

STATE OF NEVADA



JOE LOMBARDO  
Governor

DEPARTMENT OF BUSINESS AND INDUSTRY

TERRY REYNOLDS  
Director

**FINANCIAL INSTITUTIONS DIVISION**

SANDY O'LAUGHLIN  
Commissioner

January 9, 2023

Clayton Swears, Partner  
Hudson Cook, LLP  
7037 Ridge Road, Suite 300  
Hanover, Maryland 21076

RE: **Advisory Opinion Request Regarding NRS 649.365**

Dear Mr. Swears:

The State of Nevada Financial Institutions Division ("NFID") received your petition for the issuance of an advisory opinion, pursuant to NAC 232.040, concerning the applicability of Nevada Revised Statute ("NRS") 649.365 to a collection licensee's ability to communicate with a debtor in the name of a creditor. The opinion has been requested on behalf of Vervent, Inc. ("Licensee").

**Facts**

The opinion request states that section NRS 649.365<sup>1</sup> does not, on its face, obligate a licensee to disclose its name in communications and that disclosing a licensed collection agency's name in all post-default consumer communications is unreasonable. The opinion further states Licensee begins servicing accounts prior to default and under the federal Fair Debt Collection Practices Act ("FDCPA") is not a debt collector.

NRS Chapter 649 grants the authority to the NFID to license and regulate third-party past-due debt collection in the State of Nevada. NFID must approve the collection agency's name it uses to conduct business in Nevada and any communications with Nevada debtors, at initial licensing and any subsequent change to the name.

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<sup>1</sup>NRS 649.365 Approval of business name required; prohibition against use of certain names, terms and forms. 1. A collection agency licensed under this chapter must obtain the approval of the Commissioner before using or changing a business name. 2. A collection agency licensed under this chapter shall not: (a) Use any business name which is identical or similar to a business name used by another collection agency licensed under this chapter or which may mislead or confuse the public. (b) Use any printed forms which may mislead or confuse the public. (c) Use the term "credit bureau" in its name unless it operates a bona fide credit bureau in conjunction with its collection agency business. For purposes of this paragraph, "credit bureau" means any person engaged in gathering, recording and disseminating information relative to the creditworthiness, financial responsibility, paying habits or character of persons being considered for credit extension for prospective creditors.

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## **Issue Presented**

If Licensee begins servicing a debt prior to default in the name of a creditor, may the Licensee continue to communicate with the debtor in the name of the creditor without disclosing the Licensee's name and without violating NRS 649.365, where the communication is not deceptive, and disclosure of the Licensee's name is not otherwise required by applicable law?

## **Analysis**

NRS 649 governs past due debt collection on behalf of another. NRS 649.010 defines "Claim" as any obligation for the payment of money or its equivalent that is *past due*. (Emphasis added). NRS 649.020 Collection Agency defined as all persons engaging, directly or indirectly, in the collection of or in soliciting or obtaining in any manner the payment of a claim owed or due or asserted to be owed or due to another.

FDCPA defines the term "debt collector"<sup>3</sup>, in part, as any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. The term does not include –

(f) any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity (iii) concerns a debt which was not *in default* at the time it was obtained by such person. (Emphasis added).

Neither the term past due or default is defined in NRS 649 or FDCPA. Past due and default may have different meanings depending on the type of debt pursuant to the contract creating the debt.

Licensure in Nevada is required for the collection of past-due debt by a third party. A Nevada licensed collection agency must comply with all provisions of NRS and NAC 649, including communicating with Nevada debtors using the name approved by NFID. Nevada consumers must be informed that a third party is contacting them for a past due debt. If it were necessary for a consumer to file a complaint with NFID, NFID would not have record of the creditor as NFID only licenses and regulates the collection agency.

## **Conclusion**

A licensee can only communicate with a Nevada debtor regarding a past due debt using the name approved by NFID, which in this reference is not the creditor's name. Using any other name would not comply with NRS 649.365 as it could mislead or confuse the public. A Nevada licensed collection agency cannot communicate with a Nevada debtor regarding a past due debt without disclosing the licensee's name.



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Sandy O'Laughlin  
Commissioner  
Financial Institutions Division

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<sup>2</sup>NRS 649.095 Application for license: Contents; submission of fingerprints and financial statement; examination of applicant; withdrawal of application. 1. An application for a license must be in writing and filed with the Commissioner on a form provided for that purpose. 2. The application must state: (a)The name of the applicant and the name under which the applicant does business or expects to do business.

NRS 649.059 Approval of printed forms. The Commissioner may require collection agencies to submit any printed form of agreements, listing sheets, acknowledgments, communications or other documents used in its business for the Commissioner's approval or disapproval.

NRS 649.365 Approval of business name required; prohibition against use of certain names, terms and forms. 1. A collection agency licensed under this chapter must obtain the approval of the Commissioner before using or changing a business name.

<sup>3</sup>(6) The term "debt collector" means any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. Notwithstanding the exclusion provided by clause (F) of the last sentence of this paragraph, the term includes any creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts. For the purpose of section 1692f(6) of this title, such term also includes any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the enforcement of security interests. The term does not include --(F) any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity (i) is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement; (ii) concerns a debt which was originated by such person; (iii) concerns a debt which was not in default at the time it was obtained by such person; or (iv) concerns a debt obtained by such person as a secured party in a commercial credit transaction involving the creditor.