Since 1958
LEGAL AID CENTER
of Southern Nevada

Nevada Task Force on Financial Security
Short-Term Lending & Consumer Protection

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Agenda Item VI B-1 (FINANCIAL SECURITY)
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What We Do

Legal Aid Center of Southern Nevada's Consumer Rights Project fights tirelessly to provide access to justice through legal counsel, advice and representation for vulnerable and low-income community members in the following areas:

- Bankruptcy
- Car Information
- Consumer Credit
- Debt Collection
- Foreclosures
- Health Insurance
- Homestead
- Identity Theft
- Landlord / Tenant
- Payday Loans
- Predator Loans
- Criminal Record Sealing
- Small Claims Court
- Social Security
- Student Loans
- #VegasStrong

*Legal Aid Center offers all of our program services to Veterans and active-duty military in our community.

What We See

- Debt-treadmill:
  - Lenders give borrowers loans they cannot afford to repay.
  - They get multiple loans sometimes from multiple lenders.
  - They can't afford the payment so they are given new loans to pay off existing loans.
- Garnishment:
  - Once the borrower finally defaults and cannot get more loans to pay existing loans, lenders file lawsuits.
  - Borrowers do not realize there may be a defense and ignore the lawsuits.
  - Lenders get large numbers of defaults and garnish the borrowers.
- Bankruptcy
  - Many borrowers who get stuck on the debt-treadmill or are garnished, turn to their last hope and file bankruptcy that would not have otherwise filed.
- Income qualifications for our clients requires that they make at or under just 55% of Clark County median family income: family of 4: $35,365.

NRS 604A Lending

- These loans are meant to be a short-term, one-time fix for an emergency situation, however they are often used to cover ordinary, reoccurring expenses.
- Payday loans are most often utilized by lower income families.
- In 2012, the PEW Charitable Trusts found the average number of loans the borrower takes out is 8.
- The same study found that 72% of borrowers of payday loans have a household income of less than $40,000
- Economic studies have shown that payday lending increases a family's difficulties to pay mortgage, rent, and utility bills. It also appears to increase delay of needed medical care, dental care and prescription purchases. Rather than assisting with important expenses, these loans inhibit the borrower's ability to pay essential bills.
    - See: Brian T. Melzer, Quarterly Journal of Economics, 2011

Deferred Deposit Loans

- The borrower gets a loan to carry them through to the next payday to be paid back in one lump sum.
- Borrower gives the lender a post-dated check, or authorization to withdraw from their bank account, for the borrowed amount plus the associated fee.
- Lender gives cash and agrees not to cash the check, or withdraw the funds, before the date written on the check.
- Often, if the funds are not available that day, the lender will continue to attempt to withdraw the funds until they are available resulting in numerous returned check fees and overdraft charges by the borrower's bank.

High Interest Loans

- Anything longer than a traditional payday loan that charges 40% or more interest. Often, the interest rate is well over 200%, and can reach above 1000%. State average is 652%.
- These typically do not require access to the borrower's bank account.
- For one-payment loans, the original loan period cannot exceed 35 days. For multi-payment loans, the loan period cannot exceed 90 days, with three equal monthly payments.
- Installment Loans: These charge between 40% – 199% interest and are longer term loans (at least 150 days). They can check your credit and do report to the credit bureaus. Often called credit building loans for those with little or poor credit. There is no limit on how long the loan can be for.

Title Loans

- Borrower provides a vehicle title as security for the loan. This means that the lender may repossess the vehicle if the borrower defaults on the loan.
- The interest rate is greater than 35%, and often well above 300%.
- Loan period cannot exceed 30 days, but can be extended up to 7 times resulting in a loan for 210 days.
- Loans are non-recourse loans which means if the borrower defaults, the lender has to repossess the car and sell it. If the sale of the vehicle isn't enough to pay the loan off, they cannot go after the borrower for more. If the borrower hides the vehicle, the lender can then file a lawsuit for a money judgment.
- AB 163 (2017) clarified that a title loan could not be made to a person other than the legal owner of the car, and must be made with the consent of each owner if the vehicle has multiple legal owners.

Ability to Repay

- Typically, there is no credit check.
- For unsecured loans, the borrower must provide proof of income with paycheck stubs, statements, or other documentation. The loans are capped at 25% of the borrower’s gross, monthly income. The lender should also be considering such things as the borrower’s other financial obligations.
- For secured title loans, there is no minimum income requirement or monthly payment restriction, but the loan amount cannot be more than the value of the vehicle. However, they are now still required to determine if the borrower has the ability to repay the loan.

Ability to Repay

- AB 163 (2017) defined the ability to repay:
- A customer has the ability to repay a loan if the customer has a reasonable ability to repay the loan, as determined by the licensee after considering, to the extent available, the following underwriting factors:
  - (a) The current or reasonably expected income of the customer;
  - (b) The current employment status of the customer based on evidence including, without limitation, a pay stub or bank deposit;
  - (c) The credit history of the customer;
  - (d) The amount due under the original term of the loan, the monthly payment on the loan, if the loan is an installment loan, or the potential repayment plan if the customer defaults on the loan; and
  - (e) Other evidence, including, without limitation, bank statements, electronic bank statements and written representations to the licensee.
- A licensee shall not consider the ability of any person other than the customer to repay the loan.

Extensions and Grace Periods

- A lender may grant an extension to provide the borrower more time to pay, but it cannot exceed maximum amount of time allowed for the type of loan.
  - Extensions usually come at an additional cost, and lenders usually charge the full contract interest rate during this time.
  - Often, the lenders hide an extension by writing a new loan and paying off the old loan with the proceeds of the new loan.
  - Title loans have very specific rules regarding extensions. (See NRS 6904A.445).
- A lender may also grant a grace period.
  - Grace periods are free.
  - The lender is not required to offer a grace period, however they often do to avoid the loan going into default.
  - Lenders cannot charge additional interest or fees on the loan amount during the grace period.
- AB 163 (2017) cleaned up loopholes that lenders had found to use grace periods as tools to increate interest rates, add terms to existing loans, and get borrowers to take out additional loans.

Extensions and Grace Periods, contd.

- Extended Repayment Plan for Deferred Deposit Loans
  - Borrower must request it in writing prior to going into default, but lender must grant one within a 12 month time period.
  - Gives borrower at least an additional 60 days to repay the loan with four equal payments.
  - Lender cannot charge any additional amounts (including interest for the additional time added) than what is on the face of the contract even though it is effectively extending the time for repayment of the loan.

The Fair Debt Collections Practices Act

- High-interest lenders are subject to the FDCPA.
  - No calls between 9:00 PM and 8:00 AM.
  - No communication with third parties about the debt (family members, neighbors, friends, employers, etc.).
  - No threats of legal action that cannot be taken, including, but not limited to, threats of incarceration for nonpayment.
  - No use of abusive or unfair means to collect a debt, including, but not limited to, swearing at borrowers and threatening harm to person or property.
  - Continuing to contact borrower following receipt of “cease communication letter.”

Default

- Lender cannot sue or repossess without first giving a repayment plan option to the borrower.
- Option must be open for 30 days after date of default.
- The plan must be for at least 90 days.
  - Effective October 1, 2017: NRS 598.092 has been revised to make repossession before default a deceptive trade practice
- An initial payment of not more than 20% of the balance may be required.
- If borrower defaults on, or declines, the repayment plan, lender may sue or repossess.

Debt Collection After Default

- After default, the lender may only collect:
  - Any unpaid principal balance of the loan.
  - Any unpaid interest.
  - Interest for a maximum of 90 days after default, at a rate of prime plus 10%.
  - Any returned check fees that comply with the law.
- The above amounts cannot exceed the amount that the borrower originally took out.
- In the case of a title loan, the lender may only repossess and sell the vehicle. The lender cannot go after borrower’s other assets or money.

Why it’s not enough

- Last session, the legislature passed important protections. However, all bills that attempted to create a database were unsuccessful. A statewide database for all loans made pursuant to NRS 604A will make lenders responsible for knowing if the borrower can legally receive another loan.
  - For example, current law prohibits a lender from making more than one loan to the same customer at one time (NRS 604A.430) but there is no way to verify if the customer has other outstanding loans.

604A Lenders

- Lenders are licensed and regulated by the Nevada Department of Business and Industry.
- In a 2018 Performance Audit, the Department of Business and Industry Division of Financial Institutions found that nearly 1/3 of Nevada payday lenders have a received less-than-satisfactory rating from state regulators over the last five years.
- There are a significant number of repeat offenders that disregard the state laws and regulations every year.

Performance Audit

- In 2017, the audit report stated the division performed 1,447 examinations of businesses licensed as "non-depository institutions," and found 2,156 violations of state law and regulations.
- The most common violation over the last five years was for title loan companies — which extend a loan with the title of a legally owned car used as collateral — to extend a loan based on more than the fair market value of the vehicle. The division reported 137 violations of that type in 2017, and 843 over the last five years.

How people are affected

- An elderly couple had adult children that needed help so they took out a payday loan. They couldn't afford to repay all of it so they paid just the interest for about 6 months. Each month, the lender wrote a new loan for the original amount. They paid the full amount borrowed back, but still owed the full principal balance. They eventually couldn't afford to pay it so they went to two other lenders and got two additional loans to try and pay the first. They ended up in the same cycle and eventually couldn't pay any of those. They were sued by two of the lenders and came in seeking help to file bankruptcy.
- For the two original loans, the borrowers were loaned a total of $1,600, paid a total of $1,740 and are now being sued for an additional $1,563.
- After reviewing all loans and clients' income, we found several violations by the three lenders:
  - One lender rolled the loans over and exceeded the maximum timeframe for the loans.
  - One lender lent more than 25% of the clients' income.
  - All three lenders gave the client additional loans that then required more than 25% of clients' income to make the payments
  - All three lenders failed to determine whether or not the client had the ability to repay. However, while a good underwriting practice, wasn't required by statute at the time the loans were written.
  - Clients are now trying to avoid having a judgment against them and still have several outstanding payday loans they can never afford to repay. Bankruptcy may be their only option.

Benefits of a Centralized Loan Database

- "A centralized tracking system for payday loans can be of significant value to the Division, its licensees, and Legislators. A database would assist licensees with managing loans and determining loan eligibility. **It would also help licensees comply with state payday lending laws and help consumers avoid becoming overloaded with debt.** Additionally, it would help the Division identify irregular lender activity and serve as an information system for staff preparing for an examination. A centralized tracking system would provide regulatory oversight and collect statistical information on licensees providing loan services."

Page 18 of the audit

Benefits of a Centralized Loan Database

- George Burns, head of the financial institutions office, spoke with the Nevada Independent and said creating a database was the prerogative of the Legislature, but that such a tool would be valuable to the division.
  – "I would much rather control issues on the front end than chase them on the back end, which is currently what our process is."

Regulatory Benefits

- Ability to incorporate requirements in state law into the database – This can alert lenders that a borrower has exceeded borrowing limits. Nevada statutory limitations that could be monitored include loan amounts to monthly income, rollover loans, interest rates, loan durations, and repayment plans.
- Real-time notification of borrower’s loan history – This can alert lenders of a borrower’s probability to default on a new loan; thereby, reducing lenders default rate and associated costs. Borrower’s history could include loans obtained from multiple lenders.

Informational Benefits

- <u>Loan statistics</u> – Provide information regarding a licensee's loan volume, loan amounts, default rates, and fees charged.
- <u>Demographical information</u> – Provide geographical information on areas with the greater number of payday loan lenders, including lenders with the largest volume and dollar value of loans. Borrower information could also be provided, including age and monthly income.

State Cost and Efficiency Benefits

- With this tool, the Division may be able to lengthen its examination cycle or perform desk examinations on lower risk licensees, which would reduce Division overhead costs.
- This would assist the Division with planning and identifying potential violations prior to performing the on-site examination, which would allow for more efficient and targeted examinations.
- The Division would be able to obtain more accurate and complete licensee loan information, which would help with the loan documentation issues noted in the audit.

How the Database Works

- Fourteen other states use a similar payday loan database, which can in real time alert lenders if a borrower is exceeding limits or give them a real-time look at their borrowing history.
- The database is paid by a small fee tacked on to every loan, with other states charging between \$0.49 to \$1.24 per loan.

How the Database Works

- Typically, a licensee will enter the borrower's information into the system during the loan application process. The state's regulatory laws are built into the system, the system will assist in identifying whether the borrower is eligible for the loan in accordance with state payday lending laws.

Consumer Protections

- From our previous client example, the database would have prevented all consumer abuses:
  - Clients' ability to repay would have been analyzed and documented.
  - Clients would not have been given unlimited extensions resulting in long-term interest being paid on what should have been just a 90 day loan at the most.
  - Clients would not have been able to get several more payday loans from other lenders.
  - Clients would not have gotten on the debt-treadmill, only to then face a possible judgment and/or filing bankruptcy.

In Summary

- Benefit to the State – The database would allow for more efficient work and oversight by the FID and lower overhead costs.
- Benefit to the Lender – Lenders will have real time data on outstanding loans that will allow them to better assess a borrower's ability to repay the loan before it is given.
- Benefit to the Borrower – Enforcement of consumer protections will help prevent low-income Nevadans from becoming trapped on the debt treadmill.

Questions?

- For follow up questions please feel free to reach out:
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