

LCB File No. R130-08

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

Explanation: Material in *bold italics* is new material; material lined out within ~~bold brackets~~ is material to be omitted.

Purpose: To adopt regulations under chapter 604A, of the Nevada Administrative Code relating to check cashing services, deferred deposit loan services, high interest loan service and title loan services, establishing the amount of certain fees; establishing certain definitions and policies; and providing other matters properly relating thereto.

General Authority: Assembly Bill 478 (2007); Assembly Bill 440 (2007); Assembly Bill 127 (2007)

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Sec. 1. Chapter 604A of the NAC is hereby amended by adding thereto the provisions set forth as sections 2 through 5 inclusive of this regulation.

Sec. 2. *As used in this chapter, unless the context otherwise requires, the words and terms defined herein have the meanings ascribed to them as in chapter 604A of NRS.*

Sec. 3. The title of this chapter shall be “604A – DEFERRED DEPOSIT LOANS, ~~SHORT-TERM LOANS~~ *HIGH-INTEREST LOANS*, TITLE LOANS AND CHECK-CASHING SERVICES.”

Sec. 4. NAC 604A.010 is hereby amended as follows:

NAC 604A.010 Definitions. (NRS 604A.300) As used in this chapter, unless the context otherwise requires:

1. The words and terms defined in NRS 604A.015 to ~~604A.125~~ **604A.150**, inclusive, have the meanings ascribed to them in those sections.
2. "License" means a license to operate a check-cashing service, deferred deposit loan service, ~~short-term loan~~ **high-interest loan** service or title loan service pursuant to the provisions of this chapter and chapter 604A of NRS.

Sec. 5. NAC 604A.110 is hereby amended as follows:

NAC 604A.110 Foreign business entities: Prerequisites to operation in State. (NRS 604A.300) A foreign corporation, association, trust or other business entity shall not operate a check-cashing service, deferred deposit loan service, ~~short-term loan~~ **high-interest loan** service or title loan service in this State unless the foreign business entity:

1. Qualifies to do business in this State pursuant to chapter 80 of NRS; and
2. Complies with the provisions of this chapter and chapter 604A of NRS.

Sec. 6. NAC 604A.130 is hereby amended as follows:

NAC 604A.130 Notice of fees charged for services. (NRS 604A.300, 604A.405)

1. The notice required by paragraph (a) of subsection 1 of NRS 604A.405 must:
 - (a) Comply with the applicable provisions of Regulation Z and the Truth in Lending Act.
 - (b) Set forth the actual fees charged for each service.
 - (c) Except as otherwise provided in subsection 2, be in substantially the following form:

NOTICE OF FEES CHARGED FOR SERVICES

Check-cashing fee..... \$____.____
Deferred deposit loan fee..... \$____.____
~~Short-term loan~~ **high-interest loan** fee..... \$____.____
Title loan fee..... \$____.____

(d) If printed, be in boldface type. Information that must be printed in all upper case letters must be printed in at least 18-point type. All other information must be printed in at least 16-point type.

(e) If handwritten or displayed digitally or by other electronic means, be in characters that are equivalent in intensity, legibility and size to the characters required for printed matter.

2. A licensee shall not include in this notice a fee for any service that he is not licensed to provide.

Sec. 7. NAC 604A.180 is hereby amended as follows:

NAC 604A.180 Documentation of compliance with limitations on amounts of deferred deposit loans and ~~short-term loans~~ **high-interest loans**. (NRS 604A.300, 604A.425)

1. A licensee shall maintain written documentation to establish that, except as otherwise provided in NRS 604A.425 and 604A.430, he has not made a:
 - (a) Deferred deposit loan that exceeds 25 percent of the expected gross monthly income of the customer when the loan is made; or
 - (b) ~~[Short-term loan]~~ *High-interest loan* that, under the terms of the loan agreement, requires any monthly payment that exceeds 25 percent of the expected gross monthly income of the customer.
2. A licensee shall maintain separate written documentation for each deferred deposit loan or ~~[short-term loan]~~ *high-interest loan* the licensee makes to a customer.
3. A licensee who fails to provide the Commissioner with the documentation required by this section is presumed to have violated NRS 604A.425.

Sec. 8. NAC 604A.220 is hereby amended as follows:

NAC 604A.220 Prohibited acts: Acceptance of check as security for ~~[short-term loan]~~ *high-interest loan* or title loan. (NRS 604A.300, 604A.435) A licensee who accepts a check as security for a ~~[short-term loan]~~ *high-interest loan* or title loan violates NRS 604A.435 even if:

1. The check is not negotiable; or
2. The licensee does not negotiate the check.

Sec. 9. *“Loan amount” defined. “Loan amount” means the total of payments of the loan that is or should have been disclosed on the loan agreement, exclusive of fees and late charges.*

Sec. 10. *“Payment” defined. “Payment” means the act of paying principle and interest to a specific loan or account.*

Sec. 11. *Confidentiality of applications, complaints and reports by the Financial Institutions Division. (NRS 604A.300, 604A.402, 604A.730 and 604A.800)*

The application and financial records submitted by a person pursuant to the provision of this chapter, any financial records or other documents submitted by a licensee pursuant to an audit or examination conducted by the Division and any report of examination by the Division are confidential and may be disclosed only to:

1. *The Division;*
2. *An authorized employee of the Division who needs the records for purposes relating to the administration of this chapter; or*
3. *A person or governmental entity that is authorized to obtain the records pursuant to an order issued by a court of competent jurisdiction.*

Sec. 12. *Complaints. (NRS 604A.820)*

1. *If a licensee, or an authorized representative of that licensee, fails to respond to the Commissioner of Financial Institutions within 20 days after receipt of a written notice that a complaint has been filed against the licensee, the licensee is deemed to have admitted to the allegations contained in the complaint.*
2. *Subject to the discretion of the Commissioner of Financial Institutions and except as otherwise provided by specific statute, a complaint filed with the Division of Financial Institutions of the Department of Business and Industry, any documents filed with the*

complaint, and any report or information resulting from an investigation of the complaint is confidential.

3. All reports of investigation or examinations and all documents or records relating to reports of investigation or examination by the Financial Institutions Division, are confidential.

Sec. 13. NAC 604A.230 is hereby amended as follows:

NAC 604A.230 Prohibited acts: Miscellaneous acts. (NRS 604A.300 and 604A.400)

1. A licensee shall not:

(a) Require or accept a guarantor to a transaction entered into with a customer.

(b) Issue his own check to a customer unless the check is drawn on an account that is:

(1) Insured by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund or a private insurer approved pursuant to NRS 678.755;

(2) Identified as belonging to the licensee; and

(3) Maintained in a depository institution authorized to do business in this State.

(c) Use any device, subterfuge, pretense or deceptive means or representations to collect on a check.

(d) Collect or attempt to collect any interest incidental to the check other than the fees set forth in this chapter and chapter 604A of NRS.

(e) Operate his business from any location other than the location listed on his license.

(f) Harass the employer of a customer in attempting to collect on a check.

(g) Advertise for sale or threaten to advertise for sale any check as a means to enforce payment of the check, unless the licensee is acting pursuant to a court order.

(h) Except as otherwise provided in this paragraph, publish or post, or cause to be published or posted, a list of customers who have not paid on their checks. A licensee may publish or post such a list for the benefit of his agents, employees, officers, managers, stockholders or membership in connection with the internal affairs of the licensee. This provision does not prevent a licensee from providing information concerning a customer to a consumer reporting agency.

(i) Issue a new loan to the same customer before a period of seven (7) business days has past from the termination of the previous loan agreement from the same licensee.

(j) Provide loans through the use of the internet to residents of States other than the State of Nevada.

(k) Authorize or permit a collection agency to add any charges in the collection of a loan not stated under chapter 604A of the NRS.

2. This section does not prohibit a licensee from selling his receivables or assigning past due receivables to a collection agent for collection.

3. As used in this section, "consumer reporting agency" has the meaning ascribed to it in section 603(f) of the Fair Credit Reporting Act, 15 U.S.C. § 1681a(f).

Sec. 14. NAC 604A.090 is hereby amended as follows:

NAC 604A.090 Fees and assessments. (NRS 604A.300, 604A.600, 604A.640, 604A.740, 604A.760)

1. The nonrefundable application fee required pursuant to NRS 604A.600 is \$~~[400]~~ 500 plus \$100 for each additional license for a branch location at which the applicant proposes to operate under his license.

2. The additional application fee required pursuant to NRS 604A.600 is \$~~[375]~~ 500 plus \$~~[75]~~ 100 for each additional license for a branch location at which the applicant proposes to operate under his license. The Commissioner may refund the fee on a prorated basis if:

(a) An applicant withdraws his application before the Commissioner acts on the application;

(b) The Commissioner deems an application to be withdrawn because the applicant fails to submit all information and fees required to complete the application within the period set forth in NRS 604A.600; or

(c) A licensee surrenders his license pursuant to NRS 604A.840 during his first year of licensure.

3. The fee to renew a license required pursuant to NRS 604A.640 is \$~~[375]~~ 500 plus \$~~[75]~~ 100 for each branch location at which the licensee is authorized to operate under the license.

4. The fee for reinstatement of an expired license as set forth in NRS 604A.640 is \$~~[150]~~ 500 plus \$~~[50]~~ 100 for each branch location at which the licensee is authorized to operate under the license.

5. The hourly fee authorized in NRS 604A.740 for supervision, audit, examination, investigation or hearing is \$~~[60]~~ 80.

Sec. 15. *Other Remedies. (NRS 604A.900) In addition to any other remedy or penalty, if a licensee violates the provisions of NRS 604A.900, the Commissioner may require the licensee to void the loan and prohibit the licensee from collecting, receiving or retaining any principal, interest or other charges or fees with respect to the loan, including remitting said amounts to the customer.*

Sec. 16. *Proceeds of a New Loan to pay an existing loan obligation. (NRS 604A.408, 604A.480 and 604A.485) The proceeds from a new deferred deposit loan or high-interest loan may be used to pay the outstanding obligations of an existing loan under this chapter, only if the loan:*

(a) Meets the requirements of NRS 604A.480.

(b) Is fully amortized.

(c) Provides each customer a separate form informing the customer the ability to rescind the loan, such form would:

(1) be in a form which the customer may keep;

(2) provide a non exclusive ability to rescind the loan;

(3) require only a signature and date to establish rescission;

(4) provide the address or facsimile number to which the form may be transmitted to the licensee; and

(5) state the date by which the rescission must be received.

(d) The provisions of NRS 604A.485 shall apply upon default.

Sec. 17. *Contested Hearings. (NRS 604A.300)*

1 The Commissioner may issue an order to cease and desist and/or to pay an administrative fine upon a person pursuant to this chapter. The Commissioner shall:

- a. Provide a copy of the order by certified mail to the person;*
- b. Provide the person notification that he has 30 days to request an administrative hearing, and if no written application for a hearing is received by the Division, the order shall become final.*

Sec. 18. Order: Amendment; continuance; withdrawal. (NRS 604A.300)

1. If a person engages in an activity in violation of the provisions of this chapter 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 be in writing and must state that, in the opinion of the Commissioner, the person has engaged in an activity:

(a For which the person has not received a license or certificate of exemption as required by this chapter; or

(b) In a manner that violates the provisions of this chapter or any applicable law.

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

4. The order imposing the administrative fine or restricting the practices of the licensee may be amended at any time before and during the hearing.

5. The hearing officer assigned to the matter may grant a continuance if the amendment materially alters the facts or the legal issues related to the order or a respondent demonstrates an inability to prepare for the case in a timely manner.

6. An order may be withdrawn at any time before the hearing begins.

2. If a timely application for a hearing is received by the Division, a presiding hearing officer shall conduct a contested hearing.

7. Each party may request that the presiding hearing officer issue a subpoena to compel the attendance of witnesses. The party making the request shall be responsible for paying mileage for the witness.

8. The petitioner has the burden of proof in a contested case.

9. The decision of the presiding hearing shall be final for the purposes of judicial review.

Sec. 19. The hearing officer is not bound by strict rules of procedure and evidence. (NRS 604A.300)

1. The hearing officer will not be bound by strict rules of procedure or the Nevada Rules of Evidence in the conduct of its proceedings.

2. A record of the charges and a record of all evidence produced will be filed in the office of the Financial Institutions Division.

3. A hearing held pursuant to the provisions of this chapter, will be conducted pursuant to the provisions of chapter 233B of NRS.

Sec. 20. Hearing officer: Duties; authority. (NRS 604A.300)

1. The hearing officer may:

- (a) Conduct hearings;*
- (b) Question witnesses;*
- (c) Make rulings on motions and objections; and*
- (d) Submit findings of fact or conclusions of law at the conclusion of the case.*

2. The findings of fact and conclusions of law issued by the hearing officer is the final decision for purposes of judicial review.

Sec. 21. Failure to appear. (NRS 604A.300) *If a party fails to appear at a hearing scheduled by the hearing officer and a continuance has not been requested or granted, upon an offer of proof by the other party that the absent party was given proper notice and upon a determination by the Board that proper notice was given, the hearing officer 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 complaint may be considered as true.*

Sec. 22. Examination of witnesses. (NRS 604A.300)

- 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.*