

LCB File No. R111-06

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

PROPOSED ADOPTION AND AMENDMENTS TO THE REGULATIONS OF COLLECTION AGENCIES

Explanation: Material in *bold italics* is new material; material lined out within ~~bold brackets~~ is material to be omitted.

Purpose: To adopt regulations under chapter 649 of the Nevada Administrative Code relating to collection agencies, establishing standards and procedures for the licensing and regulation of collection agencies, collection agents, qualified managers and foreign collection agencies; establishing the amount of certain fees; repealing certain regulatory provisions governing collection agencies; and providing other matters properly relating thereto.

General Authority: NRS 649.045, 649.051, 649.053, 649.056, 649.059, 649.147, 649.171, 649.205, 649.295, 649.297.

Section 1. Chapter 649 of the NAC is hereby amended by adding thereto the provisions set forth as sections 2 through 15, inclusive, of this regulation.

Section 2.

A collection agency shall not conduct any business unless:

- 1. He possesses each license, certificate and permit required by this State or a local government as a condition to conducting business; and*
- 2. The business location complies with the provisions of all applicable planning and zoning ordinances.*

Section 3.

The Commissioner may refuse to renew a licensee, permit or certificate if a collection agency or collection agency manager violates any provision of this chapter or sections 649.305 to 649.375, inclusive, of chapter 649 of NRS, including, without limitation, a provision that imposes a fee or assessment on the holder of a license, permit or certificate.

Section 4.

1. Except as provided in subsection 2 and as otherwise provided by law, all papers, documents, reports and other written instruments filed with the Division pursuant to chapter 649 of NRS and 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 licensee.

2. Except as otherwise provided in this section or at the discretion of the Commissioner, a complaint and all documents and other information filed with the complaint or resulting from an investigation of the complaint are confidential.

3. If the holder of a license, certificate, or permit does not respond the Commissioner within 20 days after receipt of a written notice of a complaint by the Commissioner, he is deemed to have admitted the allegations in the complaint.

Section 5.

1. In addition to any other fees required by this chapter or chapter 649 of NRS, a foreign collection agency must pay for the actual costs associated with travel for any examination, investigation or audit by the Commissioner pursuant to NRS 649.171(3).

2. Failure of a foreign collection agency to allow the examination, investigation or audit of any accounts, books and records of the foreign collection agency at any time is grounds for revocation of the foreign collection agency's certificate.

3. Once a year, prior to renewal, a collection agency shall provide to the Commissioner, a copy of all trust account bank statement and a report of financials audited by a CPA registered or licensed in the State of the collection agency.

Section 6.

A "bank" or "credit union" as used in NRS 649.355 must be insured by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund or a private insurer approved pursuant to NRS 678.755.

Section 7.

As described in NRS 649.020(3), an "act associated with the foreclosure of a lien" pursuant to NRS 116.31162 to 116.31168 is considered by the Commissioner to be those acts taken with foreclosure of a lien following the acts described in NRS 116.31162 to NRS 116.31168.

Section 8.

1. The nonrefundable application fee required pursuant to NRS 649.295(1) is \$375.

2. The additional application fee required pursuant to section NRS 649.295(2) is \$300. The Commissioner may refund no more than \$150 of the fee on a prorated basis if:

(a) An applicant withdraws his application before the Commissioner acts on the application;

(b) The Commissioner deems an application to be withdrawn because the applicant fails to submit all information and fees required to complete the application within the period set forth in NRS 649.196; or

(c) A licensee surrenders his license during his first year of licensure.

3. The fee to renew a license required pursuant to NRS 649.295(2) is \$375.

4. The fee for a duplicate license or license for a transfer of location required pursuant to NRS 649.295(3) is \$15.

5. The nonrefundable application fee required pursuant to NRS 649.295(4) is \$190. The nonrefundable investigation fee required pursuant to NRS 649.295(4) is \$115.

6. The additional application fee required pursuant to section NRS 649.295(5) is \$30. The fee to renew a certificate required pursuant to NRS 649.295(5) is \$30.

7. *The fee for reinstatement of a manager's certificate required pursuant to NRS 649.295(6) is \$45.*
8. *The nonrefundable application fee required pursuant to NRS 649.295(8) is \$190.*
9. *The fee to renew a permit required pursuant to NRS 649.295(8) is \$150.*

Section 9.

1. *The application fee for a foreign collection agency pursuant to NRS 649.171 is \$500. The Commissioner may refund no more than \$300 of the fee on a prorated basis if:
 - (a) *An applicant withdraws his application before the Commissioner acts on the application;*
 - (b) *The Commissioner deems an application to be withdrawn because the applicant fails to submit all information and fees required to complete the application within the period set forth in NRS 649.196; or*
 - (c) *A licensee surrenders his license during his first year of licensure.**
2. *The annual renewal fee of a foreign collection agency certificate is \$200.*
3. *A certificate of registration as a collection agency shall not be reinstated.*
4. *The fee for each date a foreign collection agency fails to submit a report required under this chapter or the provisions of chapter 649 of the NRS is \$10.*
5. *A certificate of registration as a collection agency shall not be transferable.*

Section 10.

The late fee for each a day a collection agency or collection agency manager fails to submit a report required pursuant to the provisions of NRS 649.297 is \$10.

Section 11.

1. *Failure of a collection agency or collection agency manager to pay a fee required by this chapter or chapter 649 of NRS constitutes grounds for revocation of the collection agency or collection agency manager's license, certificate or permit.*
2. *The Division shall not renew a license, permit or certificate pursuant to chapter 649 of NRS if a collection agency or collection agency manager fails to pay a fee described in subsection 1.*

Section 12.

A person not licensed pursuant to NRS 649.075(2) must obtain a certificate of exemption from the Commissioner.

Section 13.

A person licensed as a qualified manager must notify the Commissioner in writing of any change of employment within 10 days of that change.

Section 14. NAC 649.010 is amended as follows:

As used in NAC 649.010 to 649.050, inclusive,

1. *unless the context otherwise requires, the words and terms defined in NAC 649.020 to 649.040, inclusive, have the meanings ascribed to them in those sections.*
2. *The term collection agency means a collection agency licensed pursuant to 649.135 of NRS and a foreign collection agency licensed pursuant to 649.171 of NRS.*

Section 15. NAC 649.060 is amended as follows:

1. The commissioner of financial institutions will charge and collect a fee of ~~[\$50]~~ \$60 per hour from each collection agency for any supervision, examination, audit, investigation or hearing conducted pursuant to chapter 649 of NRS.

2. The commissioner will bill each collection agency upon the completion of the activity for the fee established in subsection 1. The fee must be paid within 30 days after the date the bill is received. *In addition to any other fee allowed by this chapter or chapter 649 of NRS, and* ~~[Except]~~ *except* as otherwise provided 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.

3. Failure of a collection agency to pay the fee required in subsection 1 as provided in this section constitutes grounds for revocation of its license.

Section 16. NAC 649.070 is amended as follows:

1. Except as otherwise provided in NAC 658.030, each primary and secondary collection agency 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.

2. The division will bill each collection agency for the assessment. The assessment must be paid within 30 days after the date the bill is received.

3. *In addition to any other fee allowed by this chapter or chapter 649 of NRS, a* ~~[A]~~ charge of 10 percent of the assessment will be imposed on any collection agency whose assessment is received by the division after the date on which the assessment is due.

Section 17. NAC 649.100 is amended as follows:

1. The person who holds a valid *qualified* manager's certificate and who is *the* designated ~~[as agency]~~ *qualified manager of a collection agency* must *have direct supervisory responsibility for employees who engage in collections in this State and must* be required to devote a substantial portion of each business ~~[day]~~ *hour:*

(a) In supervision of those employees engaging in collections in this State; and

(b) In ~~[in]~~ *the actual management, operation and administration of the licensed agency.*

2. The manager must be available in person at the business address of the agency in order to perform his required functions and duties.