

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

LCB File No. R130-08

April 7, 2010

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

AUTHORITY: §§1, 2, 4-15, 17, 18 and 22 NRS 604A.300; §3, NRS 604A.300 and 604A.640; §16, NRS 604A.300, 658.055 and 658.098; §19, NRS 604A.300 and 604A.405; §20, NRS 604A.300 and 604A.425; §21, NRS 604A.300 and 604A.435.

A REGULATION relating to loans; requiring certain information to be confidential; enacting provisions concerning the renewal and reinstatement of certain licenses; requiring certain licensees to maintain a place of business in this State and keep certain records at that place of business; enacting requirements for the payment of outstanding loans with the proceeds from a new deferred deposit loan or high-interest loan; establishing provisions relating to a licensee's failure to file a verified answer to a complaint; authorizing the Commissioner of Financial Institutions to issue orders to cease and desist from engaging in certain activities; establishing provisions relating to contested hearings; requiring partners, officers, directors, managers and members of a business entity applying for certain licenses to satisfy certain requirements; imposing assessments on certain licensees; providing that interest, fees and charges are deemed part of the total amount of a deferred deposit loan; requiring certain licensees to obtain a permit for each location at which the licensee conducts business; revising provisions relating to prohibited acts; and providing other matters properly relating thereto.

Section 1. Chapter 604A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 11, inclusive, of this regulation.

Sec. 2. *An application for a license and financial records, if any, submitted by an applicant pursuant to the provisions of this chapter and chapter 604A 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 for a license or a licensee; or

2. Any person if the Commissioner determines, in his sole discretion, that the public interest in disclosure of the information outweighs the interest of the applicant or licensee.

Sec. 3. *1. It is the duty of the licensee to renew in a timely manner a license issued pursuant to this chapter and chapter 604A of NRS. A lack of notice from the Division to any person concerning the expiration of a license or the need to renew a license is not a justification or excuse for the failure of the person to renew a license in a timely manner and does not constitute grounds for the waiver of any of the requirements of this chapter or chapter 604A of NRS.*

2. Upon the expiration of a license issued to a person pursuant to this chapter and chapter 604A of NRS, the person is no longer licensed pursuant to this chapter and chapter 604A of NRS and shall not conduct any business for which a license is required pursuant to NRS 604A.400 unless the person has renewed the license or:

(a) Not later than 10 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.

3. If a license issued to any person has expired and the person has failed to request a grace period pursuant to paragraph (a) of subsection 2 or has failed to submit all required fees and documents within the period set forth in paragraph (b) of subsection 2, the person may

not renew or reinstate the license. If the person wishes to operate a business for which a license is required pursuant to NRS 604A.400, the person must apply for and be issued a new license pursuant to the provisions of this chapter and chapter 604A of NRS.

Sec. 4. 1. *Each licensee shall maintain an office or place of business in this State which:*

(a) 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

(b) Provides the notices and disclosures required by subsections 1 and 2 of NRS 604A.405 in an area within the office or place of business which is immediately visible to all customers entering the office or place of business.

2. *Each licensee shall keep at each office or place business in this State all books and records for the business conducted from that office or place of business. Except as otherwise provided in NRS 604A.620, if a licensee maintains only one office or place of business in this State, the licensee shall keep at that office or place of business all books and records for all business conducted in this State.*

Sec. 5. 1. *A licensee who makes a deferred deposit loan or high interest loan pursuant to subsection 2 of NRS 604A.480 must:*

(a) Fully amortize the loan;

(b) Provide the customer with a rescission form that the customer may keep and which, when signed by the customer and returned to the licensee with an amount of money equal to the face value of the loan minus any fee charged to the customer to initiate the loan, rescinds the loan; and

(c) Apply the provisions of NRS 604A.485 to the deferred deposit loan or high interest loan if the customer defaults on the loan unless an extension or repayment plan is in place for the loan.

2. The form described in paragraph (b) of subsection 1 must:

(a) Inform the customer of the customer's right to rescind the loan pursuant to subsection 2 of NRS 604A.480;

(b) Provide the mailing address or facsimile number to which the form may be transmitted; and

(c) State the date by which the rescission must be received by the licensee to be effective.

Sec. 6. 1. *If a licensee, or an authorized representative of that licensee, fails to respond to the Commissioner 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 and except as otherwise provided in this section or by specific statute, a complaint filed with the Division, any documents filed with the complaint and any report or information resulting from an investigation of the complaint are confidential.

3. All documents and information used by the Commissioner or the designee of the Commissioner as a basis for an administrative proceeding against any person pursuant to the provisions of this chapter or chapter 604A of NRS are public records.

Sec. 7. 1. *If a person engages in an activity in violation of the provisions of this chapter or chapter 604A 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:

(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 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 604A of NRS; or

(2) In a manner that violates the provisions of this chapter or chapter 604A 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 governed by chapter 604A of NRS after the person is served with the order unless the order is suspended or rescinded.

4. If a petition for a hearing regarding any administrative action 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. 8. *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. 9. *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. 10. *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. 11. *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 Commissioner's designee 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 Commissioner's designee. 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. 12. *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.

Sec. 13. *In addition to any other remedy or penalty, if a licensee violates the provisions of NRS 604A.900, the Commissioner may:*

- 1. Require the licensee to void the loan;*
- 2. Prohibit the licensee from collecting, receiving or retaining any principal, interest or other charges or fees accrued on the loan; and*
- 3. Require the licensee to return any payments already made on the loan.*

Sec. 14. NAC 604A.010 is hereby amended to read as follows:

604A.010 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. *“Division” means the Division of Financial Institutions of the Department of Business and Industry.*

3. “License” means a license to operate a check-cashing service, deferred deposit loan service, ~~short-term~~ *high-interest* loan service or title loan service pursuant to the provisions of this chapter and chapter 604A of NRS.

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

Sec. 15. NAC 604A.050 is hereby amended to read as follows:

604A.050 **1.** An application for a license must, in addition to the requirements set forth in NRS 604A.600, include:

~~1.~~ (a) The name under which the applicant proposes to conduct his business.

~~2.~~ (b) A financial statement for the applicant’s most recent fiscal year or a copy of the applicant’s federal income tax return for each of the preceding 2 years, or both.

~~3.~~ (c) For each person who owns at least 25 percent of the voting stock, partnership or member interests of the business of the applicant, a record of the personal history of the person. The record must be submitted on a form provided by the Commissioner.

2. If an application for a license is submitted by a business entity, each partner, officer, director and manager or member who acts in a managerial capacity must satisfy the requirements of NRS 604A.605.

Sec. 16. NAC 604A.090 is hereby amended to read as follows:

604A.090 **1.** The nonrefundable application fee required pursuant to NRS 604A.600 is \$400 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 plus \$75 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 plus \$75 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 plus \$50 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.

6. The late fee for each day a licensee fails to submit a report required pursuant to the provisions of chapter 604A of NRS, as set forth in NRS 604A.760, is \$10.

7. *Except as otherwise provided in NAC 658.030, each licensee shall pay to the Division 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 pursuant to NRS 658.055.*

8. *For the purposes of 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, the Commissioner interprets NRS 658.098 to require each licensee to pay the assessment and each licensee shall pay to the Division the assessment described in NRS 658.098.

9. The Commissioner ~~[shall]~~ *will* bill each licensee for any fee or assessment imposed pursuant to the provisions of this chapter and chapter 604A of NRS. The licensee shall pay the fee *or assessment* within 30 days after the date the licensee receives the bill. Except as otherwise provided in this subsection, any payment received after the date due must include a penalty of 10 percent of the fee ~~[.]~~ *or assessment*, plus an additional 1 percent of the fee *or assessment* for each month, or portion of a month, that the fee *or assessment* is not paid. The *additional 1 percent of the fee or assessment for each month, or portion of a month, that a fee or assessment is not paid does not apply to the assessments required by subsections 7 and 8 and the* Commissioner may waive the penalty for good cause.

Sec. 17. NAC 604A.100 is hereby amended to read as follows:

604A.100 **1.** A licensee shall not conduct any business under his license unless:

~~[1.—He]~~ *(a) For each location at which the licensee conducts business, the licensee* possesses each license and permit required by this State or a local government as a condition to conducting business; and

~~[2.—The]~~ *(b) Each* business location complies with the provisions of all applicable planning and zoning ordinances.

2. *A licensee shall not conduct any business from any location for which the licensee has not obtained a licensed pursuant to this chapter and chapter 604A of NRS.*

Sec. 18. NAC 604A.110 is hereby amended to read as follows:

604A.110 A foreign corporation, association, trust or other business entity shall not operate a check-cashing service, deferred deposit loan service, ~~short-term~~ *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. 19. NAC 604A.130 is hereby amended to read as follows:

604A.130 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~~ *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. 20. NAC 604A.180 is hereby amended to read as follows:

604A.180 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]~~ *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]~~ *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.

4. For the purposes of NRS 604A.425 and this section, in determining whether a deferred deposit loan exceeds 25 percent of the expected gross monthly income of the customer when the loan is made, any interest, fees or charges added to the principal allowed pursuant to the provisions of this chapter and chapter 604A of NRS must be included in the calculation of the total amount of the deferred deposit loan.

Sec. 21. NAC 604A.220 is hereby amended to read as follows:

604A.220 A licensee who accepts a check as security for a ~~[short-term]~~ *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. 22. NAC 604A.230 is hereby amended to read as follows:

604A.230 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) Make a new loan to a customer within one day of the termination or resolution of a default on a previous loan to that customer.

(j) 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.

(k) Authorize a collection agency to assess an additional collection fee to the customer in connection with the collection of a loan in default.

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).