person contesting an order of the Commissioner or the designee of the Commissioner has the burden of showing that the order was not based upon substantial evidence.*

2. 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.

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. 11. *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. 12. 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. 13. 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. 14. 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. 15. 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]~~ 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. 16. 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. 17. 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. 18. 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. 19. 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. 20. 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. 21. 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. 22. 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.