

LCB File No. R094-98

**NOTICE OF INTENT TO ACT UPON A REGULATION OF THE
DIVISION OF FINANCIAL INSTITUTIONS OF THE
DEPARTMENT OF BUSINESS AND INDUSTRY**

Notice of Hearing for the Adoption of Regulations of the Financial Institutions Division,
Department of Business and Industry

The Financial Institutions Division will hold a public hearing at 10:00 a.m., on Monday, June 29, 1998, at The Nevada State Library, Boardroom, 100 Stewart Street, Carson City, Nevada 89710, and at 10:00 a.m., Monday, June 29, 1998, at the Manufactured Housing Division, Conference Room, 2501 E. Sahara Avenue Suite 204, Las Vegas, Nevada 89104. The purpose of the hearing is to receive comments from all interested persons regarding the adoption of regulations that pertain to chapter 604 of the Nevada Administrative Code.

The following information is provided pursuant to the requirements of NRS 233B.060:

1. The need for and the purpose of the proposed regulation or amendment.

The Financial Institutions Division is directed pursuant to NRS 604.170(2) to adopt regulations necessary to carry out the provisions of chapter 604 of NRS.

2. Either the terms or the substance of the regulations to be adopted, amended or repealed, or a description of the subjects and issues involved.

See attached regulation.

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

- (a) Both adverse and beneficial effects; and

The regulations will increase the cost of doing business somewhat but will clarify the rights and obligations of check cashing and deferred deposit services operating in this state.

- (b) Both immediate and long-term effects.

The immediate effect of the regulation is that check cashing and deferred deposit services will have to complete and submit an application for registration. The long term effect is that these businesses will be regulated in this state by a state agency.

4. The estimated cost to the agency for enforcement of the proposed regulation.

It will cost approximately \$41,000 for fiscal year 1998-99 to administer and enforce this new registration law, based on the assumption of registering 63 companies.

5. A description of and citation to any regulations of other state or local governmental agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the proposed regulation overlaps or duplicates a federal regulation, the notice must include the name of the regulating federal agency.

N/A

6. If the regulation is required pursuant to federal law, a citation and description of the federal law.

N/A

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

N/A

8. Whether the proposed regulation establishes a new fee or increases an existing fee.

The proposed regulation establishes a fee for audit and examination of the registered companies.

Persons wishing to comment upon the proposed action of the Division of Financial Institutions may appear at the scheduled public hearing or may address their comments, data, views or arguments, in written form, to Commissioner, Division of Financial Institutions, 406 East Second Street, Carson City, Nevada 89710. Written submissions must be received by the Division of Financial Institutions on or before June 29, 1998. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Division of Financial Institutions may proceed immediately to act upon any written submissions.

A copy of this notice and the proposed regulation to be Amended will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the regulation will be available at Financial Institutions Division, 406 E. Second Street, Carson City, Nevada 89710, (702) 687-4259, and Financial Institutions Division, 2501 E. Sahara Avenue, Suite 300, Las Vegas, Nevada, 89104, (702) 486-4120, and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. This notice and the text of the proposed regulation are also available in the State of Nevada Register of Administrative Regulations which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653 and on the Internet at <http://www.leg.state.nv.us>. Copies will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Upon adoption of any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, will issue a concise statement of the

principal reasons for and against its adoption, and incorporate therein its reason for overruling the consideration urged against its adoption.

This notice of hearing has been posted at the following locations: (See attached list)
Posting Locations:

Financial Institutions Division
406 E. Second Street
Carson City, Nevada 89710

Financial Institutions Division
2501 E. Sahara Avenue
Suite 300, Third Floor
Las Vegas, Nevada 89104

Carson City Library
Churchill County Library
5553 S. Maine Street
Fallon, NV 89406

Attn: Darryl Batson, Director
Las Vegas - Clark County Library
833 Las Vegas, Boulevard N.
Las Vegas, NV 89101

Attn: Sara Jones, Director
Elko County Library
720 Court Street
Elko, NV 89801

Esmeralda County:
Goldfield Public Library
P.O. Box 430
Goldfield, NV 89013
(Fourth & Crook Street)

(Lander County)
Attn: Lauri Oki, Director
Eureka Branch Library
P.O. Box 293
Eureka, NV 89316

Attn: Sherry Allen, Director
Humboldt County Library
85 East 5th Street
Winnemucca, NV 89445
Director

Lincoln County Library
93 Main Street
P.O. Box 330
Pioche, NV 89043

Attn: Christian Freer-Parsons, Director

Attn: Diane Hartsock, Director
Tonopah Public Library
P.O. Box 449
Tonopah, NV 89049
(171 Central Street)

Attn: Jeanne Munk, Director
Pershing County Library
P.O. Box 781
Lovelock, NV 89419
(1125 Central Avenue)

Storey County Library
P.O. Box 14
Virginia City, NV 89440
(95 South R Street)

Attn: Nancy Cummings, Director
Washoe County Library
P.O. Box 2151
Reno, NV 89505
(301 South Center)

Attn: Lori Romero, Director
White Pine County Library
950 Campton Street
Ely, NV 89301

Attn: Lynn Chambliss, Director
Battle Mountain Branch Library

P.O. Box 141
Battle Mountain, NV 89820

Attn: Sally Edwards, Director
Carson City Library
900 N. Roop Street
Carson City, NV 89701

Attn: Carolyn Rawles-Heiser,

Douglas County Library
P.O. Box 337
Minden, NV 89423

Lyon County Library
20 Nevin Way
Yerington, NV 89447

Attn: Steve Schlatter, Director
Mineral County Library
P.O. Box 1390
Hawthorne, NV 89415
(First & A Street)

LCB File No. R094-98

**PROPOSED REGULATION OF THE DIVISION OF FINANCIAL
INSTITUTIONS OF THE DEPARTMENT OF BUSINESS AND INDUSTRY**

check-cashing and deferred deposit Services

May 28, 1998

EXPLANATION--Matter in italics is new, matter in brackets [] is material to be omitted.

Purpose: To adopt regulations to implement the provisions of NRS Chapter 604.

Authority: Act of July 16, 1997, ch. 495, § 19, 1997 Nev. Stat. 2375; NRS 604.170.

Address of Agency: The agency promulgating this regulation is the Commissioner of Financial Institutions (Commissioner), whose address is 406 East Second Street, Carson City, Nevada 89710. The Commissioner is being advised and assisted by the Nevada Attorney General's Office in the drafting of these regulations. The contact person is Doug Walther, Senior Deputy Attorney General, Attorney General's Office, Capital Complex, Carson City, Nevada 89710, phone (702) 687-6421, FAX (702) 687-5798.

Section 1. Chapter 604 of NAC is hereby amended by adding thereto sections 2 to 13, inclusive, of these regulations.

Sec. 2. 1. An application for registration as a check-cashing and/or deferred deposit service may be obtained by filing a written application in the office of the commissioner.

2. The application must:

(a) Be verified.

(b) State the location of the applicant's principal office and branch offices in this state.

(c) State the name under which the applicant will conduct business.

(d) List the names, residence and business address of all persons having an interest in the business as principals, partners, officers, managers, trustees and directors, specifying the capacity and title of each.

(e) Provide, on a form provided by the Division, a personal history record for each person having at least 25% ownership of the voting stock, partnership or member interest of the entity seeking registration.

(f) Indicate the general plan and character of the business, including whether the company engages in check-cashing only, deferred deposit service only, or both.

(g) State the length of time the applicant has been engaged in the check-cashing and/or deferred deposit service business.

(h) Include a financial statement of the applicant, which must reflect a solvent condition.

(i) Provide evidence of a \$50,000 surety bond, payable to the State of Nevada, on a bond form prescribed by the commissioner; or cash or securities in lieu of surety bond.

(j) Provide the name of the manager, or responsible person for the operation and/or oversight of the location in this state seeking registration.

(k) If requested by the commissioner, provide a set of fingerprints pursuant to NAC 657.010.

Sec. 3. 3. The commissioner shall issue a certificate of registration to a check-cashing or deferred deposit company if:

(a) The application complies with the requirements of subsection 2; and

(b) The applicant and each general partner, manager, officer, or director of the applicant, if the applicant is a partnership, corporation or unincorporated association:

(1) Has a good reputation for honesty, trustworthiness, integrity and displays competence to transact the business of a check-cashing and/or deferred deposit company in a manner which safeguards the interests of the general public. The applicant must submit satisfactory proof of these qualifications to the commissioner.

(2) Has not been convicted of, or entered a plea of nolo contendere to, a felony or any crime involving fraud, misrepresentation or moral turpitude.

(3) Has not made a false statement of material fact on his application.

(4) Has not had a certificate of registration that was issued pursuant to the provisions of NRS chapter 604 suspended or revoked within the 10 years immediately preceding the date of his application.

(5) Has not had a certificate of registration or similar certification or license that was issued in any other state, district or territory of the United States or any foreign country suspended or revoked within the 10 years immediately preceding the date of his application.

(6) Has not violated any of the provisions of NRS Chapter 604, or any regulation adopted pursuant thereto.

4. A certificate of registration entitles the holder to engage only in the activities authorized by NRS Chapter 604, and only at the address reflected on the certificate.

5. A separate application must be made for the principal office and each branch to be operated in this state. If a check-cashing or deferred deposit company maintains more than one place of business within the state, an additional license must be issued to each branch office so maintained, and the additional license must be displayed conspicuously in each branch office.

Sec. 4. 1. Subject to the administrative control of the director of the department of business and industry, the commissioner shall exercise general supervision and control over check-cashing and/or deferred deposit companies doing business in this state.

2. In addition to the other duties imposed upon him by law, the commissioner shall:

(a) Conduct such investigations as may be necessary to determine whether any person has violated any provision of NRS Chapter 604, or regulations adopted pursuant thereto.

(b) Conduct an annual examination of each registrant doing business in this state.

(c) Conduct such other examinations, periodic or special audits, investigations and hearings as may be necessary and proper for the efficient administration of the laws of this state regarding registrant.

(d) Classify as confidential certain records and information obtained by the division when those matters are obtained from a governmental agency upon the express condition that they remain confidential. This paragraph does not limit examination by the legislative auditor.

(e) Conduct such examinations and investigations as are necessary to ensure that a check-cashing or deferred deposit company meets the requirements of NRS Chapter 604 for obtaining a certificate of registration, both at the time of the application for registration and thereafter on a continuing basis.

3. For any supervision, audit, investigation, hearing or examination of a registrant, the commissioner will charge and collect a fee of \$40 per hour.

(a) The commissioner will bill each registrant upon the completion of the activity for the fee. The fee must be paid within 30 days after the date the bill is received. Except as otherwise provide in this subsection, any payment received after that date must include a penalty of 10 percent of the fee plus an additional 1 percent of the fee for each month, or portion of a month, that the fee is not paid. The commissioner may waive the penalty for good cause.

(b) Failure of a registrant to pay the fee required in subsection (a) as provide in this section constitutes grounds for revocation of its license.

4. Except as otherwise provided in NAC 658.030, each registrant shall pay to the division of financial institutions of the department of business and industry an annual assessment of \$300 to cover the costs related to the employment of a certified public accountant and the performance of audits and examinations conducted by the division.

(a) The division will bill each registrant for the assessment. The assessment must be paid within 30 days after the date the bill is received.

(b) A charge of 10 percent of the assessment will be imposed on any registrant whose assessment is received by the division after the date of which the assessment is due.

Sec. 5. Each registrant shall maintain within its licensed location copies of all records pertaining to each transaction it has entered into with a customer, for a period of three years, and must include:

1. Written agreement for each transaction with a customer as required within NRS 604.060.

2. Written notice of the fees charged for cashing check or entering into a deferred deposit transaction signed by each customer for each transaction as required within NRS 604.160(2).

3. Written agreement for each agreement to extend the time of deposit in a deferred-deposit transaction.

4. Any required disclosures given to customers as is necessary to comply with any Federal law.

4. A registrant may use a form for entering into multiple transactions or agreements with a single customer to comply with subsections 1 to 3, inclusive, of this section. The form must be submitted to the commissioner for approval before it is used and must include, for each transaction or agreement:

(1) A notification of the fee charged, the service being provided for the fee and how that fee is to be collected and applied to the customer's existing obligation;

(2) A notification of how any payment made on a check is to be applied to the customer's obligation;

(3) A space for the customer to sign for each transaction or agreement.

5. A registrant may require a customer to complete an initial general information application to determine the credit worthiness and feasibility of conducting business with that customer. Such information application may be periodically updated.

Sec. 6. A registrant or it's employees shall not:

1. Take any form of collateral as a condition for entering into a transaction covered by NRS chapter 604.

2. Require or accept a guarantor to a transaction entered into with its 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.
3. The encashment of a customer's check may not be done in any manner other than for cash or for the issuance of the registrant's check.
4. Where encashment of a check is done in a manner whereby the registrant issues its own check, such check must be drawn on an insured account maintained in a depository institution authorized to do business in this state. Such account must be identified as belonging to the registrant. Any such check issued by registrant which is not paid upon presentation, due to insufficient credit funds, subjects the registrant to disciplinary action provided for within this chapter.
5. Use any device, subterfuge, pretense or deceptive means or representations to collect on any check.
6. Collect or attempt to collect any interest incidental to the check, other than those fees disclosed in accordance with NRS 604.160.
7. Operate its business from any location, address or post office box other than that listed on its license.
8. Harass a customer's employer in attempting to collect a check.
9. Advertise for sale or threaten to advertise for sale any check as a means to enforce payment of the check, unless acting under court order or publish or post, or cause to be published or posted, any list of customers whose check has not been paid, except for the benefit of its stockholders or membership in relation to its internal affairs. This section does not prohibit a registrant from selling its receivables or assigning past due receivables to a collection agent for collection.

Sec. 7. The commissioner may require a registrant to pay an administrative fine of not more than \$1,000 for each violation he commits or suspend, revoke or place conditions upon his certificate of registration, or do both, at any time if the registrant, whether or not acting as such:

- (a) Is insolvent;
- (b) Is grossly negligent or incompetent in performing any act for which he is required to register pursuant to the provisions of NRS chapter 604;
- (c) Does not conduct his business in accordance with law or has violated any provisions of NRS chapter 604, or these regulations;

(d) Is in such financial condition that he cannot continue in business with safety to his customers;

(e) Has made a material misrepresentation or has failed to disclose any material fact which he knew, or should have known, relating to any transaction governed by NRS chapter 604, or these regulations;

(f) Has knowingly made or caused to be made to the commissioner any false representation of material fact or has suppressed or withheld from the commission any information which the applicant or registrant possesses, and which if submitted by him would have rendered the applicant or registrant ineligible to be registered pursuant to the provisions of NRS chapter 604;

(g) Has refused to permit an examination by the commissioner of his books and affairs or has refused or failed, within a reasonable time, to furnish any information or make any report that may be required by the commissioner pursuant to the provisions of NRS chapter 604, or regulations promulgated by that chapter;

(h) Has been convicted of, or entered a plea of nolo contendere to, a felony or any crime involving fraud, misrepresentation or moral turpitude;

(i) Has refused or failed to pay, within a reasonable time, those expenses assessed to registrants pursuant to NRS chapter 604, or these regulations;

(j) Has engaged in any other conduct constituting a deceitful, fraudulent or dishonest business practice; or

2. It is sufficient cause for refusal or revocation of a certificate of registration in the case of a partnership or corporation or any unincorporated association that any member of the partnership or any officer or director of the corporation or association has been guilty of any act or omission which would be cause for refusing or revoking the registration of a natural person.

3. Each day a person violates any provision of NRS chapter 604, or regulations promulgated by that chapter, or operates a check-cashing or deferred deposit business in violation of those provisions is a separate violation under this section.

Sec. 8. The commissioner may immediately suspend the registration of a registrant in the manner provided in section 9 of these regulations who fails to provide the surety bond required by NRS 604.110 within the period described in subsection 6 of that statute. 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. 9. 1. Notice of the entry of any order of suspension or of refusing a certificate of registration to any registrant or applicant for registration must be given in writing, served personally or sent by certified mail or by telegraph to the company affected.

2. The company, upon application, is entitled to a hearing; but if no such application is made within 20 days after the entry of an order of suspension or of refusing a certificate of registration of any company, the commissioner shall enter a final order in either case.

Sec. 10. It is unlawful for any foreign corporation, association or business trust to transact any check-cashing and/or deferred deposit business in this state unless it:

1. Qualifies under chapter 80 of NRS; and

2. Complies with the provisions of chapter 604 of NRS, and regulations promulgated by that chapter.

Sec. 11. 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 any information which in his judgment the public welfare or the welfare of any registrant requires to be so withheld.

Sec. 12. 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 subject to the following conditions:

(1) The provisional registration expires on August 1, 1998 if the person has not submitted an application for registration by that date;

(2) The provisional license expires on the date the Division issues an order granting or denying the application, or on January 1, 1999, whichever occurs first.

Sec. 13. Section 12 of these regulations shall be repealed effective January 2, 1999.