

BARBARA K. CEGAUSKE
Secretary of State

STATE OF NEVADA

SCOTT W. ANDERSON
Chief Deputy Secretary of State

GAIL J. ANDERSON
Deputy Secretary for Southern Nevada



ERIN HOUSTON
Deputy Secretary for Securities

DEBBIE I. BOWMAN
Deputy Secretary for Operations

KIMBERLEY PERONDI
Deputy Secretary for Commercial Recordings

MARK A. WLASCHIN
Deputy Secretary for Elections

**OFFICE OF THE
SECRETARY OF STATE**

**INFORMATIONAL STATEMENT
LCB File No. R146-20**

The following informational statement is provided pursuant to NRS 233B.066.

1. A clear and concise statement of the need for the adopted regulation.

This regulation is needed to set forth procedures for a hearing by a hearing officer on alleged violations of Chapter 240A which may result in suspension or revocation of a registration or imposition of a civil penalty. If the Secretary of State obtains information that a provision of Chapter 240A or an order issued pursuant to the chapter has been violated by a registrant or another person, the Secretary of State may conduct or cause to be conducted an investigation of the alleged violation. A hearing must be held to suspend or revoke a registrant, and a civil penalty for violations may be imposed only after a hearing. The regulation also defines what constitutes impeding an investigation conducted pursuant to NRS 240A.260. This was added to provide a specific violation for failing to respond when asked to respond to an inquiry for information and documentation in response to a complaint being investigated or an examination of records.

2. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.

Public comment was solicited at two public workshops on December 22, 2020 and May 25, 2021 and the public adoption hearing January 13, 2022.

The first Workshop was held December 22, 2020. The Notice of Workshop to Solicit Comments on proposed regulation LCB File No. 146-20 was e-mailed to active registrants on December 8, 2020 regarding the December 22, 2020 Workshop. The notice was also distributed to all subscribers of the Secretary of State news releases through "e-notify" and was posted on the required websites. Public participation was very good with some questions as well as comments. Sara Marks, registrant, commented that the regulation does not appear to address any warning or information to the registrant prior to the Investigator filing a Complaint.

Deputy Anderson referred back to Section 8, that the hearing procedures are preceded by an investigation in which the registrant is asked to participate and respond to certain allegations and provide documentation to support their response. Rafael Arroyo, registrant, commented that he would like to see progressive penalties prior to a hearing “due to businesses having staff that sometimes do not know what is going on.”

Registration Services Association of Nevada provided written comments and commented at the Workshop. The concern was regarding Section 12, which says that a Complaint with the Notice of Hearing may be amended or withdrawn at any time. Deputy Anderson responded that no new violation could be added to a Complaint without notice because of the requirement in NRS 240A.260 that an investigation must be conducted in order to determine whether there has been a violation, and the respondent would participate in that investigation. A Complaint and Notice of Hearing is sent by certified mail to the Respondent at least 30 days prior to the scheduled hearing. Section 12 allows the State to amend facts and violations or withdraw a Complaint in its entirety in response to information or documentation provided by the Respondent. The Registration Services Association also commented that Business Impact Statement was “in error” in determining that R146-20 has no economic impact on small business because most document preparers who are subject to an investigation will likely need to retain legal counsel. Deputy Anderson noted that the business impact statement qualified that there is no economic impact “to registrants who are in compliance with the provisions and requirements of chapter 240A.” However, she agreed to amend the Business Impact Statement to add the possibility that legal costs could be incurred. The Business Impact Statement was amended and reissued with the Notice for a second Workshop.

Other comments were received that were not related to the proposed Regulation file. One comment was related to notarization of a document prepared by a document preparation service, which ultimately was addressed in Assembly Bill 245 (2021). Several participants in the first Workshop requested future sessions of training with the ability to ask questions and interact with program staff.

A revision to revise LCB File #R146-20 was submitted to Legislative Council Bureau to add “impose a civil penalty” to Sections 6 and 8 of the draft regulation in response to Assembly Bill 245 that was being heard in the 2021 Legislative Session. A Revised Proposed Regulation was issued dated July 13, 2021.

The Notice of Second Workshop to Solicit Comments on an addition to LCB File No. 146-20 was posted and noticed on May 10, 2021 for a Workshop to be held May 25, 2021. The revised Business Impact Statement was posted with the Notice. The Notice was sent to all approved registrants by e-mail, posted on required websites and was distributed through the Secretary of

State’s “e-notify” system. At the May 25, 2021 Workshop, the two comments received were questions from participants that had not participated in the December 2020 Workshop.

Dee Bittner (B&L DMV Services) asked a question about the time frame of notification if an action is going to be taken. Anderson responded that the required days of notice and response are in the proposed regulation and pointed out specifics.

Glady Work (Comdata Solutions) asked what a registrant could get in trouble for. Anderson responded that the requirements are in NRS and NAC 240A and registrants are strongly encouraged to read the law. When an examination or investigation is conducted, the registrant will receive a checklist of things the investigator is looking for with the law citation for each. Anderson pointed out that there are more requirements than just being registered and holding a bond. Other requirements and disclosures are in the law.

No changes were proposed to LCB File No. 146-20 at the Workshop.

All notices included information on how to obtain a copy of the proposed regulation and the Business Impact Statement by telephone ((702) 486-2450) or e-mail (ganderson@sos.nv.gov) to Gail Anderson, Deputy Secretary of State for Southern Nevada.

The Adoption Hearing was held January 13, 2022. Two participants attended the virtual hearing, both representing Harbor Compliance out of Lancaster, PA. Anderson had been contacted by and had correspondence with Michael Geeser prior to the Hearing, who was representing the company. The issue the company was expressing was not concerning the regulation, but rather that the definitions in NRS 240A.030 and .040 were “overreaching” and the company did not believe they should fall under the definitions that would require registration. Anderson agreed on the record that there would be further discussion with Harbor Compliance to review their business model and practices. There was no other public comment offered at the Hearing.

Deputy Secretary of State Gail Anderson adopted LCB File No. 146-20 with no changes at the January 13, 2022 Hearing.

3. The number of persons (not including staff) who:

- a. Attended each hearing:** December 22, 2020 – 41 (Zoom and telephone); May 25, 2021 – 6 (Zoom and telephone); January 13, 2022 – 2 (Zoom)
- b. Testified at each hearing:** December 22, 2020 – 6; May 25, 2021 – 2; January 13, 2022 - 1
- c. Submitted to the agency written comments:** 3

- 4. A list of names and contact information, including telephone number, business address, business telephone number, electronic mail address, and name of entity or organization represented for each person identified in #3, as provided to the agency.**

December 22, 2020 Workshop

Troy Arias

AA DMV Services

2700 Lake Mead Blvd. #5

North Las Vegas, NV 89030

(702) 315-4402

troyarias@yahoo.com

Rafael Arroyo, Services Association of Nevada

Smog Plus LLC

1605 N. Lamb Blvd., Las Vegas, NV 89115

(702) 438-8600

smogplusllc@gmail.com

Cynthia Kaminski

H&R Block

1137 S. Main Street, Ste A2

Tonopah, NV 89049

(775) 482-6181

dkaminski@hrblock.com

Peter Kruger, representing Services Association of Nevada

Capital Partners, LLC

(775) 721-6888

peter@capitolpartners.us

Sarah Marks

Automotive Business Services

815 Stillwater Lane, Henderson, NV 89104

(702) 521-7546

mycarlady@gmail.com

Kewany Millard

[Contact unknown; not a registrant]

May 25, 2021 Workshop

Denise (Dee) Bittner
B and L DMV Services
5375 Cameron Street, Ste C
Las Vegas, NV 89118
(702) 822-2404
Igo4you@gmail.com

Gladys Work
Comdata Solutions
5301 Maryland Way
Brentwood, TN 37027
(615) 376-6822
gwork@comdata.com

January 13, 2022 Adoption Hearing

Michael Geeser, representing Harbor Compliance
1830 Colonial Village Lane
Lancaster, PA 17601
(717) 276-4907
mgeeser@harborcompliance.com

5. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation of how other interested persons may obtain a copy of the summary.

The Notice of Workshop to Solicit Comments on proposed regulation LCB File No. 146-20 was e-mailed to active registrants on December 8, 2020 regarding the December 22, 2020 Workshop. The notice was also distributed to all subscribers of the Secretary of State news releases through “e-notify” and was posted on the required websites.

The Notice of Second Workshop to Solicit Comments on an addition to LCB File No. 146-20 was posted and noticed on May 10, 2021 for a Workshop to be held May 25, 2021. The revised Business Impact Statement was posted with the Notice. The Notice was sent to all approved registrants by e-mail, posted on required websites and was distributed through the Secretary of State’s “e-notify” system.

The Notice of Intent to Act Upon a Regulation for LCB File No. 146-20 was posted on December 10, 2021 for the Adoption Hearing on January 13, 2022. The Agenda for the public

meeting, the Informational Statement and the Business Impact Statement, along with a the Regulations were posted at that time. Notice was posted on the required websites and submitted to LCB and the State Library and was distributed through the Secretary of State's "e-notify" system.

All notices included information on how to obtain a copy of the proposed regulation and the Business Impact Statement by telephone ((702) 486-2450) or e-mail (ganderson@sos.nv.gov) to Gail Anderson, Deputy Secretary of State for Southern Nevada.

Minutes which contain the comments from the public meetings are included in this package. Questions were asked concerning what certain words or processes meant. Questions were asked about the hearing process that were addressed in the regulation. A comment was made in the first Workshop about the Business Impact Statement which was amended and reissued for the second Workshop. Other comments not relating to the regulation were received and either responded to or noted for future possible training for registrants. It was a very positive process.

6. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

The regulation was adopted on January 13, 2022 as proposed. No changes were proposed during public comment to the regulation. The questions asked during comment periods were responded to by re-directing to a specific section of the regulation, or as addressed in statute. General comments about future training were noted.

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

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

Estimated Economic Effect of the proposed regulation:

- (a) **Adverse effect on the business:** Adverse economic impact could result from this proposed regulation to a registrant or a person found in violation of unregistered activity if an investigation finds substantiation for violations of chapter 240A and civil penalty is imposed after a hearing. An immediate economic effect would occur if a person alleged to be in violation of Chapter 240A would incur legal fees should he or she retain legal counsel to respond to a Complaint and Notice of Hearing. An immediate economic effect on a registrant would occur if a civil penalty was ordered as a result of a hearing. A long-

term adverse economic effect on a registrant would occur if a registrant was revoked and could not conduct document preparation service activity.

- (a) **Beneficial effect on the business:** The beneficial impact to a registrant or a business is to revoke or suspend or impose monetary penalty for violation of an order to cease and desist activity to any person not operating their business as required by chapter 240A. This is the “level playing field” impact that is a positive impact for those who play by the rules. The regulation sets forth the process for any action taken, and thus requires both the agency and the respondent to follow due process requirements set forth in law.
- (b) **Adverse effect on the public:** There is no adverse economic effect to the public with the proposed regulation.
- (b) **Beneficial effect on the public:** The beneficial impact to the public is to protect the public by suspending or revoking or fining any registrant not in compliance with the requirements of Chapter 240A. Potential restitution could occur to a member of the public if they were harmed in a transaction performed by a registrant or a person not registered. There is benefit to the public to penalize unregistered activity which results in fraudulent activity and harm caused by unethical practices including unlicensed practice of law.

8. The estimated cost to the agency for enforcement of the adopted regulation.

The agency does not anticipate any immediate cost for implementation of the adopted regulation. The agency intends to use existing staff (attorneys or supervisory investigators in other Divisions) as hearing officers. An increase in the AG cost allocation in future years is anticipated with the increased use of a Deputy Attorney General to draft Complaints and Notices of Hearing and to prosecute any cases.

9. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

The jurisdiction of document preparation services is not duplicated by any other state or federal government agency. Exemptions from registration as a document preparation service are listed in NRS 240A.030(3). An accredited immigration representative is exempt from registration. While tax preparers who are not CPAs or attorneys are required to register, enrolled agents are exempted from the requirement to register as a document preparation service because the Federal government has some level of jurisdiction over the designation of enrolled agents to represent a client in a tax hearing before the IRS.

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

No federal regulations apply that also apply to document preparation services.

11. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

No new fees are created in this regulation.