

We recently learned that the Nevada Division of Business & Industry Consumer Affairs Division has sent letters to a number of credit counseling agencies and debt settlement companies regarding the need to comply with the provisions of Nevada Credit Services Organization Act, NRS § 598.701 et al. (“NV CSOA”). Compliance with the NV CSOA requires each credit service organization to register and obtain a security bond for \$100,000. An alternative to registration and compliance with the NV CSOA is seeking licensure under the Nevada Debt Adjuster Act, NRS § 676.010 et al. (“NV Debt Adjuster Act”), and thus qualifying for a statutory exemption from the NV CSOA. Let us know if you have questions about the applicability of these statutes to your specific organization or business.

The NV CSOA defines a credit service "organization" as, “(1) Improving a buyer’s credit record, history or rating; (2) Obtaining an extension of credit for a buyer; (3) *Providing counseling or assistance to a person in establishing or effecting a plan for the payment of his indebtedness, unless that counseling or assistance is provided by and is within the scope of the authorized practice of a debt adjuster licensed pursuant* [NV Debt Adjuster Act]; (4) Providing advice or assistance to a buyer with regard to subparagraph (1) or (2).” See NRS § 598.741 (*emphasis supplied*). Further, the definition of credit service "organization" does not apply to “A person licensed as a debt adjuster.” Thus, it appears that the NV CSOA would apply to the activities of credit counseling agencies and debt settlement companies servicing clients that reside in Nevada IF they are not exempt by virtue of being licensed under the NV Debt Adjuster Act.

Notably, under the NV CSOA, “an organization and its agents, employees and representatives who sell or attempt to sell the services of the organization, shall not...Charge or receive any money or other valuable consideration before full and complete performance of the services the organization has agreed to perform for or on behalf of the buyer.” NRS § 598.746. The Act also contains several affirmative requirements on registrants, including specific disclosures.

Under the NV Debt Adjuster Act, the requirements for licensees include fee caps, bonding, and other requirements. The NV Debt Adjuster Act exempts “nonprofit corporations organized to render financial planning services to the public.” The NV Debt Adjuster Act is enforced by the Division of Financial Institutions, which maintains a list of licensees and organizations that are exempt from the licensee requirement.

We understand a number of credit counseling agencies may be operating under a presumption that an agency that is exempt for the Debt Adjuster Act by virtue of being a “nonprofit corporation organized to render financial planning services to the public” does not have to comply with requirements of the NV CSOA. However, it appears that the NV Consumer Affairs Division is taking a different position. As a result, nonprofit corporations organized to render financial planning services to the public that fall under the scope of the NV CSOA – and are not licensed with the Division of Financial Institutions under the NV Debt Adjuster Act – WOULD need to register with the Consumer Affairs Division under the NV CSOA.

The Nevada Credit Services Organization Act is available at:
<http://www.leg.state.nv.us/NRS/NRS-598.html#NRS598Sec746>.

The Nevada Debt Adjuster Application and Act are available at:
<http://fid.state.nv.us/DEBT%20ADJUSTER%20APPLICATION%20PACKAGE.htm>