

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

**LCB File No. R130-08**

October 10, 2008

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

AUTHORITY: §§1-12, 14 and 18, NRS 604A.300; §13, NRS 604A.300, 604A.600, 604A.640, 604A.740 and 604A.760; §15, NRS 604A.300 and 604A.405; §16, NRS 604A.300 and 604A.425; §17, NRS 604A.300 and 604A.435.

A REGULATION relating to loans; requiring certain information to be confidential; authorizing the payment of outstanding loans with the proceeds from a new deferred deposit loan or high-interest loan under certain circumstances; 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; increasing certain fees; providing that interest, fees and charges are deemed part of the total amount of a deferred deposit loan; 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. An authorized employee of the Division who needs the records for purposes relating to the administration of the provisions of this chapter; or*

*2. A person or governmental entity that is authorized to obtain the records pursuant to an order issued by a court of competent jurisdiction.*

**Sec. 3.** *1. The proceeds from a new deferred deposit loan or high-interest loan may be used to pay the balance of an existing outstanding loan only if:*

*(a) The loan meets the requirements set forth in NRS 604A.480;*

*(b) The loan is fully amortized; and*

*(c) The licensee provides the customer with a form that the customer may keep and which, if signed and dated by the customer, may be transmitted by mail or facsimile to the licensee to rescind the loan.*

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

*(a) Inform the customer of his 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. 4.** *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 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.*

*Sec. 5. 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 delivered by certified mail to the person ordered to cease and desist. For the purposes of this paragraph, proof of attempted delivery 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 604A of NRS; or*

*(2) In a manner that violates the provisions of this chapter or chapter 604A of NRS.*

*3. A person who receives an order to cease and desist pursuant to this section shall not engage in any activity governed by chapter 604A of NRS after he receives 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 his designee 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 his designee, 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 his designee is final for the purposes of judicial review.*

**Sec. 6.** *1. A party to a hearing may compel the attendance of witnesses in his behalf at the hearing upon making a request to the Commissioner or his designee 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 his designee is entitled to receive from the party calling him the fees and reimbursement for mileage provided to witnesses in civil cases pursuant to NRS 50.225.*

**Sec. 7.** *1. The Commissioner or his designee has the burden of proof in a contested hearing.*

*2. The Commissioner or his designee 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. 8.** *The Commissioner or his designee 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. 9.** *If a party fails to appear at a hearing scheduled by the Commissioner or his designee 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 his designee that proper notice was given, the Commissioner or his 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 it. 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. 10.** *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. 11.** *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. 12.** 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.

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

**Sec. 13.** 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]~~ *\$500* 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]~~ *\$500* plus ~~[\$75]~~ *\$100* 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]~~ *\$500* plus ~~[\$75]~~ *\$100* 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]~~ \$500 plus ~~[\$50]~~ \$100 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.]~~ \$80.

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. 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 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, 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.

**Sec. 14.** 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. 15.** 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. 16.** 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 loan amount allowed pursuant to the provisions of this chapter and chapter 604A of NRS must be deemed part of the total amount of the deferred deposit loan.*

**Sec. 17.** 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. 18.** 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) Issue a new loan to the same customer within 7 days of the issuance of another loan.*

*(j) Issue a loan by means of an Internet website to any person who is not a resident of the State of Nevada.*

*(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).

