

Public Testimony of Jim Marchesi representing Check City Partnership LLC provided to the Nevada Legislative Committee Concerning the Adoption of FID Proposed Regulations Relating to the Implementation of SB 201.

December 28, 2020.

My name is Jim Marchesi and I am an owner of Check City Partnership L.L.C a Nevada Company. I have lived in Las Vegas and Check City has been in business over 21 years and operates 32 retail locations and an online business in the State of Nevada. Check City employs approximately 300 Nevadan's, and has provided Nevada Customers with fair, regulated access to financial services since 1999

There are many problems with the adopted rule including the way in which it was promulgated. The legislation was meant to do two simple things via a database, (1) Determine if a consumer has any outstanding loans and (2) do those loans exceed 25% of the customers gross monthly income

The proposed rule seeks an overbroad and burdensome amount of information not specified in the legislation and that is unrelated to the protection of consumers (9 authorized/specific inputs grown to over 50).

Further, a key tenant to the application of the statute, is a fully tested and functioning database that can be electronically queried by licensees. The regulation cannot function without such. We have significant concerns with any attempt at enforcing a rule before the necessary database tools to comply are in place. I am hopeful that the Committee has the opportunity to correct the rulemaking process abuses that have taken place.

I'd like to focus my comments today on new regulatory requirements to determine a consumer's ability to repay that were not authorized in SB 201, that conflict with existing provisions in NRS 604A, and are beyond FID's statutory authority to promulgate or enforce.

When the ability to repay statute was adopted, its five criteria were affirmatively drafted, debated, modified and adopted by the Legislature in 2017 (NRS 604A.5065)¹. In contrast, the

¹ See Assembly Bill No. 163 (2017) later codified as NRS 604A.501 (payday loans); NRS 604A.5038 (installment loans – high interest loans); NRS 604A.5065 (title loans). All three provisions contain only five underwriting factors that should be considered in an ATR analysis: (1) the current reasonably expected income of the customer, (2) the current employment status of the customer based on evidence such as a paystub or bank statement (3) the credit history of the customer, (4) the amount due under the original terms including amount of payment and (5) other evidence including without limitation bank statements, electronic bank statements and written representations of the customer. Notably, consideration of the customer's total obligations was included in the original version of AB 163 and expressly taken out of the final adopted version.

FID attempts to bootstrap three additional criteria into law by wholly circumventing the legislative process (SEC 13.2)².

FID is attempting to spin this language into something far different than what was intended and adopted by the Legislature. Apparently it is FID's position that the phrase:

"The information that the Commissioner and licensees may obtain includes . . . "

Should instead be read as:

"The information that the Commissioner and licensees must obtain and utilize in making a determination of whether or not the customer has the ability to repay any loan in advance of originating a loan includes . . . "

FID does not have the statutory authority to create new ability to repay provisions. It took a legislative act to create the five ability to repay requirements in current law and that legislative act is absent here. This attempt to backdoor each of you, as members of the Legislature, is an overreach of power and authority, and an insult to the Legislative process.

It should be noted, neither my company, nor the other companies regulated by 604A are asking for an entire veto of this proposed final rule, or elimination of the database. Rather, we respectfully request this body return this issue to the FID for further consideration and that it be changed to accurately reflect SB 201, as you passed it.

² These criteria are (1) whether a customer has an outstanding loan at the time he or she applies for a loan, even if the total outstanding amount is below the 25% GMI threshold, (2) whether the customer has taken out another loan in the last 30 days and (3) whether the customer has had a total of three or more loans in the last 6 months. This is in Section 13(2) of the rule.