

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

LCB File No. R138-08

August 10, 2010

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

AUTHORITY: §§1-6, 9-11, 13-20 and 25-28, NRS 675.170; §7, NRS 675.060 and 675.170; §8, NRS 675.140 and 675.170; §12, NRS 675.170 and 675.490; §21, NRS 658.101, 675.170 and 675.400; §22, NRS 675.100; §23, NRS 675.140; §24, NRS 658.098, 675.170 and 675.440.

A REGULATION relating to installment loans; requiring certain information maintained by the Division of Financial Institutions of the Department of Business and Industry to be confidential; defining the circumstances under which a person is engaging in the business of lending money; enacting provisions concerning the expiration and renewal of licenses; requiring a licensee to maintain an office in this State which satisfies certain requirements; establishing standards for the calculation of interest rates for installment loans; authorizing the Commissioner of Financial Institutions to impose administrative fines and issue orders to cease and desist for certain activities; establishing provisions relating to contested hearings; increasing the fee charged to installment loan companies for the supervision of certain activities by the Commissioner; increasing the application fee for an applicant for a license to make installment loans; increasing the fee for the renewal of a license; enacting provisions concerning the assessment for legal services provided to the Commissioner and the Division by the Attorney General; revising provisions relating to the confidentiality of certain documents filed with the Division; and providing other matters properly relating thereto.

Section 1. Chapter 675 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 17, inclusive, of this regulation.

Sec. 2. *As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 3, 4 and 5 of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. “Division” means the Division of Financial Institutions of the Department of Business and Industry.

Sec. 4. “Installment loan” means a loan made to a person pursuant to a loan agreement which, under the original terms, charges an annual percentage rate of 40 percent or less.

Sec. 5. “Payment” means the act of paying any amount of the principal or interest of a certain loan or account.

Sec. 6. An application for a license and financial records, if any, submitted by an applicant pursuant to the provisions of this chapter and chapter 675 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.

Sec. 7. For the purposes of NRS 675.060, a person engages in the business of lending in this State if:

- 1. The person extends credit or loans money to an individual; and*
- 2. The extension of credit or loan is secured by an interest in the outcome of a civil action, case or controversy, including, without limitation, an agreement which provides that the lender has recourse against the borrower personally regardless of the outcome of the civil*

action, case or controversy and an agreement which provides that repayment is contingent upon the outcome of the civil action, case or controversy.

Sec. 8. *1. Upon the expiration of a license issued to a person pursuant to this chapter and chapter 675 of NRS, the person is no longer licensed pursuant to this chapter and chapter 675 of NRS and shall not conduct any business for which a license is required pursuant to NRS 675.060 unless the person has renewed the license or:*

(a) Not later than 15 days after the date on which the license expired, the person submits to the Commissioner a request for a grace period for the reinstatement of the license; and

(b) Not later than 30 days after the date on which the person submits the request for the grace period, the person submits to the Commissioner all fees and documents required for the reinstatement of the license.

2. If a license issued pursuant to this chapter and chapter 675 of NRS has expired and the person has failed to request a grace period pursuant to paragraph (a) of subsection 1 or has failed to submit all required fees and documents within the period set forth in paragraph (b) of subsection 1, the person may not renew or reinstate the license. If the person wishes to engage in a business for which a license is required pursuant to NRS 675.060, the person must apply for and be issued a new license pursuant to the provisions of this chapter and chapter 675 of NRS.

Sec. 9. *Each licensee shall maintain an office or place of business in this State which:*

1. Has regular business hours during which customers may enter the office or place of business and, in person, communicate and conduct business with the licensee or employees of the licensee; and

2. Provides the notices and disclosures required by this chapter and chapter 675 of NRS in an area within the office or place of business which is immediately visible to all customers entering the office or place of business.

Sec. 10. *A licensee shall not:*

1. Make a new loan to a borrower within 1 day after the termination or resolution of a default on a previous loan to that borrower.

2. Make a loan by means of an Internet website to any person who is not a resident of the State of Nevada unless the licensee is licensed or otherwise authorized to conduct the business of lending money pursuant to the laws of the state in which the person resides.

3. Authorize a collection agency to assess an additional collection fee to the borrower in connection with the collection of a loan in default.

Sec. 11. *1. Except as otherwise provided in this section, the interest rate for an installment loan must be calculated in accordance with the Truth in Lending Act, 15 U.S.C. §§ 1601 et seq., and Regulation Z, except that every charge or fee, regardless of the name given to the charge or fee, payable directly or indirectly by the borrower and imposed directly or indirectly by the lender must be included in calculating the annual percentage rate, including, without limitation:*

(a) Interest;

(b) Application fees, regardless of whether such fees are charged to all applicants or credit is actually extended;

(c) Fees charged for participation in a credit plan, whether assessed on an annual, periodic or nonperiodic basis; and

(d) Prepaid finance charges.

2. The following charges and fees must be excluded from the calculation of the interest rate for an installment loan pursuant to subsection 1:

(a) Any fees allowed pursuant to NRS 675.365 for a check not paid upon presentment or an electronic transfer of money that fails;

(b) Charges for an unanticipated late payment, exceeding a credit limit, or a delinquency, default or similar occurrence; and

(c) Any premiums or identifiable charges for insurance permitted pursuant to NRS 675.300.

3. Calculation of the interest rate for an installment loan in the manner specified in this section is limited only to calculating the interest rate for an installment loan and must not be used in compliance with any disclosure requirements of chapter 675 of NRS or any provisions of this chapter requiring disclosure of an interest rate for an installment loan in the making of an installment loan.

Sec. 12. *1. If a person engages in an activity in violation of the provisions of this chapter or chapter 675 of NRS, the Commissioner may issue an order to the person imposing an administrative fine pursuant to NRS 675.490, directing the person to cease and desist from engaging in the activity or both imposing an administrative fine and directing the person to cease and desist.*

2. An order issued pursuant to subsection 1 must:

(a) Be in writing.

(b) Be served by certified mail on the person ordered to cease and desist. For the purposes of this paragraph, proof of attempted service by certified mail to the last known address of the person is sufficient to establish that service was complete.

(c) State that the person has 30 days from the date of the order to request an administrative hearing and that the order shall be deemed final if the Division does not receive a verified petition for a hearing within the prescribed time.

(d) State that, in the opinion of the Commissioner, the person has engaged in an activity:

(1) For which the person has not received a license as required by chapter 675 of NRS;

or

(2) In a manner that violates the provisions of this chapter or chapter 675 of NRS.

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

4. If a verified petition for a hearing is received by the Division within the prescribed time, the Commissioner or the designee of the Commissioner shall hold a contested hearing.

5. An order to cease and desist may be amended or rescinded at any time before or during the contested hearing. Subject to the discretion of the Commissioner or the designee of the Commissioner, the hearing may be continued if an amendment to the order materially alters the facts or legal issues relating to the order or the respondent demonstrates an inability to prepare for the hearing as a result of the amendment.

6. The decision of the Commissioner or the designee of the Commissioner is final for the purposes of judicial review.

Sec. 13. *1. A party to a hearing may compel the attendance of witnesses in the party's behalf at the hearing upon making a request to the Commissioner or the designee of the Commissioner and designating the name and address of the person to be served with a subpoena.*

2. *A witness required to appear at a hearing before the Commissioner or the designee of the Commissioner is entitled to receive from the party calling the witness the fees and reimbursement for mileage provided to witnesses in civil cases pursuant to NRS 50.225.*

Sec. 14. 1. *At a contested hearing, the person contesting an order of the Commissioner or the designee of the Commissioner has the burden of showing that the order was not based upon substantial evidence.*

2. *The Commissioner or the designee of the Commissioner is not bound by strict rules of procedure or rules of evidence when conducting the hearing, except that the hearing must be conducted pursuant to the provisions of chapter 233B of NRS.*

3. *A record of the alleged acts which constitute grounds for issuing the order and a copy of any evidence introduced before or during the hearing must be filed with the Division.*

Sec. 15. *The Commissioner or the designee of the Commissioner may:*

1. *Conduct hearings;*

2. *Question witnesses;*

3. *Make rulings on motions and objections; and*

4. *Issue findings of fact or conclusions of law at the conclusion of the case.*

Sec. 16. *If a party fails to appear at a hearing scheduled by the Commissioner or the designee of the Commissioner and a continuance has not been requested or granted, upon an offer of proof by the Division that the absent party was given proper notice and upon a determination by the Commissioner or the designee of the Commissioner that proper notice was given, the Commissioner or the designee of the Commissioner 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 the Commissioner or the designee of the Commissioner. If the*

respondent fails to appear at the hearing or fails to reply to the notice, the charges specified in the order may be considered as true.

Sec. 17. 1. *A party to a hearing 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 the party's behalf, may question the witness as if conducting a cross-examination.

Sec. 18. NAC 675.010 is hereby amended to read as follows:

675.010 1. No licensee may advertise in any manner that may tend to confuse the identity of the licensee with any other unrelated licensee.

2. No licensee may advertise in any manner that a loan of a prospective borrower with another licensee will be paid or increased if the loan is transferred to the advertising licensee.

3. No unethical advertising by licensees will be permitted and the Commissioner ~~of~~ **Financial Institutions** reserves the right to require all licensees to submit proposed advertising for approval before its dissemination through the press, by radio or television.

Sec. 19. NAC 675.030 is hereby amended to read as follows:

675.030 1. Requests for payment must be made only to those obligated on the loan contract.

2. Collection attempts through written or printed communication, sent by mail, must be enclosed in a sealed envelope.

3. The ledger card must indicate when an account has been placed for collection or legal action taken. It must also indicate whether judgment was obtained, together with the date and the amount of the judgment.

4. On prepaid accounts, the ledger card must clearly indicate the amount rebated, both for interest and for insurance.

5. Adequate records which will enable the Commissioner ~~[of Financial Institutions]~~ to reconcile outstanding balances must be maintained in each licensed office.

6. If there no longer is an outstanding indebtedness from the borrower to the licensee, there must be delivered to the borrower by the licensee a termination statement as required by the Uniform Commercial Code (chapter 104 of NRS). Such delivery is necessary even though the Uniform Commercial Code under such circumstances does not require delivery of a termination statement unless the borrower makes a written demand upon the secured party for a termination statement.

7. If ledger cards or similar records for loan accounts and installment sale contract accounts are commingled in a licensee's files, there must be a system by which such cards may be readily identified one from the other, such as being of different colors or having corners of different colors. All of such cards must bear the date of the contract and must identify the type of transaction reflected on them.

Sec. 20. NAC 675.065 is hereby amended to read as follows:

675.065 1. A licensee may conduct business in the same office or place of business with a licensed mortgage banker if:

- (a) The licensee and the mortgage banker maintain separate licenses;
- (b) Each company is operated as a separate legal entity;
- (c) The books, records and accounts of each company are kept and maintained separately;
- (d) The licensee and the mortgage banker are subsidiaries of the same parent corporation or otherwise have the same ownership; and

(e) The mortgage banker does not maintain trust accounts as those described in NRS 645B.175.

2. Each application for approval to conduct business pursuant to subsection 1 must be written and on a form prescribed by the Commissioner . ~~{of Financial Institutions.}~~

Sec. 21. NAC 675.080 is hereby amended to read as follows:

675.080 1. The Commissioner ~~{of Financial Institutions}~~ will charge and collect a fee of ~~[\$30]~~ **\$100** per hour from each installment loan company for any supervision, examination, audit, investigation or hearing conducted pursuant to chapter 675 of NRS.

2. The Commissioner will bill each installment loan company upon the completion of the activity for the fee established in subsection 1. The fee must be paid within 30 days after the date the bill is received. Except as otherwise provided in this subsection, any payment received after that date must include a penalty of 10 percent of the fee plus an additional 1 percent of the fee for each month, or portion of a month, that the fee is not paid. The Commissioner may waive the penalty for good cause.

3. Failure of an installment loan company to pay the fee required by subsection 1 as provided in this section constitutes grounds for revocation of its license.

Sec. 22. NAC 675.090 is hereby amended to read as follows:

675.090 An application submitted pursuant to NRS 675.095 must be accompanied by:

1. A nonrefundable fee of ~~[\$750;]~~ **\$1,000;** and
2. A fee of ~~[\$800;]~~ **\$1,000**, prorated by the Commissioner . ~~{of Financial Institutions.}~~

Sec. 23. NAC 675.100 is hereby amended to read as follows:

675.100 1. A licensee shall pay annually to the Division ~~{of Financial Institutions of the Department of Business and Industry}~~ a fee of ~~[\$750]~~ **\$1,000** for the renewal of a license.

2. If the Commissioner ~~[of Financial Institutions]~~ reinstates an expired license, the licensee shall pay a reinstatement fee of \$400 in addition to the renewal fee prescribed in subsection 1.

Sec. 24. NAC 675.110 is hereby amended to read as follows:

675.110 1. Except as otherwise provided in NAC 658.030, each licensee shall pay to the Division ~~[of Financial Institutions of the Department of Business and Industry]~~ an annual assessment of \$300 to cover the costs related to the employment of a certified public accountant and the performance of audits and examinations conducted by the Division.

2. *Each licensee shall pay to the Division the assessment to cover the costs of legal services provided by the Attorney General to the Commissioner and the Division which is imposed pursuant to NRS 658.098.*

3. The Division ~~[of Financial Institutions of the Department of Business and Industry will]~~ *shall* bill each licensee for the ~~[assessment.]~~ *assessments described in subsections 1 and 2.* The ~~[assessment]~~ *assessments* must be paid within 30 days after the date *on which the licensee receives* the bill . ~~[is received.]~~

~~—3.]~~ 4. A charge of 10 percent of the assessment will be imposed on any licensee ~~[whose]~~ *if payment for an* assessment *described in subsection 1 or 2* is received by the Division ~~[of Financial Institutions of the Department of Business and Industry]~~ after the date on which the assessment is due.

5. *The failure of a licensee to pay an assessment described in subsection 1 or 2 constitutes grounds for the revocation of the license of the licensee.*

Sec. 25. NAC 675.130 is hereby amended to read as follows:

675.130 The Commissioner ~~[of Financial Institutions]~~ may revoke or suspend a license in accordance with NRS 675.370 to 675.450, inclusive, if a licensee violates any provision of this

chapter or chapter 675 of NRS, including, without limitation, a provision that imposes a fee or assessment on a licensee.

Sec. 26. NAC 675.140 is hereby amended to read as follows:

675.140 Except as otherwise provided in NAC 675.150 or *section 6 of this regulation or* by specific statute, all papers, documents, reports and other written instruments filed with the Division ~~{of Financial Institutions of the Department of Business and Industry}~~ pursuant to this chapter and chapter 675 of NRS are open to public inspection unless the Commissioner ~~{of Financial Institutions}~~ determines that the information is required to be withheld to protect the public welfare or the welfare of a licensee.

Sec. 27. NAC 675.150 is hereby amended to read as follows:

675.150 1. If a licensee, or an authorized representative of that licensee, fails to respond to the Commissioner ~~{of Financial Institutions}~~ within 20 business 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 are confidential.

3. Except as otherwise provided in this subsection, reports of investigations and examinations and any document or record relating thereto, other than those described in subsection 2, are confidential. This subsection does not preclude any party to an

administrative or judicial proceeding from introducing into evidence any information or document otherwise available or admissible.

Sec. 28. NAC 675.005 is hereby repealed.

TEXT OF REPEALED SECTION

675.005 “Licensee” defined. (NRS 675.170) As used in this chapter, unless the context otherwise requires, “licensee” means a person to whom one or more licenses have been issued pursuant to this chapter and chapter 675 of NRS.