

**PROPOSED REGULATION OF
THE COMMISSIONER OF FINANCIAL INSTITUTIONS**

LCB File No. R121-23

January 8, 2024

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

AUTHORITY: §§ 1, 2 and 5-7, NRS 671.030 and section 36 of Assembly Bill No. 21, chapter 23, Statutes of Nevada 2023, at page 100; § 3, NRS 671.030 and 671.050, as amended by section 68 of Assembly Bill No. 21, chapter 23, Statutes of Nevada 2023, at page 119 and section 36 of Assembly Bill No. 21, chapter 23, Statutes of Nevada 2023, at page 100; § 4, NRS 671.030 and 671.070, as amended by section 70 of Assembly Bill No. 21, chapter 23, Statutes of Nevada 2023, at page 122.

A REGULATION relating to financial services; requiring a person licensed to engage in the business of money transmission to develop, maintain and implement an information security program to safeguard certain customer information; increasing certain fees related to the licensure of persons engaged in the business of money transmission; revising provisions related to the confidentiality of certain documents submitted when applying for a license to engage in the business of money transmission; requiring certain money or credits presumed abandoned to comply with the Uniform Unclaimed Property Act; repealing certain provisions relating to money transmission; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Assembly Bill No. 21 (A.B. 21) of the 2023 Legislative Session: (1) eliminated provisions relating to persons who engage in the business of selling or issuing checks or of receiving for transmission or transmitting money or credits; and (2) set forth provisions relating to persons who engage in the business of money transmission. (Chapter 23, Statutes of Nevada 2023, at page 93) This regulation makes various changes to the Nevada Administrative Code relating to the enactment of A.B. 21.

Existing law provides for the licensure and regulation by the Commissioner of Financial Institutions of persons engaged in the business of money transmission. (Chapter 671 of NRS) **Section 1** of this regulation requires that a person licensed to engage in the business of money transmission must develop, implement and maintain an information security program to safeguard the nonpublic personal information of a customer as required by the federal Standards for Safeguarding Customer Information (the “Safeguards Rule”), 16 C.F.R. Part 314, and permits the Division of Financial Institutions to review any program or element implemented pursuant to the Safeguards Rule.

Existing law governs when certain forms of property are presumed abandoned. (NRS 120A.500, as amended by section 7 of Assembly Bill No. 55, chapter 179, Statutes of Nevada 2023, at page 1052) **Section 2** of this regulation provides that if any money or credits received for transmission by a licensee or authorized delegate are presumed abandoned, the licensee or authorized delegate shall comply with the relevant provisions of the Nevada Revised Statutes relating to abandoned property with respect to said money or credits.

Existing law requires an applicant for a license to engage in the business of money transmission to submit with an application: (1) a nonrefundable application fee of not more than \$500; and (2) a fee of not less than \$200 or more than \$400, prorated on the basis of the licensing year as provided by the Commissioner. (NRS 671.050, as amended by section 68 of Assembly Bill No. 21, chapter 23, Statutes of Nevada 2023, at page 119) Existing regulations provide that an application for such a license must be accompanied by: (1) a nonrefundable fee of \$375; and (2) a fee of \$300, prorated by the Commissioner. (NAC 671.020) **Section 3** of this regulation provides instead that such an application must be accompanied by: (1) a nonrefundable application fee of \$500; and (2) a license fee of \$400, prorated by the Commissioner.

Existing law provides that a license may be renewed upon approval of the Commissioner if a licensee files an application for the renewal that is accompanied by a fee of not more than \$400. Existing law further provides that if the application or fee for renewal is not filed within the required time, the Commissioner may reinstate the expired license if the licensee files the renewal application, the fee for renewal and a fee of not more than \$400 for late renewal. (NRS 671.070, as amended by section 70 of Assembly Bill No. 21, chapter 23, Statutes of Nevada 2023, at page 122) Existing regulations require a licensee to pay annually a fee of \$300 for the renewal of his or her license. Existing regulations further provide that if the Commissioner reinstates an expired license, the licensee is required to pay a reinstatement fee of \$300 in addition to the renewal fee. (NRS 671.030) **Section 4** of this regulation provides instead that: (1) the fee to renew a license is \$500; and (2) the late renewal fee to reinstate an expired license is \$400, in addition to the renewal fee.

Existing regulations prohibit, under certain circumstances, a person from engaging in the business of selling or issuing checks or of receiving for transmission or transmitting money or credits in this State. (NAC 671.070) **Section 5** of this regulation instead prohibits, under certain circumstances, a person from engaging in the business of money transmission in this State in order to conform to changes in terminology made pursuant to A.B. 21. (Chapter 23, Statutes of Nevada 2023, at page 93)

Existing law provides, with certain exceptions, that: (1) certain information and documents relating to applicants, licensees or authorized delegates; and (2) reports of investigations, examinations and certain other reports are confidential. (Section 37 of Assembly Bill No. 21, chapter 23, Statutes of Nevada 2023, at page 101 and NRS 671.170, as amended by section 78 of Assembly Bill No. 21, chapter 23, Statutes of Nevada 2023, at page 128) Existing regulations provide that: (1) an application for a license and financial records submitted by an applicant; (2) financial records or other documents submitted by a licensee pursuant to an audit or examination; and (3) any report of examination made by the Division of Financial Institutions of the Department of Business and Industry are confidential and may be only disclosed to: (1) the Division, an authorized employee of the Division or an agency of this State, any other state or the Federal Government that is investigating the activities of an applicant or a licensee; or (2) any person if the Commissioner determines, in the Commissioner's sole discretion, that the public interest in disclosure of the information outweighs the interest of the applicant or licensee.

(NAC 671.095) **Section 6** of this regulation provides instead that such information is confidential and may only be disclosed as authorized pursuant to the relevant provisions of the Nevada Revised Statutes. **Section 7** of this regulation makes a conforming change to repeal from the Nevada Administrative Code the requirement that, with certain exceptions, all papers, documents, reports and other written instruments filed with the Division be open to public inspection. (NAC 671.090)

A.B. 21 repealed provisions relating to: (1) obtaining a license to engage in the business of selling or issuing checks or of receiving for transmission or transmitting money or credits; and (2) certain agents of a licensee who also have to obtain such a license. (Section 84 of Assembly Bill No. 21, chapter 23, Statutes of Nevada 2023, at page 132) **Section 7** repeals from the Nevada Administrative Code obsolete provisions relating to the requirements for the issuance of such a license to a business entity or an agent of a licensee. (NAC 671.007, 671.040)

A.B. 21 also: (1) requires that a licensee maintain at all times permissible investments that meet certain requirements, including that the permissible investments, even if commingled with other assets of the licensee, be held in trust for the benefit of purchasers and holders of the outstanding money transmission obligations of the licensee; and (2) repealed the prohibition on a licensee or his or her agent from commingling money received from the sale or issuance of checks or for the purpose of transmission with the other assets of the licensee or agent. (Section 45 of Assembly Bill No. 21, chapter 23, Statutes of Nevada 2023, at page 105, and section 84 of Assembly Bill No. 21, chapter 23, Statutes of Nevada 2023, at page 132) **Section 7** repeals a requirement from the Nevada Administrative Code that every licensee at all times maintain a separate custodial or trust account in which must be deposited all money collected by the licensee. (NAC 671.075)

Finally, **section 7** repeals the definition of the term “licensee” which is already defined in the Nevada Revised Statutes. (Section 14 of Assembly Bill No. 21, chapter 23, Statutes of Nevada 2023, at page 132; NAC 671.005)

Section 1. Chapter 671 of NAC is hereby amended by adding thereto a new section to read as follows:

1. A licensee shall develop, implement and maintain an information security program to safeguard the nonpublic personal information of a customer as required by the Standards for Safeguarding Customer Information, 16 C.F.R. Part 314. The Division may review any information security program, risk assessment, incident response plan or element implemented by a licensee pursuant to the Standards for Safeguarding Customer Information, 16 C.F.R. Part 314.

2. *As used in this section, “information security program” means the administrative, technical or physical safeguards used to access, collect, distribute, process, protect, store, use, transmit, dispose of or otherwise handle customer information.*

Sec. 2. *If any money or credits received for transmission by a licensee or authorized delegate are presumed abandoned pursuant to NRS 120A.500, as amended by section 7 of Assembly Bill No. 55, chapter 179, Statutes of Nevada 2023, at page 1052, the licensee or authorized delegate must comply with the provisions of chapter 120A of NRS with respect to the money or credits.*

Sec. 3. NAC 671.020 is hereby amended to read as follows:

671.020 An application for a license submitted pursuant to NRS 671.050 , *as amended by section 68 of Assembly Bill No. 21, chapter 23, Statutes of Nevada 2023, at page 119*, must be accompanied by:

1. A nonrefundable *application* fee of ~~#{375;} \$500;~~ and
2. A *license* fee of ~~#{300;} \$400,~~ prorated by the Commissioner.

Sec. 4. NAC 671.030 is hereby amended to read as follows:

671.030 1. A licensee shall pay annually to the Division a fee of ~~#{300;} \$400~~ for the renewal of his or her license.

2. If the Commissioner reinstates an expired license, the licensee shall pay a ~~#{reinstatement} late renewal~~ fee of ~~#{300;} \$400~~ in addition to the renewal fee prescribed in subsection 1.

Sec. 5. NAC 671.070 is hereby amended to read as follows:

671.070 A person shall not engage in the business of ~~#{selling or issuing checks or of receiving for transmission or transmitting money or credits} money transmission~~ in this State unless:

1. The person possesses each license, certificate and permit required by this chapter, chapter 671 of NRS and a local governmental entity; and

2. The location of the business complies with any applicable planning and zoning ordinances.

Sec. 6. NAC 671.095 is hereby amended to read as follows:

671.095 An application for a license and financial records ~~[-if any,]~~ submitted by an applicant pursuant to the provisions of this chapter and chapter 671 of NRS, financial records or other documents submitted by a licensee pursuant to an audit or examination conducted by the Division and any report of examination made by the Division are confidential and may be disclosed ~~only to:~~

~~—1.— The Division, an authorized employee of the Division or an agency of this State, any other state or the Federal Government that is investigating the activities of an applicant or a licensee; or~~

~~—2.— Any person if the Commissioner determines, in the Commissioner's sole discretion, that the public interest in disclosure of the information outweighs the interest of the applicant or licensee.] as authorized pursuant to section 37 of Assembly Bill No. 21, chapter 23, Statutes of Nevada 2023, at page 101, and NRS 671.170, as amended by section 78 of Assembly Bill No. 21, chapter 23, Statutes of Nevada 2023, at page 128.~~

Sec. 7. NAC 671.005, 671.007, 671.040, 671.075 and 671.090 are hereby repealed.

TEXT OF REPEALED SECTIONS

671.005 “Licensee” defined. As used in this chapter, unless the context otherwise requires, “licensee” means any person licensed pursuant to this chapter and chapter 671 of NRS.

671.007 Requirements for issuance of license to business entity. If an application for a license is submitted by a business entity, the Commissioner will not issue a license to the applicant unless each partner, principal officer, director and trustee, whichever are applicable to the business entity, satisfies the requirements of NRS 671.055.

671.040 Fees: Application and license for agent of licensee. An agent who must be licensed pursuant to NRS 671.090 shall pay to the Division:

1. An application fee of \$250; and
2. A license fee of \$250.

671.075 Maintenance of separate custodial or trust account and related records.

1. Every licensee shall at all times maintain a separate custodial or trust account in a bank or credit union in which must be deposited all money collected by the licensee. The account must be maintained in a bank or credit union located in this State and bear some title sufficient to distinguish it from the licensee’s personal or general checking account and to designate it as a trust account, such as “customer’s trust fund account.” The account must at all times contain sufficient money to pay all money due or owing to all customers, and no disbursement may be made from the account except to customers or to pay costs advanced for those customers, except

that a licensee may periodically withdraw from the account such money as may accrue to the licensee from collections deposited or from adjustments resulting from costs advanced and payments made directly to customers.

2. Every licensee maintaining a separate custodial or trust account shall keep a record of all money deposited in the account, which must indicate clearly the date and from whom the money was received, the date deposited, the dates of withdrawals and other pertinent information concerning the transaction, and which must show clearly for whose account the money is deposited and to whom the money belongs. The records and money are subject to inspection by the Commissioner or an authorized representative of the Commissioner. The records must be maintained at the premises in this State at which the licensee is authorized to conduct business.

3. The licensee shall reconcile each custodial or trust account established pursuant to subsection 1 on a monthly basis.

4. If the Commissioner finds that a licensee's records are not maintained pursuant to subsections 2 and 3, the Commissioner may require the licensee to deliver an audited financial statement prepared from the records of the licensee by a certified public accountant who holds a certificate to engage in the practice of public accounting in this State. The statement must be submitted within 60 days after the Commissioner requests it. The Commissioner may grant a reasonable extension for the submission of the financial statement if an extension is requested before the statement is due.

5. If money in a custodial or trust account of a licensee becomes presumed abandoned pursuant to NRS 120A.500, the licensee shall comply with the provisions of chapter 120A of NRS with respect to the money.

671.090 Inspection of documents filed with Division. Except as otherwise provided in NAC 671.100 and 671.130 and NRS 671.170, all papers, documents, reports and other written instruments filed with the Division pursuant to this chapter and chapter 671 of NRS are open to public inspection unless the Commissioner determines that the information is required to be withheld to protect the public welfare or the welfare of a licensee.