

LCB File No. R141-04

PROPOSED REGULATION OF
THE STATE CONTROLLER

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

CHAPTER 353C - COLLECTION OF DEBTS OWED TO STATE AGENCY: OFFSET OF
DEBTS OWED TO DEBTORS

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GENERAL PROVISIONS

NAC 353C.100 Request to offset debt; payment of ~~vendor~~ *debtor* after notification of interception.

1. If an agency requests that the state controller place a hold on payments to a person who owes a debt to the agency, the agency may, upon receiving notification from the state controller that such a payment has been intercepted, submit to the state controller a request to offset any amount due the agency from the debtor against any amount due the debtor from any agency.

2. The request must be submitted in the format provided by the state controller.

3. The agency shall verify and certify the accuracy of the name and address of the debtor and the amount of the debt, and shall immediately notify the state controller if the agency discovers that any of the information is incorrect.

4. If an agency has requested that the state controller place a hold on payments to a ~~vendor~~ *debtor* and such a payment is intercepted, any agency that receives notification pursuant to NAC 353C.110 that the payment has been intercepted and is being held for potential offset shall not attempt to pay that ~~vendor~~ *debtor* using a different vendor number *or by any other form of payment*, unless authorized by the state controller or the agency that requested the hold on payments to the ~~vendor~~ *debtor*.

NAC 353C.110 Action by state controller upon receipt of request to offset debt. Except as otherwise provided in NAC 353C.140, not later than 5 working days after receiving a request to offset from an agency pursuant to NAC 353C.100, the state controller will:

1. Proceed with the suspension of all payments due the debtor from any agency, *excepting debts due from employees*.

2. Notify the requesting agency and each agency processing a payment to the debtor that the payment has been intercepted and is being held for potential offset.

3. Send written notice to the debtor that the agency has requested the offset and that the debtor has 10 days after the date of the notice in which to request a hearing before the state controller to contest the offset. The notice will:

(a) Be sent by United States mail to the *last known* address of the debtor provided by the agency;

(b) Inform the debtor of the method by which he can request the hearing; and

(c) Inform the debtor that the authority for the offset is set forth in NRS 353C.190 and NAC 353C.100 to 353C.140, inclusive, and that the hearing will be held in accordance with the provisions of NAC 353C.150 to 353C.340, inclusive.

NAC 353C.120 Action by state controller upon failure of debtor to request hearing. If the debtor fails to request a hearing within 10 days after the date of the notice sent pursuant to NAC 353C.110, the state controller will:

1. Process the offset; and

2. Except as otherwise provided in NAC 353C.140, transfer an amount equal to the amount due the debtor from an agency from the appropriate account of that agency to the appropriate account of the agency that requested the offset.

NAC 353C.130 Proration of amount due from debtor upon multiple requests to offset debt. If two or more agencies submit requests for an offset with regard to the same debtor, the amount transferred to each agency pursuant to NAC 353C.120 will be prorated based on:

1. The amount of the original debt due from the debtor to each agency; and

2. Any additional interest and penalties due from the debtor to each agency.

NAC 353C.140 Restrictions on offsetting of debt.

1. The state controller will not offset:

(a) Any amount due a debtor pursuant to a program of public assistance or any other program for which the welfare division of the department of human resources is responsible; or

~~[(b) Any amount due a debtor who is in bankruptcy.]~~

2. As used in this section, “public assistance” has the meaning ascribed to it in NRS 422.050.

3. Debts due from employees will be referred to payroll for withholding from employees paychecks in accordance with all payroll rules and regulations.

HEARING ON REQUEST TO OFFSET DEBT

NAC 353C.150 Definitions. As used in NAC 353C.150 to 353C.340, inclusive, unless the context otherwise requires, the words and terms defined in NAC 353C.160, 353C.170 and 353C.180 have the meanings ascribed to them in those sections.

NAC 353C.160 “Hearing” defined. “Hearing” means a hearing before the state controller *or her designee* concerning a requested offset pursuant to NAC 353C.100 to 353C.140, inclusive.

NAC 353C.170 “Petitioner” defined. “Petitioner” means a person who requests a hearing.

~~[NAC 353C.180 “Staff” defined. “Staff” means the staff of the office of the state controller.]~~

NAC 353C.180 “Respondent” defined. “Respondent” means the staff of the agency, which requested the debt offset.

NAC 353C.190 Scope and construction of provisions; deviations from rules.

1. NAC 353C.150 to 353C.340, inclusive:

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

(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 rules set forth in NAC 353C.150 to 353C.340, inclusive, 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.

NAC 353C.200 Scope of hearing. The scope of a hearing excludes review of the final determination of the amount due an agency from the petitioner.

NAC 353C.210 Submission and receipt of pleadings. (All pleadings, including, without limitation, complaints, petitions, answers, briefs, motions, affidavits and applications, must be addressed to the state controller. All pleadings shall be deemed to be officially received by the state controller when a true copy of the paper or document, properly addressed and stamped, is deposited in the United States mail.

NAC 353C.220 Testimony must be under oath. 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 is about to give will be the truth, the whole truth and nothing but the truth.

~~[<NAC 353C.230 Proof of service of documents. With all documents required to be served, an acknowledgment of service or a certificate in substantially the following form must be included:~~

~~— I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding (by delivering a copy thereof in person to) (by mailing a copy thereof, properly addressed, with postage prepaid, to).~~

~~Dated at, this(day) of(month) of(year)~~

~~Signature>]~~

NAC 353C.240 Transcripts. If the petitioner wishes to have a transcript of the hearing, he 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 matter pursuant to chapter 233B of NRS.

NAC 353C.250 Conduct required. A person appearing in a hearing shall conform to the recognized standards of ethical and courteous conduct.

NAC 353C.260 Rights of petitioner and ~~[staff]~~ **respondent**. At a hearing, the petitioner and ~~[staff]~~ **respondent** may:

1. Call and examine witnesses.
2. Introduce relevant exhibits and evidence identified in their respective prehearing statements submitted pursuant to NAC 353C.290, 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 him to testify.

5. Offer rebuttal evidence.

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

NAC 353C.270 Representation of parties.

1. A party may appear at a hearing:

(a) In person;

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

(c) As provided in subsection 2.

2. If a party is not a natural person, the party may appear at a hearing:

(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 supreme court.

NAC 353C.280 Notice and location of hearing.

1. Except as otherwise provided in subsection 3, notice of the place, date and hour of a hearing will be served at least 15 days before the date set for the hearing.

2. A hearing will be held at the office of the state controller in Carson City, Nevada, or at such other place in this state as may be designated in the notice of hearing.

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

NAC 353C.290 Prehearing statements. The petitioner and the **[staff]** *respondent* shall each submit a prehearing statement to the state controller at least 5 days before the date of a 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.

NAC 353C.300 Continuances and recesses; failure of party to appear. The state controller *or her designee* retains discretion:

1. To 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, to dismiss the proceeding with or without prejudice, or to recess the hearing for a specified period to enable the party to attend.

NAC 353C.310 Burden of proof; presentation of evidence. (NRS 353C.190)

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 manner:

- (a) Brief *opening statements by the petitioner and the respondent* ~~[orientation by the staff]~~;
- (b) Presentation of evidence by the petitioner;
- (c) Presentation of evidence by the ~~[staff]~~ *respondent*; and
- (d) Presentation of rebuttal evidence by the petitioner.

NAC 353C.320 Rules of evidence; depositions; subpoenas. (NRS 353C.190)

1. A hearing will not be conducted according to the technical rules of evidence, but pursuant to the provisions of NRS 233B.123.
2. The state controller or any party to the hearing may cause the depositions of witnesses to be taken in the manner prescribed by the Nevada Rules of Civil Procedure for depositions in civil actions.
3. The state controller, upon the application of a party, may issue subpoenas.

NAC 353C.330 Official notice. 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.

NAC 353C.340 Action by state controller after hearing.

1. After the conclusion of the evidentiary portion of a hearing, the state controller will, within 30 days, prepare findings of fact, conclusions of law and a final decision on the issues presented in the hearing.

2. The state controller will serve a copy of the findings of fact, conclusions of law and decision upon all parties of record.