

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

**LCB File No. R050-10**

**PROPOSED ADOPTION AND AMENDMENTS TO THE  
REGULATIONS OF THE UNIFORM DEBT MANAGEMENT SERVICES**

**Explanation:** Material in *bold italics* is new material.

**Purpose:** To adopt regulations under chapter 676A of the Nevada Administrative Code relating to Uniform Debt Management Services, establishing standards and procedures for the licensing and regulation of debt management services; establishing the amount of certain fees; and providing other matters properly relating thereto.

**General Authority:** Senate Bill 355 Sections 1 – 67

**Agency Address:**

Financial Institutions Division  
2785 E. Desert Inn Road, Suite 180  
Las Vegas, Nevada 89121

**Agency Contact Persons:**

George E. Burns, Commissioner  
gburns@fid.state.nv.us  
Steven W. Kondrup, Deputy Commissioner  
skondrup@fid.state.nv.us  
Telephone: (702) 486-4120  
Facsimile: (702) 486-4563

**Deputy Attorney General Providing Assistance to the Agency:**

Daniel Ebihara, Deputy Attorney General  
debihara@ag.nv.gov  
Telephone: (702) 486-3326  
Facsimile: (702) 486-3416  
555 N. Washington Street, Suite 3900  
Las Vegas, Nevada 89101-1068

**Section 1.** Chapter 676A of the NAC is hereby set forth as sections 2 through 10, inclusive, of this regulation.

**Sec. 2. *Definitions***

*1. The following terms are defined in Senate Bill 355 sections 4 – 24 and have the same meaning when used in the context of the regulation.*

*“Affiliate”*

*“Agreement”*

*“Bank”*

*“Certified counselor”*

*“Certified debt specialist”*

*“Commissioner”*

*“Concessions”*

*“Credit counseling”*

*”Day”*

*“Debt - management plan”*

*“Debt – management services”*

*“Debt settlement services”*

*“Entity”*

*“Good faith”*

*“Person”*

*“Plan”*

*“Principal amount of debt”*

*“Provider”*

*“Record”*

*“Settlement fee”*

*“Sign”*

*“State”*

*“Trust account”*

*2. The following terms used herein has the meaning:*

*(a) “Accreditation” means certified as meeting a prescribed standard.*

*(b) “Commissioner” means the Commissioner of the Financial Institutions Division.*

*(c) “Division” means the Department of Business and Industry Financial Institutions Division.*

*(d) “Licensee” means any person who applies for or receives a license or certification to conduct business pursuant to chapter 676A of NRS.*

*3. “Insured Bank” means a bank where the accounts are insured by the federal government or an agency of the federal government.*

**Sec. 3.** *Every insurance company providing insurance to any licensee must be certified by the Division of Insurance of the Department of Business and Industry to conduct the business of insurance in this State.*

**Sec. 4.** *In addition to any other lawful reasons, the Commissioner may suspend or revoke a license if the licensee has engaged in any act that would be grounds for denying a license.*

**Sec. 5. 1.** *If a person engages in an activity in violation of the provisions of this chapter or chapter 676A of NRS, the Commissioner may issue an order to the person directing the person to cease and desist from engaging in the activity.*

*2. The order to cease and desist must:*

*(a) Be in writing.*

*(b) Be delivered by certified mail to the person ordered to cease and desist. For the purposes of this paragraph, proof of attempted delivery by certified mail to the last known address of the person is sufficient to establish that service was complete.*

*(c) State that the person has 30 days from the date of the order to request an administrative hearing and that the order shall be deemed final if the Division does not receive a verified petition for a hearing within the prescribed time.*

*(d) State that, in the opinion of the Commissioner, the person has engaged in an activity:*

*(1) For which the person has not received a license as required by chapter 676A of NRS; or*

*(2) In a manner that violates the provisions of this chapter or chapter 676A of NRS.*

*3. A person who is served with an order to cease and desist pursuant to this section shall not engage in any activity governed by chapter 676A of NRS after he is served with the order unless the order is suspended or rescinded.*

*4. If a petition for a hearing is received by the Division regarding any administrative action, within the prescribed time, the Commissioner or his designee shall hold a contested hearing.*

*5. An order to cease and desist may be amended or rescinded at any time before or during the contested hearing. Subject to the discretion of the Commissioner or his designee, the hearing may be continued if an amendment to the order materially alters the facts or legal*

*issues relating to the order or the respondent demonstrates an inability to prepare for the hearing as a result of the amendment.*

*6. The decision of the Commissioner or his designee is final for the purposes of judicial review.*

**Sec. 6.** *1. A party to a hearing may compel the attendance of witnesses in his behalf at the hearing upon making a request to the Commissioner or his designee and designating the name and address of the person to be served with a subpoena.*

*2. A witness required to appear at a hearing before the Commissioner or his designee is entitled to receive from the party calling him the fees and reimbursement for mileage provided to witnesses in civil cases pursuant to NRS 50.225.*

**Sec. 7.** *1. Any person contesting an order by the Commissioner or his designee at a contested hearing has the burden of showing that the order was not based upon substantial evidence.*

*2. The Commissioner or his designee is not bound by strict rules of procedure or rules of evidence when conducting the hearing, except that the hearing must be conducted pursuant to the provisions of chapter 233B of NRS.*

*3. A record of the alleged acts which constitute grounds for issuing the order and a copy of any evidence introduced before or during the hearing must be filed with the Division.*

**Sec. 8.** *The Commissioner or his designee may:*

*1. Conduct hearings;*

*2. Question witnesses;*

*3. Make rulings on motions and objections; and*

*4. Issue findings of fact or conclusions of law at the conclusion of the case.*

**Sec. 9.** *If a party fails to appear at a hearing scheduled by the Commissioner or his designee and a continuance has not been requested or granted, upon an offer of proof by the Division that the absent party was given proper notice and upon a determination by the Commissioner or his designee that proper notice was given, the Commissioner or his designee may proceed to consider the case without the participation of the absent party and may dispose of the matter on the basis of the evidence before it. If the respondent fails to appear at the hearing or fails to reply to the notice, the charges specified in the order may be considered as true.*

**Sec. 10. 1.** *A party may call any other party or witness as an adverse witness. The party may question such a witness as if conducting a cross-examination.*

**2.** *Any party who is surprised by the testimony of a witness, called in good faith as a witness on his behalf, may question the witness as if conducting a cross-examination.*

**Sec. 11.** *Upon expiration of a license issued pursuant to this chapter, the organization ceases to be a licensed entity and shall no longer conduct the business pursuant to this chapter or chapter 676A in the State of Nevada, unless:*

**(1)** *The entity that ceased to be licensed solely due to the expiration of the previous license submits a request for a grace period from the Commissioner within 10 days from the date of expiration of the license; and*

**(2)** *The entity provides all fees and documents required for reinstatement of the license within 30 days from the date the grace period was requested. If the entity fails to request a grace period or request a grace period but fail to submit all required information, documents and fees to the Commissioner within the 30 day period and the Commissioner has not extended the grace period, the time for reinstatement of the license is expired. The entity*

*with the expired license must apply for a new license with the Commissioner and the entity is not permitted to conduct the business of debt management services provider while the application is pending.*

*(3) It is the obligation of the licensee to renew its license in a timely manner and the lack of notification by the Division regarding the end of the licensing period shall not be a justification for a failure to renew.*

**Sec. 12.** *A licensee shall not conduct any business under his license unless:*

*1. He possesses each license and permit required by this State or a local government as a condition to conducting business for each location in which the licensee conducts business; and*

*2. The Each business location complies with the provisions of all applicable planning and zoning ordinances.*

*3. No business may be conducted from any location which is not licensed under this chapter and chapter 676A of the NRS.*

**Sec. 13.** *Each licensee must maintain a business location in this State, which*

*1. Has regular business hours where customers may enter, communicate and conduct business with the licensee in person;*

*2. Provides all required disclosures are conspicuously posted and visible to all customers entering the business location;*

*3. Maintains all books and records from business conducted from that location. If there is only one business location in this state, it must maintain all books and records from business conducted in this State, unless the licensee has received prior approval from the Commissioner for an alternate location.*

**Sec. 14.** *1. Except as otherwise provided in NAC 658.030, each licensee shall pay to the Division an annual assessment to cover the costs related to the employment of a certified public accountant and the performance of audits and examinations conducted by the Division pursuant to section 658.055 of the NRS.*

*2. Except as otherwise provided in NAC 658.030, each licensee shall pay the assessment for costs of legal services provided by the Attorney General to the Commissioner and the Division pursuant to section 658.098 of the NRS.*

*3. The Division will notify each licensee for the assessments in subsection 1 and 2. The assessments must be paid within 30 days after the date the notification is received.*

*4. A charge of 10 percent of the assessments will be imposed on any licensee whose assessment is received by the Division after the date on which the assessment is due.*

*5. The failure of a licensee to pay the assessments required pursuant to subsections 1 and 2 as provided in this section constitutes grounds for revocation of the license of the licensee.*

**Sec. 15.** *Every individual applicant, every officer, director and ten percent or more owner of a corporate applicant, and every member of a firm or partnership applicant for a license must submit proof satisfactory to the Commissioner that the person is:*

*1. Is a citizen of the United States or lawfully entitled to remain and work in the United States.*

*2. Has a good reputation for honesty, trustworthiness and integrity and is competent to transact the business of a debt management services provider in a manner which protects the interests of the general public.*



*3. Has not had a professional license associated with this chapter suspended or revoked within the 10 years immediately preceding the date of the application.*

*4. Has not been convicted of, or entered a plea of nolo contendere to:*

*(a) A felony relating to any activity covered under this chapter or chapter 676A of the NRS; or*

*(b) Any crime involving fraud, misrepresentation or moral turpitude.*

*5. Has not made a false statement of material fact on his application.*

**Sec. 16. 1. Each agreement for services by a provider must contain all of the disclosures stated in section 54 of Senate Bill 355 (2009) subsection 8(a).**

*2. A provider shall not include in any written agreement:*

*(a) A promise by the customer to hold the provider harmless;*

*(b) A waiver of any claim or defense arising out of the provider agreement or a waiver of any provision of this chapter. The provisions of this paragraph do not apply to the extent preempted by federal law.*

*3. A provider shall not engage in any deceptive trade practice, as defined in chapter 598 of NRS, including, without limitation, making a false representation.*

*4. A provider shall not advertise or permit to be advertised in any manner any false, misleading or deceptive statement or representation with regard to the rates, terms or conditions for loans.*

*5. A provider shall not use or attempt to use any agent, affiliate or subsidiary to avoid the requirements or prohibitions of this chapter.*

**Sec. 17.** *1. The Commissioner will charge and collect a fee of \$100 per hour from each licensee for any supervision, examination, audit, investigation or hearing conducted pursuant to chapter 676A of NRS.*

*2. The Commissioner will bill each licensee 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. Except as otherwise provided in this subsection, any payment received after that date the due date must include a penalty of 10 percent of the fee plus an additional 10 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 debt management services provider to pay the fee required in subsection 1 as provided in this section constitutes grounds for revocation of its license.*

**Sec. 18.** *An application submitted pursuant to chapter 676A of the NRS must be accompanied by:*

- 1. A nonrefundable fee of \$2000; and*
- 2. A fee of \$1000, prorated by the Commissioner.*

**Sec. 19.** *1. A licensee shall pay annually to the Division a fee of \$1500 for the renewal of a license.*

*2. If the Commissioner reinstates an expired license, the licensee shall pay a reinstatement fee of \$1500 in addition to the renewal fee prescribed in subsection 1.*

**Sec. 20.** *The Commissioner may suspend or revoke a license, if a provider violates any provision of this chapter or chapter 676A of NRS, including, without limitation, a provision that imposes a fee or assessment on a provider.*

**Sec. 21.** *All dollar amounts reflected in sections 676A.030, 676A.310, 676A.350, 676A.390, 676A.580, 676A.740 and 676A.760 of the NRS shall be subject to an annual increase based upon the rate of inflation as determined by the Consumer Price Index for All Urban Consumers, published by the United States Department of Labor or a similar inflation index determined by the federal government. The base year for all fees shall be the year 2010. The Division shall post the dollar amounts for each year on the Internet and will be made available in print form upon request.*

**Sec. 22.** *A financial planning service provider is not subject to the provision of this chapter or chapter 676A of the NRS, so long as the conduct of the financial planner in relationship to the client are regulated by the State and that the financial planner possess a professional license from this State which as a requirement for that license:*

*1. Requires compliance with a professional code of conduct in relation to his activities with and on behalf of the client;*

*2. The financial planner must satisfy a specified amount of continuing education in order to maintain the license; and*

*3. Regulates and subjects the financial planner to discipline regarding his conduct and activity with and on behalf of the client.*

*A financial planner that engages in business pursuant to the provisions of this chapter and chapter 676A of the NRS and does not meet the requirements of this section is required to possess a license pursuant to chapter 676A of the NRS.*

**Sec. 23.** *The Commissioner shall post the approved training programs and certifying authorities which required in order to become a certified counselor pursuant to chapter 676A of NRS on the Internet.*

**Sec. 24.** *As of June 30, 2010, Chapter 676 of the Nevada Administrative Code is hereby repealed.*