

**ADOPTED REGULATION OF THE
SECRETARY OF STATE**

LCB File No. R081-13

Effective February 26, 2014

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

AUTHORITY: §§1-6, section 2 of Senate Bill No. 60, chapter 221, Statutes of Nevada 2013, at page 831 (NRS 76.180); §§7 and 8, NRS 76.140.

A REGULATION relating to business licenses; adopting procedures for the imposition of penalties on persons who conduct a business in this State and willfully fail or neglect to obtain or renew a state business license and pay the accompanying required fees; requiring a person who claims to be excluded from the requirement to obtain a state business license to submit an annual claim for the exemption on a form that contains certain required information; and providing other matters properly relating thereto.

Section 1. Chapter 76 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 6, inclusive, of this regulation.

Sec. 2. *The Secretary of State may refer the matter to the district attorney of the county in which a person's principal place of business is located or the Attorney General, or both, for a determination of whether to institute proceedings to recover the fine set forth in section 2 of Senate Bill No. 60, chapter 221, Statutes of Nevada 2013, at page 831 (NRS 76.180), if the person:*

1. Is purporting to be a business organized and existing under the laws of this State but has willfully failed or neglected to obtain or renew a state business license and to pay the fees required by NRS 76.100 and 76.130; or

2. Is doing business in this State but has willfully failed or neglected to obtain or renew a state business license and to pay the fees required by NRS 76.100 and 76.130.

Sec. 3. 1. A person may report to the Secretary of State that a person may be subject to the fine set forth in section 2 of Senate Bill No. 60, chapter 221, Statutes of Nevada 2013, at page 831 (NRS 76.180), by emailing a complaint to blcompliance@sos.nv.gov or by mailing a complaint to:

*Secretary of State
Commercial Recordings Division
Attn: Business Compliance
202 North Carson Street
Carson City, Nevada 89701*

2. A complaint filed with the Secretary of State pursuant to subsection 1 must be on a form prescribed by the Secretary of State and must contain, at a minimum:

(a) The name, street address, telephone number and, if applicable, the electronic mail address and any other contact information of the complainant;

(b) The name, street address, telephone number and, if applicable, the electronic mail address and any other contact information of any person authorized by the complainant to file the complaint on behalf of the complainant;

(c) The name, street address, telephone number and, if applicable, the electronic mail address and any other contact information of the person alleged to be subject to the fine set forth in section 2 of Senate Bill No. 60, chapter 221, Statutes of Nevada 2013, at page 831 (NRS 76.180);

(d) Information identifying all persons involved in the alleged conduct subjecting the person to the fine set forth in section 2 of Senate Bill No. 60, chapter 221, Statutes of Nevada 2013, at page 831 (NRS 76.180), including, without limitation, the names, street addresses, business locations, telephone numbers, electronic mail addresses and Internet websites of the persons involved in the alleged conduct;

(e) Information identifying the nature of the business engaged in by the person alleged to be subject to the fine set forth in section 2 of Senate Bill No. 60, chapter 221, Statutes of Nevada 2013, at page 831 (NRS 76.180);

(f) Information identifying any other regulatory entity or agency or any court, arbitrator or other tribunal with which the complainant has filed a complaint or report regarding the same conduct, including, without limitation, the name and address of the regulatory entity, agency, court, arbitrator or tribunal, the date upon which any complaint or report was filed and the case number assigned to the complaint or report, if any;

(g) Any additional information which the complainant believes may assist in the investigation of the allegations made in the complaint;

(h) Copies of any documents which the complainant believes may assist in the investigation of the allegations made in the complaint;

(i) A statement indicating whether the complainant is willing to testify regarding the complaint in a court of law or in an administrative proceeding; and

(j) A statement that to the best of the complainant's knowledge the information contained in the complaint is true and correct.

Sec. 4. 1. Upon receiving a complaint filed pursuant to section 3 of this regulation, the Secretary of State will:

- (a) Review the complaint and any information submitted with the complaint;*
- (b) Determine whether the allegations in the complaint may be addressed through the administrative processes of the Office of the Secretary of State; and*
- (c) Determine whether to refer the complaint to another regulatory or enforcement agency of this State, a political subdivision of this State, another state or the Federal Government.*

2. The Secretary of State may refer the information obtained in a complaint filed pursuant to section 3 of this regulation and any information obtained by the Secretary of State through an investigation of the complaint to another regulatory or enforcement agency of this State, a political subdivision of this State, another state or the Federal Government.

3. The Secretary of State may request that the complainant or the person alleged to be subject to the fine set forth in section 2 of Senate Bill No. 60, chapter 221, Statutes of Nevada 2013, at page 831 (NRS 76.180), provide any information deemed necessary by the Secretary of State to assist in the investigation of the allegations made in the complaint.

Sec. 5. *1. If the Secretary of State determines that the information provided with a complaint filed pursuant to section 3 of this regulation is not sufficient to warrant further investigation or processing of the complaint, the Secretary of State will send to the complainant written notification of the deficiencies in the complaint.*

2. If the Secretary of State determines that the information provided with a complaint filed pursuant to section 3 of this regulation or obtained during the course of an investigation of another matter is sufficient to warrant further investigation or processing, the Secretary of State may send a written demand for a response to the complaint or investigation to the person alleged to be subject to the fine set forth in section 2 of Senate Bill No. 60, chapter 221, Statutes of Nevada 2013, at page 831 (NRS 76.180).

3. *A response demanded pursuant to subsection 2 must be:*

(a) Completed and returned to the Office of the Secretary of State within the time specified in the written demand; and

(b) Signed under oath by the respondent or, if the respondent is an entity, by a person in a position of responsibility with the respondent.

4. *If, based on the information submitted with a complaint, any information obtained during an investigation of the complaint and any information included in a response demanded pursuant to subsection 2, the Secretary of State determines that a person is subject to the fine set forth in section 2 of Senate Bill No. 60, chapter 221, Statutes of Nevada 2013, at page 831 (NRS 76.180), the Secretary of State may demand that the person file any document required to bring the person into compliance with chapter 76 of NRS and pay any fee, penalty or fine required by the laws of this State.*

5. *If, in response to the demand of the Secretary of State pursuant to subsection 4, the person does not file a document required to bring the person into compliance with chapter 76 of NRS or pay any fee, penalty or fine required by the laws of this State, the Secretary of State may refer the matter to the district attorney of the county in which the person's principal place of business is located or the Attorney General, or both, and request that the district attorney or Attorney General institute legal proceedings to require the person to file any document required to bring the person into compliance with chapter 76 of NRS and to pay any fee, penalty or fine required by the laws of this State.*

6. *The Secretary of State may communicate any findings made or actions taken in response to a complaint or the investigation of a complaint to:*

(a) The complainant at the address provided on the complaint form; and

(b) The person who is alleged to be subject to the fine set forth in section 2 of Senate Bill No. 60, chapter 221, Statutes of Nevada 2013, at page 831 (NRS 76.180), at the last known address of the person or through the person's registered agent of record.

Sec. 6. Except as otherwise provided in subsection 2 of section 3 of Senate Bill No. 60, chapter 221, Statutes of Nevada 2013, at page 832 (NRS 76.105), a person who claims to be excluded from the requirement to obtain a state business license must submit annually to the Secretary of State a claim for the exemption on a form prescribed by the Secretary of State that includes, without limitation:

- 1. The name of the person claiming the exemption;*
- 2. If available, the business identification number issued with the original notice of exemption;*
- 3. The exemption code provided by the Secretary of State under which the exemption is claimed;*
- 4. The physical street address and, if different, the mailing address where the person will be conducting business in this State;*
- 5. The electronic mail address where notices and correspondence may be received;*
- 6. Other information the Secretary of State deems necessary to ensure that a claim for an exemption from the state business license is appropriate;*
- 7. A declaration under penalty of perjury that:*
 - (a) The information contained in the form is true, correct and complete to the best of the person's knowledge and belief;*

(b) The person acknowledges that pursuant to NRS 239.330, it is a category C felony to knowingly offer any false or forged instrument for filing with the Office of the Secretary of State; and

(c) The person meets the statutory requirements for an exemption from the requirement to obtain a state business license pursuant to NRS 76.020; and

8. The signature of the person claiming the exemption from the state business license.

Sec. 7. Section 5 of LCB File No. R080-11 is hereby amended to read as follows:

Sec. 5. For the purposes of this chapter and NRS 76.020, the Secretary of State interprets the term:

1. “Governmental entity” to mean:

(a) The government of the United States, this State or any other state or territory of the United States or an incorporated or unincorporated agency or instrumentality thereof;

(b) A corporation which is wholly owned by the government of the United States; and

(c) A county, city, town, district or other political subdivision of this State or any other state or territory of the United States.

2. “Person who operates a business from his or her home” to mean a natural person who individually operates *a business and performs all essential business functions exclusively from his or her personal residence* or a married couple who jointly operate a business *and perform all essential business functions exclusively* from ~~his~~ *their* personal residence in this State if no part of the personal residence is held open to the general public for use in furtherance of that business that would require the posting of a business license in accordance with a county or municipal ordinance.

Sec. 8. Section 6 of LCB File No. R080-11 is hereby amended to read as follows:

Sec. 6. The exemption from the requirement to obtain a state business license which is set forth in paragraph (e) of subsection 2 of NRS 76.020 applies only to a person ~~who:~~

~~1. Is~~ :

1. *Who is* registered with the Division of Motion Pictures *and has obtained all applicable permits otherwise required by other agencies and political subdivisions of this State* pursuant to ~~paragraph (a) of~~ subsection 1 of NRS 231.128;

2. ~~Provides annually to the Secretary of State the registration number assigned to the person by the Division of Motion Pictures; and~~

~~3. Creates~~ *Whose primary purpose is to create* or ~~produces~~ *produce* in this State feature films, movies made for broadcast ~~on television~~ *or other electronic transmission* or programs made for broadcast ~~on television~~ *or other electronic transmission* in episodes ~~;~~ *and*

3. *Who completes any form or provides any information requested by the Secretary of State to establish or verify the requirements set forth in subsections 1 and 2.*

LEGISLATIVE REVIEW OF ADOPTED REGULATIONS - NRS 233B.066
Informational Statement
LCB File Nos. R068-13, R077-13, R078-13, R079-13, R080-13 & R081-13
Regulations Relating to Commercial Recordings

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) Chapters 68, 77, 78, 79, 80, 81, 86, 87, 87A, 88, 88A, 89 and 598.

- 1) **R068-13**: Adopting provisions relating to filing a Charitable Solicitation Registration Statement for certain Chapter 82 entities and adopting certain requirements for solicitation disclosures. This regulation is necessary to further define certain terms and to clarify the contents of and the financial information required in the Charitable Registration Information Statement.
- 2) **R077-13**: Adopting provisions governing the process by which an individual or entity may register a willingness to serve as a registered agent for an entity; governing the publication and updating of the list of such individuals and entities by the Secretary of State and other matters properly relating thereto. This regulation is necessary to place the regulation in the proper chapter of NAC relating to NRS Chapter 77 requirement. It adopts the same provisions as in current (now repealed) NAC Chapter 77 and adopts the provisions relating to the removal and reinstatement of a registered agent from the list under certain circumstances.
- 3) **R078-13**: Adopting provision relating to the selection of an alternative due date for filing certain required lists with the Secretary of State. This regulation provides the requirements for an entity to select an alternate due date pursuant to 78.150, 80.110, 82.523, 86.263, 86.5461, 87.510, 87.541, 87A.290, 87A.560, 88.395, 88.591, 88A.600, 88A.732 and 89.250 as amended by SB 60 of the 2013 session of the Nevada Legislature.
- 4) **R079-13**: Adopting provisions governing commercial registered agents and commercial registered agent registration statements; revising provisions governing written materials produced by or at the direction of registered agents. This regulation provides the requirements for the Commercial Registered Agent Registration Statement required pursuant to NRS Chapter 77 and clarifies the requirements therein. It also provides additional guidance for solicitations made to Nevada and Nevada qualified entities by registered agents.
- 5) **R080-13**: Revising provisions relating to the institution of proceedings against certain persons conducting business in Nevada for the recovery of certain fines. This regulation is necessary to use the same wording regarding the referral of matters to the district attorney or Attorney General as in Title 7 as amended by SB 60 of the 2013 session of the Nevada Legislature.
- 6) **R081-13**: Adopting provisions relating to the procedures for the imposition of penalties on persons who conduct business in Nevada and willfully fail or neglect to obtain or renew a state business license; requiring a person claiming exemption from the state business license to annually submit a claim for said exemption that contains certain required information. This Regulation is necessary to clarify provisions in NRS Chapter 76 relating to those conducting business in Nevada and adopts similar provisions in to NAC Chapter 76 as is currently in regulation for business entities filed in the Office of the Secretary of State.

2) Public comments were solicited at the November 20, 2013 public workshop to solicit comments on proposed regulations and the December 3, 2013 hearing for the adoption of regulations. Copies of the proposed regulations, notices of workshop and notices of intent to act upon the regulations were sent via fax and email to persons known to have an interest in the subjects pertaining to registration requirements for entities which solicit or intend to solicit charitable contributions; commercial resident agent registration requirements, resident agent requirements; alternative due dates for filing certain required lists and procedures for imposing penalties on persons conducting business in the state who willfully fail or neglect to maintain a state business license. These documents were provided to the main libraries in each county. These documents were also made available on the Secretary of State website, www.NVSOS.gov and posted at the following locations:

- The Capitol Building, 101 North Carson Street, Carson City, Nevada 89701
- The State Library, 100 North Stewart Street, Carson City, Nevada 89701
- The Secretary of State-Reno, 500 Damonte Ranch Pkwy, Suite 657-A, Reno, Nevada 89521
- The Grant Sawyer Building, 555 East Washington Avenue, Las Vegas, Nevada 89101
- Nevada State Legislative Building, 401 South Carson Street, Carson City, Nevada 89701

The minutes of the November 20, 2013 public workshop to solicit comments on proposed regulations and the December 3, 2013 hearing for the adoption of regulations are attached hereto and contain a summary of the brief discussion held regarding the proposed amendments. A copy of the workshop and hearing minutes may be obtained from the office of the Secretary of State, 101 N. Carson Street, Suite 3, Carson City, Nevada 89701, 775-684-5720 or via email sent to scotta@sos.nv.gov.

3) The number of persons who:

- (a) **Attended the November 20, 2013 public workshop: 11**
- (b) **Testified at the November 20, 2013 public workshop: 3**
- (c) **Submitted to the agency written comments: 1**
- (d) **Attended the December 3, 2013 hearing for the adoption of regulations: 2**
- (e) **Testified at the December 3, 2013 hearing for the adoption of regulations: 1**
- (f) **Submitted to the Agency written comments: 1**

4) For each person identified in paragraphs (b) and (c) of number 3 above, the following information is provided to the agency conducting the hearing:

- (a) **Name; Matthew Taylor - Both workshop and hearing**
- (b) **Telephone number; 775-888-4070**
- (c) **Business address; 311 N. Third Street, Carson City, NV 89703**
- (d) **Business telephone number; 775-888-4070**
- (e) **Electronic mail address; mtaylor@nvbiz.com**
- (f) **Name of entity or organization represented Nevada Registered Agents' Association**

- (a) **Name; Phil Johncock**
- (b) **Telephone number; 702-486-1266**
- (c) **Business address; 639 Isbell Court, Suite 460, Reno, NV 89509**
- (d) **Business telephone number; 702-486-1266**
- (e) **Electronic mail address; UNK**
- (f) **Name of entity or organization represented; Alliance for Nevada Nonprofits**

- (a) **Name; Andrew Platt**
- (b) **Telephone number; 702-433-9696**
- (c) **Business address; 1349 W. Galleria Drive, Suite 200, Henderson, NV 89014**
- (d) **Business telephone number; 702-433-9696**
- (e) **Electronic mail address; aplatt@woodserickson.com**
- (f) **Name of entity or organization represented: Woods Erickson**

5) Comments were solicited from affected businesses in the same manner as they were solicited from the public. In addition discussions were had with the Registered Agents Association, Business Law Section of the State Bar of Nevada and representatives from Alliance for Nevada Nonprofits (ANN) and other nonprofit organizations.

6) The permanent regulations were adopted on December 3, 2013 and included changes suggested at the November 20, 2013 public workshop to solicit comments on proposed regulations. There were no changes made as a result of the public workshop to regulations R077-13, R080-13 and R081-13 as no changes were suggested. Amendments were made as a result of the public workshop to regulations R078-013 and R079-13. These amendments did not substantively change the regulations as proposed and are included in the regulations transmitted to the Legislative Counsel Bureau. R068-13 had amendments offered at the hearing. The regulations are adopted without these amendments as they had been submitted to the Legislative Counsel Bureau for review and had not been returned by the adoption hearing. The amendments to R068-13 will be scheduled for future workshop and hearing.

7) There is no estimated economic effect of the adopted regulation on the businesses which it is to regulate or on the public.

8) There is no additional cost to the agency for enforcement of this regulation.

9) There are no other state or government agency regulations that the regulation overlaps or duplicates.

10) The proposed regulation does not include provisions that are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.

11) The proposed regulation does not involve a new fee or increases an existing fee.