

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

LCB File No. R130-08

October 18, 2013

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

AUTHORITY: §§1, 2, 4, 8-17 and 19-24, NRS 604A.300; §3, NRS 604A.300 and 604A.640; §5, NRS 604A.210 and 604A.300; §6, NRS 604A.300 and 604A.450; §7, NRS 604A.300 and 604A.475; §18, NRS 604A.300, 604A.600, 604A.640, 604A.740, 658.055 and 658.098.

A REGULATION relating to loans; amending various provisions governing the licensing of check-cashing services and persons making deferred deposit loans, high-interest loans and title loans; requiring licensees to maintain a place of business in this State and keep certain records at that place of business; adopting provisions governing amounts which may be collected by licensees during a grace period and under a repayment plan; defining the circumstances under which a customer has the ability to repay a title loan; adopting various provisions relating to procedures in hearings before the Commissioner of Financial Institutions; amending provisions governing remedies and penalties imposed by the Commissioner; imposing assessments on licensees; amending provisions concerning the licensing and permitting of locations at which a licensee conducts business; amending various other provisions relating to check-cashing services, deferred deposit loans, high-interest loans and title loans; 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 15, 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 or a licensee; or

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

Sec. 3. *1. 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.

2. If a license issued pursuant to this chapter and chapter 604A of NRS has expired and the person has failed to request a grace period pursuant to paragraph (a) of subsection 1 or has failed to submit all required fees and documents within the period set forth in paragraph (b) of subsection 1, 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 required by subsections 1 and 2 of NRS 604A.405 in an area within the office or place of business which is clearly visible to all customers entering the office or place of business.

2. Each licensee shall keep at each office or place of business in this State all books and records, including, without limitation, computer and electronic 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, including, without limitation, computer and electronic records, for all business conducted in this State.

Sec. 5. *During a grace period pursuant to NRS 604A.210:*

1. A licensee may collect the amount of accrued interest and fees on the outstanding loan or extension of the loan which is owed pursuant to the loan agreement.

2. No interest may accrue and no fees may be charged after the expiration of the period of the outstanding loan or extension of the loan.

Sec. 6. 1. *For the purposes of NRS 604A.450, the Commissioner interprets “ability to repay the title loan” to mean the customer’s ability to repay from his or her net disposable income any and all principal, interest and fees owed under the terms of a lawful loan agreement, in accordance with the repayment schedule set forth in a lawful loan agreement*

which, when completed, repays any and all principal, interest and fees owed under the terms of a lawful loan agreement and extinguishes the debt.

2. For the purposes of determining a customer's net disposable income pursuant to subsection 1, an affidavit signed by the customer stating the customer's gross income and expense obligations and that the statement of the customer's gross income and expense obligations is true and correct information concerning the customer's gross income and expense obligations constitutes satisfactory evidence of the customer's gross income and expense obligations.

3. As used in this section, "net disposable income" means verifiable gross income minus:

- (a) Any and all deductions from income; and*
- (b) All verifiable or stated expense obligations, including, without limitation, housing, utilities, groceries, transportation, fuel and debt payments.*

Sec. 7. *During a repayment plan for a loan made pursuant to this chapter, a licensee may collect only the following amounts:*

- 1. The amount of the unpaid principal of the outstanding obligation.*
- 2. If the customer has defaulted on a loan which requires only a single payment, the amount of unpaid interest that the licensee could have collected during the term of the original loan agreement or any lawful extension at a rate not exceeding the annual percentage rate set forth in the original loan agreement.*
- 3. If the customer has defaulted on a loan which requires multiple payments, the amount of unpaid interest that the licensee could have collected during the original term of the loan agreement at a rate not exceeding the annual percentage rate set forth in the original loan agreement.*

Sec. 8. 1. If a licensee, or an authorized representative of the 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. 9. 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 imposing an administrative fine, directing the person to cease and desist from engaging in the activity or both imposing an administrative fine and directing the person to cease and desist.

2. An order issued pursuant to subsection 1 must:

(a) Be in writing.

(b) Be served by certified mail on the person to whom the order is issued. 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 after 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 request 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 prohibited by the order after the person is served with the order unless the order is suspended or rescinded.

4. If a request for a hearing 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 issued pursuant to this section 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. 10. *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. 11. 1. *The Commissioner or the designee of the Commissioner is not bound by strict rules of procedure or rules of evidence when conducting a hearing, except that the hearing must be conducted pursuant to the provisions of chapter 233B of NRS.*

2. 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. 12. *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. 13. *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 designee of the Commissioner 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 designee of the Commissioner. 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. 14. 1. *A party to a hearing 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 or her behalf, may question the witness as if conducting a cross-examination.

Sec. 15. *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. 16. 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. 17. 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:

- ~~1-1~~ **(a)** The name under which the applicant proposes to conduct his or her business.
- ~~1-2~~ **(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.

~~13.1~~ (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. 18. 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 the applicant's 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 or her license. The Commissioner may refund the fee on a prorated basis if:

(a) An applicant withdraws his or her 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 or her license pursuant to NRS 604A.840 during the licensee's 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. *Each licensee shall pay to the Division 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.*

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 *on which* the licensee receives the bill. Except as otherwise provided in this subsection ~~any~~ :

(a) *Any* payment *required pursuant to this section that is* received after the date due must include a penalty of 10 percent of the fee ~~plus~~ *or assessment*.

(b) *Any payment of a fee required pursuant to subsections 1 to 6, inclusive, must include a penalty of* 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~~ *a* penalty *set forth in this section* for good cause.

Sec. 19. NAC 604A.100 is hereby amended to read as follows:

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

~~{1. The}~~ **(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 license pursuant to this chapter and chapter 604A of NRS.

Sec. 20. 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}~~ **title 7** of NRS; and
2. Complies with the provisions of this chapter and chapter 604A of NRS.

Sec. 21. 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 or she is not licensed to provide.

Sec. 22. 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, the licensee 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.

Sec. 23. NAC 604A.200 is hereby amended to read as follows:

604A.200 1. Except as otherwise provided in NRS 604A.700, a licensee shall maintain for at least 3 years the original or a copy of each account, book, paper, written or electronic record or other document that concerns each loan or other transaction involving a customer in this State.

2. Except as otherwise provided in NRS 604A.620, those records must be maintained at ~~at~~ *an office or* place of business in this State ~~{designated by the licensee.}~~ *in accordance with subsection 2 of section 4 of this regulation.*

Sec. 24. 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.