

**PROPOSED REGULATION OF THE
OFFICE OF THE STATE CONTROLLER**

LCB File No. R079-09

NOTICE OF INTENT TO ACT UPON A REGULATION

Notice of Hearing for the Adoption and Amendment

of Regulations of the

Nevada State Controller Office

The Nevada State Controller's Office will hold a public hearing at 1:00 p.m., on the 30th of July of 2010, at the Nevada State Capitol Annex, 101 N. Carson Street, Carson City, Nevada 89701. Videoconferencing is also being provided at the Grant Sawyer Office Building, 555 E. Washington Ave Suite 5100, Las Vegas, Nevada 89101. The purpose of the hearing is to receive comments from all interested persons regarding the Adoption and Amendment of regulations that pertain to chapter 353C of the Nevada Administrative Code.

The following information is provided pursuant to the requirements of NRS 233B.0603:

1. The need for and the purpose of the proposed regulation or amendment.

The purpose is to establish procedures for implementing AB87 from the 2009 legislative session regarding debt collection efforts performed by the State of Nevada.

2. Either the terms or the substance of the regulations to be adopted, amended or repealed, or a description of the subjects and issues involved.

The complete text of the regulation additions and amendments is provided below.

3. The estimated economic effect of the regulation on the business which it is to regulate and on the public. These must be stated separately and in each case must include:

- (a) Both adverse and beneficial effects; and
- (b) Both immediate and long-term effects.

There are no adverse or beneficial effects expected on the businesses being regulated. There will be no immediate or long term effects on the businesses being regulated.

4. The estimated cost to the agency for enforcement of the proposed regulation.

The estimated cost to the agencies for enforcement of the proposed regulations will be negligible. Most agencies will have cost savings due to the Controller's Office assuming the responsibility of notifying, tracking and resolving debt collections cases on behalf of the state agencies. No increase in costs is anticipated to the Controller's Office for enforcement of the proposed regulation.

5. A description of and citation to any regulations of other state or local governmental agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the proposed regulation overlaps or duplicates a federal regulation, the notice must include the name of the regulating federal agency.

There is no overlap or duplication of regulations.

6. If the regulation is required pursuant to federal law, a citation and description of the federal law.

Not applicable.

7. If the regulation includes provisions which are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.

Not applicable.

8. Whether the proposed regulation establishes a new fee or increases an existing fee.)

The regulation does not establish a new fee or increase an existing fee. The regulation implements the fees set by the legislature and fixes the interest rate to be used in debtor agreements at the state's legal rate.

9. A statement identifying the methods used by the agency in determining the impact on a small business prepared pursuant to subsection 3 of NRS 233B.0608.

Inasmuch as the proposed regulation does not affect how private businesses in this State shall be conducted, and is limited to the procedures for implementation of existing statutes, the Office of the Controller has determined that the proposed regulation will have no impact on small business in this State.

Persons wishing to comment upon the proposed action of The State Controller may appear at the scheduled public hearing or may address their comments, data, views or arguments, in written form, to Nevada State Controller, Attention Mark Taylor, 101 N. Carson Street Suite 5, Carson City, Nevada, 89701. Written submissions must be received by the State Controller's Office on or before July 30, 2010. If no person who is directly affected by the proposed action

appears to request time to make an oral presentation, the State Controller may proceed immediately to act upon any written submissions.

A copy of this notice and the regulation to be Adopted and Amended will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the regulation to be Adopted Amended will be available at 101 N. Carson Street Suite 5, Carson City, Nevada 89701, 515 E. Musser Suite 200, Carson City, Nevada 89701, 555 E. Washington Ave Suite 4300, Las Vegas, Nevada 89101, and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. This notice and the text of the proposed regulation are also available in the State of Nevada Register of Administrative Regulations, which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653, and on the Internet at <http://www.leg.state.nv.us/>. Copies of this notice and the proposed regulation will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Upon adoption of any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption.

This notice of hearing has been posted at the following locations:

Nevada State Capitol
101 North Carson Street
Carson City, Nevada 89701

Legislative Counsel Bureau
401 South Carson Street
Carson City, Nevada 89701

Nevada State Library and Archives
100 North Stewart Street
Carson City, Nevada 89701

State Controller's Office
515 East Musser Street, Suite 200
Carson City, Nevada 89701

Grant Sawyer State Office Building
555 East Washington Ave
Las Vegas, Nevada 89101

Legislative Counsel Bureau
555 East Washington, Suite 4400
Las Vegas, Nevada 89101

**PROPOSED REGULATION OF THE
OFFICE OF THE STATE CONTROLLER**

LCB File No. R079-09

May 28, 2010

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

AUTHORITY: §1, NRS 353C.110; §§ 2 and 3, NRS 353C.110 and 353C.128; §§4-6, NRS 353C.110 and 353C.195; §7, NRS 353C.110 and 353C.130; §§8 and 9, NRS 353C.110 and 353C.190; §§10 and 11, NRS 353C.110, 353C.190 and 353C.224.

A REGULATION relating to state financial administration; providing the conditions precedent to the refusal of a state agency to conduct a transaction with, or the State Controller to draw a warrant in favor of, a person; establishing the contents for written notice to a debtor concerning such a refusal; imposing certain requirements on an agency that assigns a debt to the State Controller for collection; prohibiting an agency from assigning a debt to the State Controller under certain circumstances; providing for the payment of interest in an agreement for the payment of debt on an installment basis; making various changes concerning the collection of debts owed to state agencies by means of an offset; and providing other matters properly relating thereto.

Section 1. Chapter 353C of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 7, inclusive, of this regulation.

Sec. 2. 1. *Before an agency may refuse to conduct a transaction with, or the State Controller refuses to draw a warrant in favor of, a person, pursuant to NRS 353C.128, the agency must or the State Controller will, as applicable, determine that:*

- (a) The person owes a debt to an agency;*
- (b) The debt is unpaid; and*
- (c) The person has not entered into an agreement, pursuant to NRS 353C.130, for the payment of the debt on an installment basis.*

2. *An agency may or the State Controller will base the determination required by subsection 1 on any information that is of a type commonly relied upon by reasonable and prudent persons in the conduct of their affairs.*

Sec. 3. 1. *If, pursuant to NRS 353C.128, an agency refuses to conduct a transaction with, or the State Controller refuses to draw a warrant in favor of, a person, the agency shall,*

or the State Controller will, provide written notice of the refusal to the person. The notice must:

(a) Be sent by United States mail to the last known address of the person; and

(b) Inform the person:

(1) Of the agency to which the person owes the debt;

(2) Of the amount of the debt, including, without limitation, any penalty or interest owed and any costs and fees imposed pursuant to NRS 353C.135;

(3) That the person may have the right to administratively contest the existence or amount of the debt in accordance with the administrative procedures prescribed by the agency to which the debt is owed; and

(4) Of the provisions of NRS 353C.128.

2. A person who is aggrieved by the refusal of an agency to conduct a transaction with, or the refusal of the State Controller to draw a warrant in favor of, the person may submit a petition to the agency or State Controller, as applicable, seeking relief. The petition must set forth with specificity the legal and factual grounds upon which the claim for relief is based.

3. This section does not confer on a debtor any right to administratively contest the existence or amount of a debt that is in addition to the right conferred on the debtor by the administrative procedures prescribed by the agency to which the debt is owed.

Sec. 4. 1. *An agency that assigns a debt to the State Controller for collection pursuant to NRS 353C.195 shall make the assignment electronically or in writing using the format prescribed by the State Controller. The assignment must include, without limitation, the name of the debtor and the amount of the debt.*

2. An agency that assigns a debt to the State Controller for collection shall, at the time of the assignment or as soon thereafter as practicable, submit to the State Controller:

(a) A statement of the agency's efforts to collect the debt; and

(b) All relevant information and documentation in the agency's possession concerning the debt, including, without limitation:

(1) Information concerning the debtor, including, without limitation, the debtor's address, telephone number and other identifying information;

(2) Information concerning the debtor's ability to pay the debt, including, without limitation, the identity and location of any assets owned by the debtor;

(3) Documentation establishing the existence and amount of the debt, including, without limitation, the record of any administrative proceedings conducted by the agency relating to the debt and any judicial review of such proceedings;

(4) Documentation related to any judicial proceedings concerning the debt, including, without limitation, a copy of any judgment obtained by the agency against the debtor;

(5) Documentation related to any lien obtained by the agency upon the real and personal property of the debtor; and

(6) Any other documentation or information requested by the State Controller.

3. The failure of an agency to provide any information or documentation concerning a debt that is required pursuant to subsection 2 does not invalidate the assignment of the debt to the State Controller.

Sec. 5. *An agency that has obtained a judgment against a debtor or a lien upon the real and personal property of a debtor shall not assign the debt to the State Controller for collection if the judgment or lien will expire within 90 days after the date of the prospective assignment.*

Sec. 6. 1. *An agency that wishes to obtain a waiver of a requirement of NRS 353C.195 may submit a request for such a waiver to the State Controller.*

2. A request submitted pursuant to subsection 1 must:

(a) Be in the form prescribed by the State Controller;

(b) Specify each requirement of NRS 353C.195 from which the waiver is sought; and

(c) Include:

(1) A description of the resources that the agency has to engage in its own debt collection efforts; or

(2) Other evidence of good cause for granting the waiver.

3. A request submitted pursuant to subsection 1 may include, without limitation:

(a) A description of the procedures that the agency uses to collect its own debts;

(b) A statement of the success of the agency in collecting its own debts; and

(c) A statement of the reasons why the agency contends that granting the waiver is likely to generate more net revenue for the State than if the request for the waiver is denied.

4. The State Controller will condition the grant of a waiver upon an agency's agreement to certain conditions concerning methods and procedures for the collection of debts by the agency and for the assignment of the agency's debts to the State Controller for collection.

5. The State Controller will notify the agency, in writing, of the grant or denial of the waiver. If the State Controller grants a waiver, the notice will set forth the terms of the waiver, including, without limitation, the conditions concerning methods and procedures for the collection of debts by the agency and for the assignment of the agency's debts to the State Controller for collection.

6. The State Controller will review each waiver granted pursuant to NRS 353C.195 at least once each year and at any other time if the State Controller determines that there has been a material change in the circumstances upon which the waiver was granted.

Sec. 7. 1. *An agreement with a debtor, pursuant to NRS 353C.130, for the payment of a debt on an installment basis may include a provision that requires the debtor to pay interest on the debt.*

2. The rate of interest included in such an agreement must be equal to the rate established pursuant to NRS 99.040.

Sec. 8. NAC 353C.100 is hereby amended to read as follows:

353C.100 1. If an agency requests that the State Controller place a hold on payments to a person who owes a debt to the agency, the agency may, upon receiving notification from the State Controller that such a payment has been intercepted, submit to the State Controller a request to offset any amount due the agency from the debtor against any amount due the debtor from any agency. *The request to offset the amount shall be deemed an assignment of a debt to the State Controller for collection pursuant to NRS 353C.195.*

2. The request must be submitted in the format provided by the State Controller.

3. The agency shall verify and certify the accuracy of the name and address of the debtor and the amount of the debt and shall immediately notify the State Controller if the agency discovers that any of the information is incorrect.

4. If an agency has requested that the State Controller place a hold on payments to a debtor and such a payment is intercepted, any agency that receives notification pursuant to NAC

353C.110 that the payment has been intercepted and is being held for potential offset shall not attempt to pay that debtor using a different vendor number or by any other form of payment, unless authorized by the State Controller or the agency that requested the hold on payments to the debtor.

Sec. 9. NAC 353C.110 is hereby amended to read as follows:

353C.110 Except as otherwise provided in NAC 353C.140, not later than 5 working days after receiving a request to offset from an agency pursuant to NAC 353C.100, the State Controller will:

1. Unless the debtor is an employee of the State of Nevada, proceed with the suspension of all payments due the debtor from any agency.

2. Notify the requesting agency and each agency processing a payment to the debtor that the payment has been intercepted and is being held for potential offset.

3. Send written notice to the debtor that the agency has requested the offset and that the debtor has 10 days after the date of the notice in which to request a hearing before the State Controller to contest the offset. The notice will:

(a) Be sent by United States mail to the last known address of the debtor provided by the agency; *and*

(b) Inform the debtor ~~of~~:

(1) Of the amount due from the debtor, including, without limitation, any costs and fees imposed pursuant to NRS 353C.135;

(2) Of the method by which he can request the hearing; and

~~[(c) Inform the debtor that]~~

(3) That the authority for the offset is set forth in NRS 353C.190 and NAC 353C.100 to 353C.140, inclusive, and that the hearing will be held in accordance with the provisions of NAC 353C.150 to 353C.340, inclusive.

Sec. 10. NAC 353C.120 is hereby amended to read as follows:

353C.120 If the debtor fails to request a hearing within 10 days after the date of the notice sent pursuant to NAC 353C.110, the State Controller will:

1. Process the offset; and
2. Except as otherwise provided in NAC 353C.140, transfer an amount equal to the amount due the debtor from an agency from the appropriate account of that agency to the appropriate ~~account of the agency that requested the offset.~~ ***accounts in accordance with NRS 353C.224.***

Sec. 11. NAC 353C.340 is hereby amended to read as follows:

353C.340 1. After the conclusion of the evidentiary portion of a hearing, the State Controller will, within 30 days, prepare findings of fact, conclusions of law and a final decision on the issues presented in the hearing.

2. The State Controller will serve a copy of the findings of fact, conclusions of law and decision upon all parties of record.

3. Upon completion of service pursuant to subsection 2, the State Controller will:

(a) Process the offset; and

(b) Except as otherwise provided in NAC 353C.140, transfer an amount equal to the amount due the debtor from an agency from the appropriate account of that agency to the appropriate accounts in accordance with NRS 353C.224.