ADOPTED REGULATION OF THE

COMMISSIONER OF FINANCIAL INSTITUTIONS

LCB File No. R037-20

AUTHORITY: §§1-25, NRS 604A.303.

A REGULATION relating to financial services; establishing the duties of a service provider who develops, implements and maintains a database of certain loans pursuant to a contract with the Commissioner of Financial Institutions; providing for access to the database; establishing certain duties of a licensee regarding the use of the database and the making of certain loans; authorizing the charging and collection of certain fees from licensees and customers under certain circumstances; requiring a licensee to enter certain information into the database; requiring a licensee to retain certain information and documentation relating to certain loans; providing for access to the database by the Office of the Commissioner of Financial Institutions for certain purposes; and providing other matters properly relating thereto.

Legislative Counsel's Digest:
Existing law requires the Commissioner of Financial Institutions to develop, implement and maintain, by contract with a vendor or service provider or otherwise, a database of all deferred deposit loans, title loans and high-interest loans in this State. (NRS 604A.303)

Section 9 of this regulation sets forth certain duties of a service provider regarding: (1) the development, implementation and maintenance of the database; and (2) the protection of the confidentiality and security of the information contained in the database.

Section 10 of this regulation sets forth certain duties of a service provider regarding: (1) the maintenance of data in the database for the purposes of compliance, investigation and enforcement; and (2) notification of the Office of the Commissioner if the database becomes unavailable for any reason.

Section 11 of this regulation restricts the persons who may have access to the database and sets forth certain requirements for passwords to access the database.

Section 12 of this regulation requires a licensee to query the database with certain information which verifies the identity of a customer before making a deferred deposit loan, title loan or high-interest loan to that customer.

Section 13 of this regulation: (1) sets forth the information that must be provided by the database in response to a query by a licensee; (2) requires a licensee to consider that information

and any other available information in determining the ability of a customer to repay a loan; and (3) requires a licensee to provide certain information to a customer if the customer is determined to be ineligible for a loan.

Section 14 of this regulation: (1) authorizes a licensee, during any period in which the database is unavailable due to technical issues on the service provider's side of the system, to rely upon certain written representations by a customer regarding the eligibility of the customer for a loan; and (2) requires the licensee to perform certain actions if the licensee makes a loan to a customer during a period when the database is unavailable.

Section 15 of this regulation: (1) requires the service provider to charge and collect a fee from a licensee for each loan which the licensee approves and enters into the database; and (2) sets certain restrictions on such a fee.

Section 16 of this regulation: (1) sets certain restrictions on the fee which a licensee may charge or collect from a customer; and (2) requires the fee to be itemized in the loan agreement.

Sections 17-21 of this regulation require a licensee to enter certain information regarding deferred deposit, high-interest and title loans into the database.

Section 22 of this regulation requires a licensee to retain for not less than 3 years certain information and documentation relating to certain loans.

Section 23 of this regulation prohibits a licensee from deleting from the database any information relating to a customer, unless the deletion is in accordance with **section 10**, which requires the deletion of certain data 3 years after a loan is closed.

Section 24 of this regulation provides for the Office of the Commissioner to have access to the database for the purposes of ensuring compliance and generating and publishing certain reports.

Section 25 of this regulation provides that a customer has the right to request from a licensee, without charge, fee or cost, certain information relating to his or her loan and the repayment of a loan.

Section 1. Chapter 604A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 25, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 25, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in NRS 604A.036, 604A.038 and 604A.057, and sections 3 to 7, inclusive, of this regulation, have the meanings ascribed to them in those sections.*

Sec. 3. *"Database" means the database required by NRS 604A.303 to be developed, implemented and maintained.*

Sec. 4. *"Delete" means to erase data by overwriting the data.*

Sec. 5. *"Due date" means the date, based on a payment schedule and subject to all statutory requirements, on which a customer is scheduled to:*

1. Make a payment, either to pay the full amount of a loan, including principal, finance charge and fees, and extinguish the debts; or

2. If applicable, make an installment payment.

Sec. 6. *"Identifying customer information" means:*

1. The name of a customer;

2. The social security number or alien registration number of a customer;

3. The driver's license number of a customer; or

4. The number of an identification card which was issued to a customer by the Federal Government, this State or any other state,

➥ *that is entered into the database.*

Sec. 7. *"Service provider" means the vendor or service provider with which the Commissioner has contracted to develop, implement and maintain the database.*

Sec. 8. *For the purposes of sections 2 to 25, inclusive, of this regulation, a loan is closed if the final status of the loan is no longer active because the loan has been paid in full under the loan agreement, because the loan is a title loan and the vehicle securing the loan has been repossessed, because the licensee has charged off the loan or for any other reason.*

Sec. 9. *The service provider shall:*

1. Develop, implement and maintain the database.

2.   Take all actions the service provider deems necessary to protect the confidentiality and security of the information contained in the database and be responsible for the confidentiality and security of such information.

Sec. 10.   *The service provider shall:*

1.   Retain the data in the database only as required to ensure that a licensee complies with the requirements of this chapter and chapter 604A of NRS.

2.   Unless notified by the Commissioner that the data and identifying customer information relating to a transaction of a customer is needed for the purposes of a pending investigation or enforcement action:

(a) Archive the data in the database not later than 2 years after the loan is closed. As used in this paragraph, "archive" means to copy data to a long-term storage mechanism separate from the database.

(b) Delete the data and any identifying customer information from the database on the date that is 3 years after the date on which the loan is closed.

3.   If the database becomes unavailable for any reason, notify the Office of the Commissioner not later than the next business day after the database becomes unavailable.

Sec. 11.   *1.   Access to the database must be limited to members of the staff of:*

(a) A licensee who underwrite and process loans;

(b) A licensee who collect and post payments made on loans;

(c) A licensee who are senior staff members;

(d)   The service provider; and

(e) The Office of the Commissioner.

2.   Each user of the database must be required to:

(a) Create a password to access the database that meets the criteria of the service provider for passwords; and

(b) Safeguard the password by not sharing the password with any person or by committing the password to writing.

Sec. 12. *1. Before making a deferred deposit loan, title loan or high-interest loan, a licensee shall query the database.*

2. To verify the identity of a customer, a query made pursuant to subsection 1 must include, at a minimum:

(a) The full name of the customer, including, without limitation, first and last name and middle initial;

(b) The social security number or alien registration number of the customer;

(c) The number of a valid identification card issued by a governmental entity which contains a photograph of the customer; and

(d) The date of birth of the customer.

3. The service provider shall retain each query of the database for review by the Office of the Commissioner.

Sec. 13. *1. In response to a query by a licensee, the database must:*

(a) Provide the licensee with the information which a licensee may obtain pursuant to paragraphs (a) to (d), inclusive, of subsection 1 of NRS 604A.303;

(b) Inform the licensee whether a customer is eligible for a loan pursuant to this chapter and chapter 604A of NRS; and

(c) If the customer is ineligible for a loan, provide the licensee with the reason for such ineligibility.

2. In determining the ability of a customer to repay a loan for the purposes of chapter 604A of NRS, a licensee shall consider the information provided pursuant to subsection 1 and any other available information.

3. A licensee may approve a loan only if the making of the loan is permissible pursuant to the provisions of this chapter and chapter 604A of NRS.

4. If the database informs a licensee that a customer is ineligible for a loan, the licensee must provide the customer with a written notice which contains:

(a) The reason for the ineligibility;

(b) The contact information of the service provider; and

(c) A statement advising the customer to submit an inquiry to the service provider if the customer has questions regarding the specific reason for the ineligibility.

5. A written notice provided by a licensee pursuant to subsection 4 does not preclude or replace any disclosure required by federal law.

Sec. 14. *1. During any period in which the database is unavailable due to technical issues on the service provider's side of the system, a licensee may rely upon the written representation of a customer applying for a loan and assess the ability of the customer to repay the loan by obtaining the documentation required by this chapter and chapter 604A of NRS to verify that making the loan for which the customer applied is permissible pursuant to this chapter and chapter 604A of NRS.*

2. The written representation of a customer applying for a loan, which a licensee may rely on pursuant to subsection 1, must include, without limitation:

(a) An affirmation that the customer does not have any loan outstanding at the time the customer applies for the loan;

(b) If, at the time the customer applies for a deferred deposit loan or high-interest loan, the customer has another outstanding loan, an affirmation that:

(1) The amount of the additional deferred deposit loan or high-interest loan, as applicable, for which the customer is applying would not, when combined with the amount of the outstanding loan of the customer, exceed 25 percent of the expected gross monthly income of the customer; and

(2) The customer has the ability to repay the loan and the additional deferred deposit loan or high-interest loan for which the customer is applying; or

(c) If, at the time the customer applies for a title loan, the customer has outstanding another title loan, an affirmation that:

(1) The customer has the ability to repay the outstanding title loan and the additional title loan for which the customer is applying; and

(2) The title to the vehicle is not perfected with another lender or licensee.

3.   If a licensee makes a loan to a customer during a period when the database is unavailable, whether due to a scheduled outage or other technical issues, a licensee must:

(a) Enter the loan into the database not later than 24 hours after the database becomes operational;

(b) Notate on the loan file that the loan was originated during a period the database was unavailable; and

(c) Retain all records of the loan transaction as required for any loan which is made by a licensee pursuant to the provisions of this chapter and chapter 604A of NRS.

Sec. 15. *1.* *Except as otherwise provided in this section, the service provider shall charge and collect a fee from each licensee for each loan which the licensee approves and enters into the database. The fee:*

(a) Must have been established by the competitive procurement process through which the service provider was selected by the Commissioner; and

(b) Must not exceed $3 per approved loan.

2. The service provider shall not charge or collect a fee from a licensee for a loan which is:

(a) Not approved;

(b) Voided; or

(c) Rescinded.

3. The fee may be charged only at the time of the origination of a loan and cannot be charged to extend, roll over, renew, refinance or consolidate a loan, or for any other action which would extend the due date.

Sec. 16. *1.* *A licensee shall not charge or collect from a customer a fee:*

(a) If a loan is not approved.

(b) If a loan is voided.

(c) If a loan is rescinded.

(d) In an amount which exceeds the actual cost of the fee charged to the licensee by the service provider.

2. The fee must be itemized on the loan agreement, regardless of whether the fee is required to be included in the finance charge under the Truth in Lending Act, as amended, 15 U.S.C. §§ 1601 et. seq., and Regulation Z, 12 C.F.R. Part 226.

Sec. 17. *Except as otherwise provided in section 13 of this regulation, a licensee shall enter into the database, in real time:*

1. Each loan originated by the licensee;

2. Each renewal, extension, rollover and refinance of a loan;

3. Information concerning a loan that has entered a grace period;

4. Each payment on a loan;

5. The date on which an offer of a repayment plan is sent;

6. The date on which a repayment plan is entered into by the customer and the licensee;

7. Each declined loan; and

8. Any other transaction relating to a loan, as applicable, and in compliance with the provisions of this chapter and chapter 604A of NRS.

Sec. 18. *1. A licensee who makes:*

(a) A deferred deposit loan; or

(b) A high interest loan,

↪ *shall comply with the requirements of subsection 2.*

2. Except as otherwise provided in section 13 of this regulation, a licensee who makes a loan described in subsection 1 shall, in real time, enter into the database the following information:

(a) Whether the customer is a covered service member.

(b) Whether the customer is a dependent of a covered service member.

(c) The origination date of the loan.

(d) The term of the loan.

(e) The principal amount of the loan.

(f) The total finance charge associated with the loan.

(g) The fee charged for the loan.

(h) The due date of the loan.

(i) The annual percentage rate of the loan.

(j) The scheduled payment amount.

(k) The payment details as required by section 20 of this regulation.

(l) The type of loan product.

(m) The gross monthly income of the customer.

Sec. 19. *Except as otherwise provided in section 13 of this regulation, a licensee who makes a title loan shall, in real time, enter into the database the following information:*

1. Verification that the customer is the legal owner of the vehicle which secures the loan.

2. Whether the customer is a covered service member.

3. Whether the customer is a dependent of a covered service member.

4. The origination date of the loan.

5. The term of the loan.

6. The principal amount of the loan.

7. The total finance charge associated with the loan.

8. The fee charged for the loan.

9. The due date of the loan.

10. The annual percentage rate of the loan.

11. The scheduled payment amount.

12. The payment details as required by section 20 of this regulation.

13.   The year, make, model and vehicle identification number of the vehicle which secures the loan.

14.   The fair market value of the vehicle as valued by a third-party vendor.

15.   If applicable:

(a) The name of the legal co-owner of the vehicle; and

(b) The consent of the legal co-owner of the vehicle for the vehicle to serve as security for the loan.

Sec. 20.   *1.   Except as otherwise provided in section 13 of this regulation, for each payment made on a loan, the licensee shall, in real time, enter into the database the following information, without limitation:*

(a) The scheduled payment amount.

(b) The due date of the payment.

(c) The actual payment amount.

(d) The date on which the payment was made.

(e) The allocation of the total payment, including, without limitation, the dollar amount applied to the principal and the dollar amount applied to interest and fees.

(f) The amount and date of the payment received from a customer when the loan is paid in full.

2.   If a customer fails to make a payment as scheduled, the licensee shall enter into the database the following information:

(a) The new interest rate, if applicable.

(b) Whether a repayment plan was offered.

(c) Whether the customer entered into a repayment plan.

(d) The duration of the grace period, if any.

3.   If a customer enters into a loan agreement which requires installment payments, the licensee must enter into the database the information required pursuant to subsection 1 for each installment payment.

Sec. 21. *Each licensee shall enter into the database and maintain the status of each loan originated by that licensee, including, without limitation:*

1.   If the loan is in collection, whether being collected by the licensee or by a third party:

(a) The date on which the loan entered into collection.

(b) The payment history of the loan.

2.   If the loan is in default:

(a) The date on which the loan entered into default.

(b) The payment history of the loan.

(c) And if the interest rate changed, the new rate and the date on which the rate changed.

3.   If the loan is in a grace period:

(a) The date on which the loan entered into the grace period.

(b) The payment history of the loan.

4.   If the loan is in a repayment plan:

(a) The date on which the loan entered the repayment plan.

(b) The payment history of the loan.

5.   If the loan is closed:

(a) The date on which the loan closed.

(b) The reason the loan was closed.

6.   If a vehicle which secured a loan was ordered to be repossessed:

Adopted Regulation R037-20

(a) The date on which the vehicle was ordered to be repossessed.

(b) The date on which the repossession of the vehicle occurred.

Sec. 22.   *A licensee shall retain for not less than 3 years all data and documentation collected and reviewed for any loan, loan transaction or query made in the database. For the purposes of this section, "documentation" includes, without limitation:*

1.   All copies of the documents considered in determining the ability of a customer to repay a loan, including the gross monthly income of the customer, identity and credit history; and

2.   For title loans, any third-party vendor documentation which shows the fair market value of the vehicle which secured the title loan and a copy of the title to the vehicle.

Sec. 23.   *1.   Except as otherwise provided in section 10 of this regulation, a licensee shall not delete any information relating to a customer that is entered into the database.*

2.   If a loan or loan transaction is voided or rescinded, a licensee must notate on the loan file and in the database that the loan or loan transaction is voided or rescinded, as applicable, and the reason that the loan or loan transaction is voided or rescinded. Except as otherwise provided in section 10 of this regulation, the licensee shall not delete the voided or rescinded loan or loan transaction from the database.

Sec. 24.   *1.   The Office of the Commissioner must have access to the database and will use the database as a tool of enforcement to ensure the compliance of each licensee with the provisions of this chapter and chapter 604A of NRS.*

2.   The Office of the Commissioner may periodically run reports for purposes other than examinations, investigations or internal reporting, including, without limitation, to publish online a report regarding the scope of the industry. The data in such a report must not disclose

identifying customer information or information which identifies a licensee, including,

without limitation, the name, address or number of the license of a licensee. The report may

contain:

    (a) The number of loans made for each loan product;

    (b) The number of defaulted loans;

    (c) The number of loans paid, including the number of loans paid by their respective due

dates and loans paid after their respective due dates;

    (d) The total amount borrowed and collected; and

    (e) Any other permissible data that the Commissioner or his or her designee deems

necessary.

    Sec. 25.   *A customer may request from a licensee, without charge, fee or cost, a copy of*

his or her loan history, file, record and any other documentation relating to any loan for

which the customer applied or the repayment of any loan made to the customer.