

**ADOPTED REGULATION OF THE
COMMISSIONER OF FINANCIAL INSTITUTIONS**

LCB File No. R094-98

Effective August 28, 1998

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

AUTHORITY: §§2-24, NRS 604.170.

Section 1. Chapter 604 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 22, inclusive, of this regulation.

Sec. 2. *As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 3 to 10, inclusive, have the meanings ascribed to them in those sections.*

Sec. 3. *“Cashing” has the meaning ascribed to it in NRS 604.020.*

Sec. 4. *“Check” has the meaning ascribed to it in NRS 604.030.*

Sec. 5. *“Check-cashing service” has the meaning ascribed to it in NRS 604.040.*

Sec. 6. *“Commissioner” means the commissioner of financial institutions.*

Sec. 7. *“Deferred deposit” has the meaning ascribed to it in NRS 604.060.*

Sec. 8. *“Deferred deposit service” has the meaning ascribed to it in NRS 604.070.*

Sec. 9. *“Division” means the division of financial institutions of the department of business and industry.*

Sec. 10. *“Registrant” has the meaning ascribed to it in NRS 604.080.*

Sec. 11. *An application for registration as a check-cashing service or deferred deposit service must:*

1. *Be verified;*
2. *State the location of the principal office and any branch offices in this state of the applicant;*
3. *State the name under which the applicant will conduct business;*
4. *List the name, capacity, title, residential address and business address and phone number of each person having an interest in the business, including, without limitation, any principal, partner, officer, manager, trustee and director;*
5. *Include, on a form provided by the division, a record of the personal history of each person having at least 25 percent ownership of the voting stock, partnership or member interest of the entity seeking registration;*
6. *Indicate the general plan and character of the business, including, without limitation, whether the company engages in check-cashing only or deferred deposit service only, or both;*
7. *State the length of time the applicant has provided check-cashing services or deferred deposit services, or both;*
8. *Include a financial statement of the applicant;*
9. *Include evidence:*
 - (a) *On a form provided by the commissioner, that the applicant has obtained a \$50,000 surety bond made payable to the State of Nevada pursuant to NRS 604.110; or*
 - (b) *That the applicant has deposited cash or securities in lieu of a surety bond pursuant to NRS 604.120;*
10. *Include the name of the manager or other person responsible for the operation of any office of the applicant that the applicant is seeking to register; and*

11. If required by the commissioner, include a set of fingerprints of the applicant pursuant to NAC 657.010.

Sec. 12. *1. The commissioner will issue a certificate of registration to an applicant to operate a check-cashing service or deferred deposit service if the applicant:*

(a) Submits an application with the contents set forth in NRS 604.100 and section 12 of this regulation;

(b) Submits a application for the principal office and list each branch that he wishes to operate in this state;

(c) Demonstrates in his financial statement that he is financially solvent; and

(d) Submits the information required pursuant to subsection 2.

2. An applicant, or each general partner, manager, officer and director of an applicant that is a partnership, corporation or other business entity, must submit with his application satisfactory proof that he:

(a) Has a reputation for honesty, trustworthiness and integrity;

(b) Is competent to operate a check-cashing service or deferred deposit service in a manner that safeguards the interests of the general public;

(c) Has not been convicted of a felony or any crime involving fraud, misrepresentation or moral turpitude;

(d) Has not made a false statement of material fact on his application;

(e) Has not had a certificate of registration issued pursuant to chapter 604 of NRS suspended or revoked within the 10 years immediately preceding the date of his application;

(f) Has not had a certificate of registration or similar certification or license that was issued in any other jurisdiction suspended or revoked within the 10 years immediately preceding the date of his application; and

(g) Has not violated any provision of chapter 604 of NRS or any regulation adopted pursuant thereto.

3. The commissioner will issue a separate certificate of registration for each office at which an applicant will operate a check-cashing service or a deferred deposit service. Such an applicant shall prominently display the certificate of registration at the office for which the certificate was issued.

4. A certificate of registration entitles the holder to engage in the activities authorized by chapter 604 of NRS and this chapter at the address set forth on the certificate.

Sec. 13. *The commissioner may:*

1. Conduct investigations to determine whether a registrant has violated a provision of chapter 604 of NRS or any regulation adopted pursuant thereto.

2. Conduct any other examination, periodic or special audit, investigation or hearing that is necessary for the efficient administration of the provisions of chapter 604 of NRS and any regulation adopted pursuant thereto.

3. Classify as confidential any records or information that the division obtains from a governmental agency upon the express condition that the records or information remain confidential or are confidential pursuant to any other state or federal law. This subsection does not in any way limit examination by the legislative auditor.

4. *Conduct any examination or investigation that is necessary to ensure that an applicant satisfies the requirements set forth in chapter 604 of NRS and this chapter for obtaining a certificate of registration at the time the applicant submits the application.*

Sec. 14. *1. If upon investigation it appears that a check-cashing service or deferred deposit service is conducting its business in violation of this chapter or the regulations adopted by the commissioner or when it appears that a person is engaging in the business of a check-cashing service or deferred deposit service without being registered pursuant to the provisions of this chapter, the commissioner may:*

(a) Advise the district attorney of the county in which the business is conducted. The district attorney shall cause the appropriate legal action to be taken to enjoin the operation of the business or prosecute the violation of this chapter.

(b) Bring suit in the name and on behalf of the State of Nevada against such a person and any other person concerned in or in any way participating in or about to participate in such unsafe or injurious practices or action in violation of this chapter or the regulations adopted by the commissioner to enjoin any such person from continuing or engaging in such practices or doing any such act.

2. If the commissioner brings suit, the district court of any county of this state may grant an injunction to prevent and restrain such practices or transactions. The court may, during the pendency of the proceedings before it, issue such temporary restraining orders as may appear to be just and proper. The findings of the commissioner shall be deemed to be prima facie evidence and sufficient ground, in the discretion of the court, for the issuance ex parte of a temporary restraining order. In any such court proceedings the commissioner may apply for

and on due showing is entitled to have issued the court's subpoena requiring forthwith the appearance of any defendant and his employees and the production of documents, books and records as appear necessary for the hearing of the petition, to testify and give evidence concerning the acts or conduct or things complained of in the application for an injunction.

Sec. 15. *A registrant shall maintain for a period of 3 years at an office in this state designated by the registrant a copy or the original of all records pertaining to each transaction with a customer that occurs in this state, including, without limitation, all of the following:*

- 1. The documentation for each deferred deposit transaction with a customer that is required pursuant to NRS 604.060.*
- 2. The written notice of the fees charged for cashing a check or entering into a deferred deposit transaction signed by each customer. The registrant shall have a customer sign a separate notice for a transaction in which the fee charged is different from the fee described in any notice previously signed by the number.*
- 3. A written agreement for each agreement with a customer, which may include, without limitation, an agreement to extend the time of a deposit; and*
- 4. Any disclosures given to customers to comply with federal law.*

Sec. 16. *1. A registrant shall use a form for entering into a deferred deposit transaction with a customer. The registrant may use one form to enter into more than one transaction with a customer.*

2. The form must include, without limitation, for each transaction:

(a) Notification of:

- (1) The fee that the registrant will charge; and*

(2) The service that the registrant will provide for the fee;

(b) An explanation of how the registrant will:

(1) Collect the fee;

(2) Apply the fee to any existing obligations of the customer; and

(3) Apply any payment the customer makes on a check to the obligation of the customer;

and

(c) Space for the customer to sign for each transaction.

3. A registrant may require a customer to:

(a) Complete an initial general information application to determine the credit worthiness and feasibility of conducting business with the customer; and

(b) Periodically update the information on the initial general information application.

Sec. 17. 1. A registrant or his employee shall not:

(a) Take any form of collateral as a condition for entering into a transaction with a customer.

(b) Require or accept a guarantor to a transaction entered into with a customer, except that the registrant may require, as a condition of providing a check-cashing service, that the customer provide a check guarantee card issued by a depository institution.

(c) Cash a check of the customer in any manner other than by providing the customer with cash or by issuing the customer a check from the registrant. If the registrant issues the customer his own check, the registrant shall draw the check on an insured account that is identified as belonging to the registrant and is maintained in a depository institution authorized to do business in this state. If a check that is issued by a registrant is not paid upon

presentation because of insufficient funds, the registrant will be subject to disciplinary action provided for within this chapter.

(d) Use any device, subterfuge, pretense or deceptive means or representations to collect on a check.

(e) Collect or attempt to collect any interest incidental to the check other than the fees disclosed pursuant to NRS 604.160.

(f) Operate his business from any location, address or post office box other than the location listed on his license.

(g) Harass the employer of a customer in attempting to collect on a check.

(h) Advertise for sale or threaten to advertise for sale any check as a means to enforce payment of the check, unless the registrant is acting pursuant to a court order.

(i) Publish or post, or cause to be published or posted, a list of customers who have not paid on their checks, except that the registrant may publish or post such a list for the benefit of his stockholders or membership in relation to the internal affairs of the registrant.

2. This section does not prohibit a registrant from selling his receivables or assigning past due receivables to a collection agent for collection.

Sec. 18. 1. The commissioner may:

(a) Suspend, revoke or place conditions upon the certificate of registration of a registrant, if the registrant:

(1) Is insolvent or in such financial condition that he cannot continue his business and ensure the financial safety of his customers;

- (2) *Is grossly negligent or incompetent in performing any act for which he is required to register pursuant to chapter 604 of NRS;*
- (3) *Does not conduct his business in accordance with law;*
- (4) *Violates any provision of chapter 604 of NRS or this chapter;*
- (5) *Makes a material misrepresentation of fact or fails to disclose a material fact that he knew or should have known concerning a transaction governed by chapter 604 of NRS or this chapter;*
- (6) *Knowingly makes or causes to be made to the commissioner any false representation of material fact;*
- (7) *Suppresses or withholds from the commissioner any information that the registrant possesses, which, if submitted to the commissioner, would have rendered the registrant ineligible to be registered pursuant to chapter 604 of NRS or this chapter;*
- (8) *Refuses to permit an examination of his books and affairs by the commissioner;*
- (9) *Refuses or fails within a reasonable time to provide the commissioner with any information that the commissioner requires pursuant to chapter 604 of NRS or this chapter;*
- (10) *Is convicted of a felony or any crime involving fraud, misrepresentation or moral turpitude;*
- (11) *Refuses or fails to pay within a reasonable time any expenses assessed to registrants pursuant to chapter 604 of NRS or this chapter; or*
- (12) *Engages in any other conduct constituting a deceitful, fraudulent or dishonest business practice;*

(b) Require a registrant to pay an administrative fine of not more than \$1,000 for each violation of a provision of chapter 604 of NRS or this chapter; or

(c) Impose upon a registrant any combination of the penalties set forth in paragraphs (a) and (b).

2. It is sufficient cause for the commissioner to refuse to issue or to revoke a certificate of registration of a registrant that is a partnership, corporation or other business entity if any member of the partnership or business entity or any officer or director of the corporation has been found to have committed an act or omission which would be cause for refusing or revoking the registration of a natural person.

3. Each day on which a person violates a provision of chapter 604 of NRS or this chapter is a separate violation under this section.

Sec. 19. *1. The commissioner may suspend the registration of a registrant who:*

(a) Fails to provide the surety bond required pursuant to NRS 604.110; or

(b) Deposit securities pursuant to NRS 604.120.

2. If requested by the registrant in writing, a hearing on the suspension must be held as soon as practicable, but in no event later than 10 business days after the request for a hearing.

Sec. 20. *1. The commissioner will provide that written notice of a refusal to issue a certificate of registration to an applicant or of an order to suspend the certificate of registration of a registrant will be served personally upon or sent by certified mail or by telegraph to the applicant or registrant.*

2. The applicant or registrant may, not more than 20 days after the applicant or registrant receives notice pursuant to subsection 1, request in writing that the commissioner hold a

hearing concerning the refusal or suspension. If the applicant or registrant fails to make a written request within 20 days after he receives notice, the commissioner will enter a final order concerning the refusal or suspension.

Sec. 21. *It is unlawful for a foreign corporation, association or business trust to operate a check-cashing service or deferred deposit service in this state unless the foreign corporation, association or business trust:*

- 1. Qualifies to do business in this state pursuant to chapter 80 of NRS; and*
- 2. Complies with the provisions of chapter 604 of NRS and this chapter.*

Sec. 22. *Except as otherwise provided by law, all papers, documents, reports and other written instruments filed with the commissioner pursuant to this chapter are open to public inspection, except that the commissioner may withhold from public inspection, for such time as he considers necessary, information that in his judgment is required to be withheld to protect the public welfare or the welfare of a registrant.*

Sec. 23. NAC 657.010 is hereby amended to read as follows:

657.010 In addition to any other information required by law, the commissioner of financial institutions may require an applicant for a license, a certificate, permission to organize or approval of a change of control pursuant to chapter 604, 645A, 645B, 649, 659, 671, 673, 675, 677 or 678 of NRS to submit a fingerprint card with his application. Fingerprints must be taken by a recognized law enforcement agency.

Sec. 24. 1. Every person in this state providing a check-cashing or deferred deposit service as of July 1, 1998, shall be deemed to have been issued a provisional registration.

2. A provisional registration issued pursuant to subsection 1 expires on:

(a) October 1, 1998, if the person has not submitted an application for registration by that date; or

(b) The date the person receives notice that the commissioner has granted or denied the person's application, or on February 1, 1999, whichever occurs first.