

**PROPOSED REGULATION OF THE
STATE CONTROLLER**

LCB File No. R060-14

June 6, 2014

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

AUTHORITY: §§1-29, NRS 353C.110 and 353C.1965.

A REGULATION relating to state financial administration; establishing procedures for the conduct by the State Controller of a hearing in which a licensee whose debt to an agency has been assigned to the State Controller for collection may contest the validity of the debt; providing for the conduct of a prehearing conference under certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires certain state agencies to assign their past due debts to the State Controller for collection. (NRS 353C.195) Section 4 of Senate Bill No. 21 of the 2013 Session of the Nevada Legislature added a new provision to existing law which requires the State Controller to maintain a list of all persons who owe a debt to an agency that has been assigned to the State Controller for collection. If the State Controller determines that a debtor is a licensee of certain licensing agencies, the State Controller is required to give notice to the licensee that he or she may satisfy the debt in full, enter into an agreement with the State Controller for the payment of the debt on an installment basis or request a hearing before the State Controller to contest the validity of the debt. If the licensee fails to take one of those actions within 30 days after receiving notice from the State Controller or, having requested a hearing, fails at the hearing to demonstrate that the debt is not valid, the State Controller is required to notify the licensing agency that regulates the licensee of this failure. The licensing agency is then prohibited from renewing the license of the licensee until receiving a subsequent notice from the State Controller that the licensee has satisfied the debt or entered into an agreement with the State Controller for the payment of the debt on an installment basis. (Chapter 462 of Statutes of Nevada 2013, at page 2718, codified at NRS 353C.1965)

This regulation establishes various procedures to be used by licensees, agencies and the State Controller in carrying out the provisions of NRS 353C.1965.

Section 6 of this regulation provides that the State Controller may designate employees to carry out some or all of the State Controller's duties in connection with this manner of collecting a debt owed to an agency that has been assigned to the State Controller for collection.

Section 10 of this regulation makes plain that a licensee whose debt to an agency has been assigned to the State Controller for collection may, at any time, satisfy the debt or enter into an agreement for the payment of the debt on an installment basis, in which case the State Controller will, within 10 days thereafter, remove the licensee from the list of persons who owe such a debt and, if the State Controller has previously provided notice to the licensing agency of the licensee's failure to pay the debt, notify the licensing agency that the licensee has complied with the requirements for the elimination of the prohibition against the licensing agency's renewal of the license of the licensee.

Sections 11-14 of this regulation concern various preliminary matters. **Section 14**, in particular, provides that the State Controller may require that the parties attend a prehearing conference, either in person or by telephone, at which they may attempt to resolve between themselves some or all of the issues that would otherwise be addressed at the full hearing. Finally, **section 14** provides that the State Controller may schedule a full hearing to consider only the issues on which the parties are unable to agree.

Section 16 of this regulation provides that the scope of hearing concerns the validity of the debt only and excludes consideration of any other dispute between the parties. **Section 16** also provides that if a licensee has exhausted his or her administrative and judicial remedies, the final administrative or judicial decision concerning the validity of the debt will be deemed to be correct, and the scope of the hearing will be limited only to considering the balance due on the debt. **Section 15** of this regulation provides that the balance due on the debt is the amount of the debt assigned to the State Controller for collection, minus any payments on the debt made by a licensee after the date of the assignment, plus any interest, fees or costs for which the licensee is liable as a result of his or her failure to pay the debt on a timely basis. **Section 16** also provides that in the case of a licensee who did not previously attempt to exercise any of his or her administrative remedies, the scope of the hearing is limited to a review of any documentation concerning the existence, amount and balance of the debt.

Sections 17-28 of this regulation establish various procedures relating to the conduct of the hearing itself. **Section 17** provides for the location of the hearing. **Section 18** requires each party to submit a prehearing statement. **Section 23** provides that each party to the hearing may call, cross-examine and impeach witnesses and offer direct and rebuttal evidence. **Section 24** provides that a party may appear at a hearing in person or by an attorney or other representative. **Section 26** expressly imposes the burden of proof on the licensee and establishes the order in which evidence and argument will be presented at the hearing.

Section 29 of this regulation provides that State Controller will, within 30 days after the conclusion of a hearing, prepare and serve on the parties findings of fact, conclusions of law and a final decision on the issues presented in the hearing. **Section 29** also sets out the various actions the State Controller will then take depending on whether the debt is determined to be valid or invalid and whether the licensee pays or agrees to pay a valid debt or fails to do so.

Section 1. Chapter 353C of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 29, inclusive, of this regulation.

Sec. 2. As used in sections 2 to 29, 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. "Hearing" means a hearing requested by a licensee pursuant to subsection 4 of NRS 353C.1965.

Sec. 4. "Petitioner" means a licensee who requests a hearing.

Sec. 5. "Respondent" means the agency:

- 1. To which a debt is owed or allegedly owed by a petitioner; and*
- 2. That has assigned the debt to the State Controller for collection pursuant to NRS 353C.195.*

Sec. 6. The State Controller may designate any person within the Office of the State Controller to carry out some or all of the duties authorized or required of the State Controller pursuant to NRS 353C.1965 and sections 2 to 29, inclusive, of this regulation.

Sec. 7. A licensing agency that provides information to the State Controller pursuant to subsection 2 of NRS 353C.1965 shall:

- 1. Provide the information electronically in the form and manner prescribed by the State Controller; and*
- 2. Provide the State Controller with an electronic mail address to be used for correspondence concerning debts assigned to the State Controller for collection.*

Sec. 8. The State Controller will send any notice required by NRS 353C.1965 or sections 2 to 29, inclusive, of this regulation and any other correspondence concerning a debt assigned to the State Controller for collection pursuant to NRS 353C.195:

1. To a licensee, by certified mail to the address provided by the licensing agency pursuant to NRS 353C.1965.

2. To a licensing agency, by electronic mail to the address provided by the licensing agency pursuant to section 7 of this regulation.

Sec. 9. If a licensee who is sent a notice pursuant to subsection 4 of NRS 353C.1965 fails, within 30 days after the date on which the notice was sent, to satisfy the debt, enter into an agreement for the payment of the debt pursuant to NRS 353C.130 or request a hearing, the State Controller will:

1. Deem the debt to be valid and issue a determination of the outstanding balance of the debt.

2. Send written notice of the determination to the licensee.

3. Send notice, pursuant to subsection 5 of NRS 353C.1965, to the licensing agency that regulates the licensee.

Sec. 10. A licensee whose debt to an agency has been assigned to the State Controller for collection pursuant to NRS 353C.195 may, at any time, satisfy the debt or enter into an agreement for the payment of the debt pursuant to NRS 353C.130. The State Controller will, within 10 days after the date of the satisfaction or agreement:

1. Remove the licensee from the list maintained pursuant to subsection 1 of NRS 353C.1965; and

2. If the State Controller has previously provided notice to the licensing agency pursuant to subsection 5 of NRS 353C.1965, notify the licensing agency that the petitioner has satisfied the debt or entered into an agreement for the payment of the debt.

Sec. 11. 1. *Except as otherwise provided in subsection 2, the provisions of sections 2 to 29, inclusive, of this regulation:*

(a) Govern the practice and procedure in a hearing; and

(b) Will be liberally construed to secure the just, speedy and economical determination of all issues presented in a hearing.

2. *The State Controller may permit deviation from the provisions of sections 2 to 29, inclusive, of this regulation in specific cases if:*

(a) Good cause appears for the deviation;

(b) The deviation is not contrary to a specific statute; and

(c) The deviation is stipulated to by all parties of record.

Sec. 12. *The provisions of NRS 353C.1965 and sections 2 to 29, inclusive, of this regulation do not confer on a licensee any right to administratively contest the existence or amount of a debt that is in addition to the right conferred on the licensee by the administrative procedures prescribed by the agency to which the debt is owed.*

Sec. 13. *A request for a hearing must be in writing and addressed to the State Controller.*

Sec. 14. 1. *The State Controller may, before scheduling a hearing, direct the petitioner and respondent to participate in a prehearing conference.*

2. *The State Controller will set the place, date and hour of the prehearing conference. A party may participate in a prehearing conference by telephone.*

3. *At least 3 days before the date scheduled for the prehearing conference, the petitioner and respondent shall each submit to the State Controller and the other party a concise statement outlining the issues they intend to present during the prehearing conference.*

4. Except as otherwise provided in subsection 5, if the parties are able to reach an agreement on one or more issues presented during the prehearing conference, the State Controller may accept the agreement of the parties as determinative of those issues and will schedule a hearing to resolve the issues on which the parties are unable to agree.

5. If the parties are able to reach an agreement on all issues presented during the prehearing conference, the State Controller may, in lieu of scheduling a hearing, accept the agreement of the parties as to the validity of the debt and, after determining the amount of the outstanding balance of the debt, treat that determination as a final decision as set forth in section 29 of this regulation.

Sec. 15. *For the purposes of NRS 353C.1965 and sections 2 to 29, inclusive, of this regulation, the determination of the validity of a debt requires the State Controller to determine:*

- 1. The existence of the debt;*
- 2. The amount of the debt; and*
- 3. The balance due on the debt. For the purposes of this subsection, the balance due on a debt is the amount of the debt assigned by an agency to the State Controller for collection pursuant to NRS 353C.195, minus any payments on the debt made by a licensee after the date of the assignment, plus:*

(a) Any fees owed by the licensee to the State Controller pursuant to a specific statute, including, without limitation, NRS 353C.135, for collection of the debt;

(b) Any costs and fees actually incurred to collect the debt; and

(c) Any interest on the debt due under the terms of an agreement with the licensee for the payment of the debt pursuant to NRS 353C.130.

Sec. 16. 1. *The scope of a hearing is limited to a determination of the validity of the debt and excludes consideration of any other dispute between the parties. The scope of the hearing is further limited as follows:*

(a) If a petitioner timely contested the debt in accordance with the administrative procedures prescribed by the respondent, the respondent has issued a final decision concerning the existence and amount of the debt and:

(1) The time for filing a petition for judicial review of the decision has expired; or
(2) The petitioner timely filed a petition for judicial review of the decision and obtained a final judgment of the court concerning the validity of the debt,
↳ the final decision of the respondent or the final judgment of the court, as applicable, shall be deemed to be correct, and the scope of the hearing is limited to a determination of the balance due on the debt.

(b) If a petitioner failed timely to contest the debt in accordance with the administrative procedures prescribed by the respondent, the scope of the hearing is limited to a review of any documentation concerning:

(1) The existence or amount of the debt as of the date of the assignment; and
(2) The balance due on the debt.

2. A party that wishes to rely on all or part of an administrative or judicial decision must introduce into evidence at the hearing the original or an acceptable copy of the decision.

Sec. 17. 1. *Except as otherwise provided in subsection 3, the State Controller will serve the parties with notice of the place, date and hour of a hearing at least 15 days before the date set for the hearing.*

2. *A hearing may be held at the office of the State Controller in Carson City, Nevada, or at any other place in this State designated in the notice of hearing.*

3. *A hearing date may be set with less than 15 days' notice if the petitioner and the respondent agree in writing.*

Sec. 18. *The petitioner and respondent shall each submit a prehearing statement to the State Controller and the other party at least 5 days before the date of the hearing. The prehearing statement must include a statement of the issues to be presented and a list of witnesses and evidence to be presented at the hearing.*

Sec. 19. *All pleadings submitted in connection with a hearing must be addressed to the State Controller. A pleading shall be deemed to be received by the State Controller when a true copy of the pleading, properly addressed and stamped, is deposited in the United States mail.*

Sec. 20. *Oral evidence will be taken only upon oath or affirmation administered by the State Controller. Before testifying, a person must swear or affirm that the testimony he or she is about to give will be the truth, the whole truth and nothing but the truth.*

Sec. 21. *If the petitioner wishes to have a transcript of the hearing, he or she must furnish the reporter, pay for the transcript and deliver a copy of the transcript to the State Controller within 20 days after requesting a rehearing or filing a petition for judicial review of the final decision of the State Controller pursuant to chapter 233B of NRS.*

Sec. 22. *A person appearing in a hearing or prehearing conference shall conform to the recognized standards of ethical and courteous conduct.*

Sec. 23. *At a hearing, the petitioner and respondent may:*

1. *Call and examine witnesses.*

2. *Introduce relevant exhibits and evidence identified in their respective prehearing statements submitted pursuant to section 18 of this regulation, subject to objection by the opposing party.*

3. *Cross-examine opposing witnesses on any relevant matter, even if that matter was not covered in the direct examination.*

4. *Impeach any witness regardless of which party first called the witness to testify.*

5. *Offer rebuttal evidence.*

6. *Call any person who, because of his or her relationship to any other party, may be an adverse witness and examine him or her as an adverse witness.*

Sec. 24. 1. *A petitioner or respondent may appear at a hearing or prehearing conference:*

(a) *In person;*

(b) *By an attorney, accountant or other authorized representative; or*

(c) *As provided in subsection 2.*

2. *If a petitioner is not a natural person, the petitioner may appear at a hearing or prehearing conference:*

(a) *If a partnership, by a partner.*

(b) *If a corporation, by an officer or a regular employee.*

(c) *If a municipal corporation, by an officer, agent or employee.*

(d) *If an unincorporated association, by an officer or employee.*

3. *An attorney who is not a member of the State Bar of Nevada may represent a party at a hearing if the attorney is otherwise authorized to practice law in this State pursuant to the rules of the Nevada Supreme Court.*

Sec. 25. *The State Controller may:*

- 1. Grant continuances or recesses, both before and during a hearing; and*
- 2. If a party fails to appear at the time and place set for a hearing, dismiss the proceeding with or without prejudice or recess the hearing for a specified period to enable the party to attend.*

Sec. 26. *1. The petitioner has the burden of proof in a hearing.*

2. Unless otherwise ordered by the State Controller in a specific case, evidence will be received in the following order:

- (a) Brief opening statement by the petitioner;*
- (b) Brief opening statement and presentation of evidence by the respondent;*
- (c) Presentation of evidence by the petitioner; and*
- (d) Presentation of rebuttal evidence by the respondent.*

Sec. 27. *A hearing will not be conducted according to the technical rules of evidence, but pursuant to the provisions of NRS 233B.123.*

Sec. 28. *The State Controller may take official notice of the following matters:*

1. Rules, regulations, official reports, decisions and orders of the State Controller and any regulatory agency of this State.

2. Matters of common knowledge and technical or scientific facts of established character.

3. An official document properly introduced into the record of a hearing if:

- (a) The document is pertinent; and*
- (b) Proper and definite reference to the document is made by the party offering it.*

4. Matters which may be judicially noticed by the courts of this State.

Sec. 29. 1. The State Controller will, within 30 days after the conclusion of a hearing, prepare and serve on the parties written findings of fact, conclusions of law and a final decision on the issues presented in the hearing.

2. If the final decision of the State Controller declares that the debt is valid and:

(a) The petitioner fails, within 15 days after the date of service of the final decision, to satisfy the debt or enter into an agreement for payment of the debt pursuant to NRS 353C.130, the State Controller will notify the licensing agency of the petitioner's failure as set forth in subsection 5 of NRS 353C.1965; or

(b) The petitioner satisfies the debt or enters into an agreement for the payment of the debt pursuant to NRS 353C.130, the State Controller will, within 15 days after the date of the satisfaction or agreement:

(1) Remove the petitioner from the list maintained by the State Controller pursuant to subsection 1 of NRS 353C.1965; and

(2) If the State Controller has previously provided notice to the licensing agency pursuant to subsection 5 of NRS 353C.1965, notify the licensing agency that the petitioner has satisfied the debt or entered into an agreement for the payment of the debt.

3. If the final decision of the State Controller declares that a debt is not valid, the State Controller will, within 15 days after the date of service of the final decision:

(a) Remove the petitioner from the list maintained pursuant to subsection 1 of NRS 353C.1965; and

(b) If the State Controller has previously provided notice to the licensing agency pursuant to subsection 5 of NRS 353C.1965, notify the licensing agency that the petitioner has demonstrated that the debt is not valid.