

LCB File No. R101-01

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

NOTICE OF INTENT TO ACT UPON A REGULATION

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

The State of Nevada, Department of Business and Industry, Financial Institutions Division ("Division") will hold a public hearing at 1:30 p.m. on October 1, 2001, at 406 East Second Street, Suite 3, Carson City, Nevada 89701-4758 (telephone 775-684-1830). The purpose of the hearing is to receive comments from all interested persons regarding the adoption of regulations that pertain to chapter 677 of the Nevada Administrative Code.

The following information is provided pursuant to the requirements of NRS 233B.0603:

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

Pursuant to NRS 677.247(3), the Division is required to adopt regulations allowing certain thrift companies to accept deposits and to insure those deposits with a private insurer of deposits.

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 Either the terms or the substance of the regulations to be adopted, amended, or repealed, or a description of the subjects and issues involved.

A copy of the full text of the proposed regulation is attached hereto as Exhibit A.

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

EFFECTS ON THRIFT COMPANIES:

The Division does not believe that the proposed regulation will have any adverse effect on thrift companies that it regulates. The Division already has the authority to charge a specific licensee for any special audit, examination, or investigation that it conducts. NRS 677.435; NAC 677.310(4). Any

regulation in this area can only apply to one licensee because of the grandfather provision set forth in NRS 677.247(2)(a).

The Division believes that the regulation will have a beneficial effect on the one thrift company that will be able to accept deposits using a private insurer of deposits, which may increase the business of the one thrift company.

(b) Both immediate and long-term effects.

The Division does not believe that thrift companies will feel any immediate or long-term effects. Specifically, the Division does not believe that the regulations will increase the general examination fee charged to thrift companies pursuant to NAC 677.310(1).

EFFECTS ON THE PUBLIC:

(a) Both adverse and beneficial effects; and

The regulation may have a beneficial effect on the general public by allowing more choices of depository institutions. The Division does not believe that there are any adverse effects to the public as the regulation sets forth clear standards for the requirements of a private insurer of deposits.

(b) Both immediate and long-term effects.

The immediate effect of the regulation will be that the public will have an additional institution wherein they may deposit money. However, there are no large, immediate, or long-term effects anticipated to the public.

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

As previously stated, no additional cost to the agency is anticipated as it already has the authority to charge for examinations, investigations, and audits. NRS 677.435; NAC 677.310(4). In addition, the agency does not anticipate the need for additional personnel as a result of the regulation.

5. A description of and citation to any regulations of other state or local governmental agencies that 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.

There is no overlap or duplication of other state or local law. To a certain extent, the proposed regulations may overlap with 12 U.S.C. § 1831t(b) (relating to notices required of depository entities having private insurance

for deposits). In general, there may be an overlap of the other requirements of 12 U.S.C. § 1831t. The regulating federal authority over 12 U.S.C. § 1831t is the Federal Trade Commission.

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

The proposed regulation is not required by federal law.

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

The proposed regulation does not contain provisions more stringent than federal law.

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

The proposed regulation does not establish a new fee or increase an existing fee.

Persons wishing to comment upon the proposed action of the Division may appear at the scheduled public hearing or may address their comments, data, views, or arguments in written form to Commissioner L. Scott Walshaw, Financial Institutions Division, 406 East Second Street, Suite 3, Carson City, Nevada 89701-4748. The Financial Institutions Division must receive written submissions on or before September 26, 2001. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Division may proceed immediately to act upon any written submissions.

A copy of this notice and the regulation to be adopted 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 to be adopted will be available at the Financial Institutions Division at 406 East Second Street, Suite 3, Carson City, Nevada 89701, the Financial Institutions Division at 2501 East Sahara Avenue, Suite 300, Las Vegas, Nevada 89104, 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 of this notice and the proposed regulation 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:

Financial Institutions Division
406 East Second Street, Suite 3
Carson City, NV 89701

Attn: Barbara Mathews, Director
Churchill County Library
553 South Maine Street
Fallon, NV 89406

Attn: Darryl Batson, Director
Las Vegas - Clark County Library
833 Las Vegas Blvd. North
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 Streets)

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

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

Attn: Christian Freer-Parsons, Director
Lyon County Library
20 Nevin Way
Yerington, NV 89447

Financial Institutions Division
2501 East Sahara Avenue, Suite 300
Las Vegas, NV 89104

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 (Lander County)
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, Director
Douglas County Library
P.O. Box 337
Minden, NV 89423

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

State Library
100 North Stewart Street
Carson City, NV 89701

DATED this _____ day of _____, 2001.

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
FINANCIAL INSTITUTIONS DIVISION

By: _____
L. SCOTT WALSHAW, Commissioner

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

EXPLANATION – Matters in *italics* are new.

AUTHORITY: §§ 1- 13, NRS 677.247(3), NRS 677.230(1).

Section 1. Chapter 677 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 through 13, inclusive, of this regulation.

Sec. 2. *“Affiliated Business” is a corporation, partnership, or other legal business entity that controls, is controlled by, or is under common control with another company, partnership, individual, or other legal business entity.*

Sec. 3. *“Commissioner of the Financial Institutions Division” has the meaning ascribed to it in NRS 677.065.*

Sec. 4. *“Commissioner of Insurance” has the meaning ascribed to it in NRS 679A.060.*

Sec. 5. *“Depository Services” have the meaning ascribed to “Deposit” in NRS 677.075.*

Sec. 6. *“Stockholders equity” has the meaning ascribed to it in NRS 677.125.*

Sec. 7. 1. *In order to obtain a contract for private insurance of deposits as specified in NRS 677.247(2), a licensee must:*

(a) Be licensed pursuant to NRS chapter 677 before October 1, 1997;

(b) Have not obtained insurance of deposits as provided in NRS 677.247(1)(a) or NRS 677.247(1)(b);

(c) Have a contract of insurance that has been approved by both the Commissioner of Financial Institutions and by the Commissioner of Insurance;

(d) Create and maintain reserves of no less than 5 percent of deposits in the manner provided in NRS 677.230(1)(a), (1)(b), (1)(c), or (1)(d);

(e) Maintain a fidelity bond of at least \$300,000.00 on each Officer, Director, and employee;

(f) Maintain Stockholders equity of at least \$500,000.00 plus an additional \$50,000.00 for each additional branch office;

(g) Not enter into a contract for private insurance of deposits with an affiliated business unless approved by the Commissioner of the Financial Institutions Division and the Commissioner of Insurance. After approval of the private insurance of deposits by the Commissioner of the Financial Institutions Division and the Commissioner of Insurance, consent may only be withdrawn for good cause under the applicable insurance laws and regulations or the applicable provisions of NRS chapter 677 or the regulations promulgated thereto. The licensee or the private insurer of deposits may request a hearing, in the event of withdrawal of consent, under the applicable provisions of law, or if no specific hearing right exists under the insurance laws or NRS chapter 677, a hearing may be requested pursuant to NRS chapter 233B;

(h) Comply with all applicable provisions of federal law.

Sec. 8. 1. *In order to qualify to issue a policy of private insurance of deposits as specified in NRS 677.247(2), a private insurer must:*

- (a) Be licensed in the State of Nevada by the Commissioner of Insurance;*
- (b) Be rated by a nationally recognized rating service in the top five categories or hold a Certificate of Authority as acceptable sureties on federal bonds issued by the United States Department of the Treasury;*
- (c) Submit quarterly and annual financial statements to the Commissioner of the Financial Institutions Division and the Commissioner of Insurance;*
- (d) Maintain sufficient liquidity in its investment portfolio, including cash, reinsurance, and lines of credit to reimburse depositors fully and promptly for any losses, which investors may incur;*
- (e) Establish and maintain in cash, U.S. treasury notes or bills, short-term certificate of deposits, money market accounts, lines of credit, in cash, or the investments specified in NRS 355.140 in an amount equal to at least 15 percent of the amount of the insured deposits.*

Sec. 9. 1. *In determining whether a private insurer is acceptable to issue a contract for the insurance of deposits, the Commissioner of the Financial Institutions Division and the Commissioner of Insurance must consider:*

- (a) The value of the insurer's capital;*
- (b) The qualifications of the directors, officers and managers of the private insurance company;*
- (c) The insurer's articles of incorporation and its bylaws and all amendments thereto;*
- (d) The insurer's policies for investments;*
- (e) The form of all insurance contracts entered into by the insurer, including contracts for reinsurance.*

Sec. 10. 1. *After a private insurer of insurance deposits obtains approval from the Commissioner of the Financial Institutions Division and the Commissioner of Insurance the Commissioner of the Financial Institutions Division, after consultation with the Commissioner of Insurance, may, for cause, require the insurer to establish and maintain for such a time as the Commissioner of the Financial Institutions Division may require, an additional reserve, in cash or United States treasury bills, or notes, in an amounts fixed by the Commissioner of the Financial Institutions Division. If required, the reserve must be kept in an account approved by the Commissioner of the Financial Institutions Division in a federally insured financial institution located in this state.*

Sec. 11. 1. *The licensee holding privately insured deposits, shall, prior to offering depository services to any consumer or business entity, have the consumer or business entity sign and date a form with the following disclosure:*

"Your deposit is not insured by the Federal Deposit Insurance Corporation or any other federal or state entity. This business holds private deposit insurance only. The name of the private insurance carrier is... You are advised to fully consider this issue prior to depositing funds in this entity."

The licensee may place this language on a form that contains other information. The licensee shall provide a copy of this notice to all consumers or business entities engaging in depository activities. The notice shall be in boldfaced 8-point type. The licensee shall retain the original of the signed disclosure for a minimum period of six years. The licensee shall present the originals or copies thereof when requested to do so by the Commissioner of the Financial Institutions Division or by any employee of the Financial Institutions Division. The

licensee shall also place a placard with the disclosure in boldface 14-point type at the main entrance to the business and at a visible location at each teller's window. The licensee shall further comply with all notice requirements of applicable federal law.

Sec. 12. 1. The Commissioner of the Financial Institutions Division may request that the Commissioner of Insurance conduct an examination on the private insurer of deposits. The Commissioner of Insurance shall conduct such an examination, and report the results to the Commissioner of the Financial Institutions Division.

Sec. 13. 1. A private insurer of deposits shall notify the Commissioner of the Financial Institutions Division if there is any change in the ownership of 10 percent or more of the outstanding voting stock of its corporation or a change of partners if a partnership, within three business days after the private insurer of deposits, has knowledge of the change.

2. The Commissioner of the Financial Institutions Division shall then either approve or disapprove the continuance of the private insurance of deposits.