

# PROPOSED REGULATION OF THE SECRETARY OF STATE

## LCB File No. R081-13

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

AUTHORITY: Section 2(4) of SB 60 of the 2013 Regular Session of the Nevada Legislature.  
NRS 76.140.

A REGULATION relating to persons doing business in Nevada without filing and maintaining a State Business License or Notice of Exemption from State Business License as issued by the Secretary of State as required by law; requirement of sole proprietors, partnerships and those not required to file organizational or qualifying documents with the Secretary of State that claim an exemption from the State Business license to annually file its claim for exemption.

**Section 1.** Chapter 76 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 sections 2 to 13, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3, 4 and 5 of this regulation have the meanings ascribed to them in those sections.*

**Sec. 3.** *“Other terminated status” means any status on the records of the Secretary of State other than “revoked” or “permanently revoked” status that indicates that a person no longer has the right to conduct business in Nevada, including, but not limited to, dissolved, cancelled, terminated or withdrawn.*

**Sec. 4.** *“Person” means a natural person, any form of business or social organization, a corporation, partnership, association, trust, unincorporated organization, government, governmental agency or political subdivision of a government.*

**Sec. 5.** *“Registering” means to file and maintain the formation or qualification document with the Secretary of State as required by Title 7 of the Nevada Revised Statutes, or*

*if a sole proprietor or partnership or other entity not required to file formation or qualification documents, to apply for and maintain a State Business License or notice of exemption with the Secretary of State.*

**Sec. 6.** *Actions subject to complaint and possible administrative action pursuant to sections 2 to 13, inclusive, of this regulation, include, without limitation:*

*1. Doing business in Nevada without properly registering with the Secretary of State by filing and maintaining formation documents and annual lists as required by NRS Title 7;*

*2. Purporting to be a Nevada entity without properly registering with the Secretary of State by filing and maintaining formation documents and annual lists as required by NRS Title 7;*

*3. Doing business in Nevada while in a revoked, permanently revoked or other terminated status with the Secretary of State; or*

*4. Doing business in Nevada and not maintaining a State business license or proper notice of exemption from the State Business License.*

**Sec. 7. 1.** *A person may report to the Secretary of State a business that may be doing business in Nevada without proper registration by submitting a complaint to:*

*Secretary of State*

*Commercial Recordings Division*

*Attn: Business Compliance*

*202 North Carson Street*

*Carson City, Nevada 89701*

2. *A complaint submitted pursuant to subsection 1 may be on a form prescribed by the Secretary of State and must contain, at a minimum, the following information:*

*(a) The name, street address, telephone number and, if applicable, the electronic mail address and any additional contact information of the reporting person.*

*(b) The name, street address, telephone number and, if applicable, the electronic mail address and any additional contact information of the person, if any, authorized by the reporting person to submit the complaint on behalf of the reporting person.*

*(c) The name, street address, telephone number and, if applicable, the electronic mail address and any additional contact information of the person doing business in Nevada in violation of this section.*

*(d) Information, if known, identifying all persons involved in the alleged violation of this section, including, without limitation, names, street addresses, business locations, telephone numbers, and website and electronic mail addresses.*

*(g) Information identifying the nature of any business in the alleged violation of this section.*

*(h) Information identifying other regulatory entities or agencies, and courts, arbitrators or other tribunals, with which the reporting person has filed other complaints or reports regarding the same filing, including, without limitation, the names and addresses of such other regulatory entities, agencies, courts, arbitrators and tribunals, the dates upon which those other complaints or reports were submitted, and the case numbers assigned to those complaints or reports, if any.*

*(i) Any additional information which the reporting person believes may assist in investigating the allegations in the complaint.*

*(j) Photocopies of any documents which the reporting person believes may be useful in investigating the allegations in the complaint.*

*(k) A statement indicating whether the reporting person is willing to testify regarding the complaint in a court of law or administrative proceeding.*

*(l) A declaration under penalty of perjury under the laws of the State of Nevada that the information provided in the complaint is true and correct to the best of the signatory's knowledge and a statement that the information in the complaint may be used by the Secretary of State and other entities to investigate the complaint. The declaration and statement must be followed by the printed name and signature of the reporting person and the date on which the complaint was signed.*

**Sec. 8.** *1. Upon receipt of a complaint submitted pursuant to section 7 of this regulation, the Secretary of State will review the complaint and determine whether the complaint may be resolved through the administrative process and if the complaint should be referred to another regulatory or enforcement agency for further investigation.*

*2. The Secretary of State may apply the provisions of sections 9 to 12, inclusive, of this regulation when, as a result of an investigation of another matter or upon his own initiative when he or she believes a filing may be in violation of this section.*

**Sec. 9.** *The Secretary of State may refer the information obtained in a complaint or through the associated investigation to other entities for further investigation.*

**Sec. 10.** *If the information provided in a complaint is insufficient for further process or investigation, the Secretary of State will communicate in writing the deficiencies to the reporting person at the address provided on the complaint form, if available.*

**Sec. 11.** *The Secretary of State may require of a reporting person or of persons alleged to be in violation of this section any additional information necessary to determine the validity of the allegations.*

**Sec. 12. 1.** *If the information provided in a complaint or received as a result of an investigation of another matter is sufficient for further process or investigation, the Secretary of State may demand information substantiating the accuracy of a filing alleged to be in violation of NRS 225.084. The demand must be made in writing to the entity referenced in the record, through the registered agent of the entity, and to the person who submitted the record alleged to be in violation of NRS 225.084.*

**2.** *A response to a demand for information by the Secretary of State must include, at a minimum, the following information:*

**(a)** *The name, street address, telephone number and, if applicable, the electronic mail address and any additional contact information of the person responding to the demand for information;*

**(b)** *The name of the entity from which the Secretary of State is demanding a response;*

**(c)** *Information, if known, identifying all persons involved in the alleged violation of this section, including, without limitation, names, street addresses, telephone numbers, and website and electronic mail addresses;*

**(d)** *Information identifying the nature of any business in the alleged violation of this section;*

**(e)** *The date business commenced in violation of this section.*

**(f)** *Any additional information that the person responding to the demand believes may be useful in an investigation of the complaint or alleged violation of this section; and*

*(g) A statement as to why the person in the alleged violation of this section is not properly registered, or is not required to register with the Secretary of State.*

*(h) A declaration under penalty of perjury under the laws of the State of Nevada that the information provided in the response is true and correct to the best of the signatory's knowledge and a statement that the information in the response may be used by the Secretary of State and other entities to investigate further the complaint or alleged violation of NRS 225.084. The declaration and statement must be followed by the printed name and signature of the person responding to the demand and the date on which the response was signed.*

*3. The person responding to the demand may include in his response photocopies of any documents which he believes may be useful in an investigation of the complaint or alleged violation of NRS 225.084.*

*4. If, within 30 days after mailing the demand pursuant to subsection 1, the Secretary of State receives information in response to his demand, he will evaluate the information received in response to the demand. If the Secretary of State deems that the information received in response to his demand validates the violation of this section, he may demand that the person file the proper registration documents and pay all fees and penalties that would have been required from the date the violation commenced.*

*5. If, within 30 days after mailing the demand pursuant to subsection 4, the Secretary of State does not receive the proper registration documents and related fees or response to his original demand, he may refer the complaint to the District Attorney or Attorney General or both to institute proceedings to recover fees, penalties and fines pursuant to NRS Title 7 and to require compliance with filing requirements. The violating party may be enjoined from doing business in Nevada until such a time that the demand has been satisfied.*

6. *The Secretary of State will communicate his finding:*

*(a) To the reporting person at the address provided on the complaint form; and*

*(b) To the person who has violated or allegedly violated this section at the last known address.*

*Sec. 13. A person in violation of this section may correct the violation by filing the proper registration documents and paying the fees and penalties associated with the years in which he or she was in violation within 30 days of receiving the demand pursuant to Section 12(4).*

*Sec. 14 An entity in violation because it is in revoked, permanently revoked or other terminated status on the records of the Secretary of State may correct the violation by submitting the proper reinstatement, revival or correction documents and state business license documents, including applicable fees and penalties necessary to bring the entity into good standing.*

*Sec. 15 A person claiming an exemption from the State Business License must annually renew his or her claim for exemption from State Business License on a form prescribe by the Secretary of State that includes:*

*(a) The name of the person, partnership or other business claiming exemption from the State Business License; and*

*(b) The Nevada Business Identification Number, if available, issued with the original Notice of Exemption; and*

*(c) The exemption code for which the exemption is claimed; and*

*(d) The physical street address and the mailing address, if different, where the person will be conducting business in this state; and*

- (e) The e-mail address where notices and correspondence may be received; and*
- (f) Other information the Secretary of State deems necessary to ensure a claim for exemption is appropriate; and*
- (g) A declaration under penalty of perjury that*
  - a. The information is true, correct and complete to the best of the signers knowledge and belief; and*
  - b. Acknowledges that pursuant to NRS 239.330, it is a category C felony to knowingly offer any false or forged instrument for filing in the Office of the Secretary of State; and*
  - c. The person meets the statutory requirements for exemption from the State Business License pursuant to NRS 76.020.*
- (h) Signature of the person claiming the exemption from the State Business License.*

**Sec. 16.** Section 5 of adopted regulation R080-11 (not yet codified) is hereby amended to read as follows:

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 ~~to~~ *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. 17.** Section 6 of adopted regulation R080-11 (not yet codified) is hereby amended to read as follows:

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 registered with the Division of Motion Pictures *and has maintained 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. Whose primary purpose is to* ~~Creates~~ *create* or produce~~s~~ in this State feature films, movies made for broadcast on television or programs made for broadcast on television in episodes.
3. *Completes any form and/or provides any information requested by the Secretary of State in order to establish and/or verify the requirements set forth in subsections 1 and 2. of this section.*