

LCB File No. R138-08

PROPOSED REGULATION OF THE COMMISSIONER OF FINANCIAL INSTITUTIONS

Explanation: Material in *bold italics* is new material; material lined out within ~~bold brackets~~ is material to be omitted.

Purpose: To adopt regulations under chapter 675 of the Nevada Administrative Code relating to Installment Loan Companies by establishing the amount of certain fees; providing for certain definitions and policies; and providing other matters properly relating thereto.

General Authority: NRS 675.100, 675.140, 675.170

Agency Address:

Financial Institutions Division
2785 E. Desert Inn Road, Suite 180
Las Vegas, Nevada 89121

Agency Contact Persons:

George E. Burns, Commissioner
gburns@fid.state.nv.us
Steven Kondrup, Deputy Commissioner
skondrup@fid.state.nv.us
Telephone: (702) 486-4120
Facsimile: (702) 486-4563

Deputy Attorney General Providing Assistance to the Agency:

Daniel Ebihara, Deputy Attorney General
debihara@ag.nv.gov
Telephone: (702) 486-3326
Facsimile: (702) 486- 3416
555 East Washington Street, Ste. 3900, Las Vegas, Nevada 89101-1068

Sec. 1. Chapter 675 of the NAC is hereby amended by adding thereto the provisions set forth as sections 2 through 8, inclusive, of this regulation.

Sec. 2. *Definitions (NRS 675.170) As used in this chapter, unless the context otherwise requires:*

- 1. "Installment Loan" means a loan made to a consumer, pursuant to a loan agreement which, under its original terms, charges an annual percentage rate of 40 percent or less.*
- 2. "Loan amount" means the total of all payments that is or should have been disclosed on the loan agreement.*
- 3. "Payment" means the act of paying principle and interest to a specific loan or account.*

Sec. 3. *Prohibited Acts. (NRS 675.170) A Licensee shall not:*

- 1. Issue a new loan to the same customer before a period of seven (7) business days has past since the completion of a loan pursuant to this chapter.*
- 2. Provide loans through the use of the internet to customers who are not residents of the state of Nevada.*
- 3. Authorize a collection agency to add a collection charge for accepting the defaulted loan for collection.*

Sec. 4. NAC 675.080 is hereby amended as follows:

NAC 675.080 Fee for supervision and related activities: Amount; collection; failure to pay. (NRS 658.101, 675.170, 675.400)

1. The Commissioner of Financial Institutions will charge and collect a fee of ~~[\$30]~~ **\$100** per hour from each installment loan company for any supervision, examination, audit, investigation or hearing conducted pursuant to chapter 675 of NRS.

2. The Commissioner will bill each installment loan company upon the completion of the activity for the fee established in subsection 1. The fee must be paid within 30 days after the date the bill is received. Except as otherwise provided in this subsection, any payment received after that date 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.

3. Failure of an installment loan company to pay the fee required by subsection 1 as provided in this section constitutes grounds for revocation of its license.

Sec. 5. NAC 675.090 is hereby amended as follows:

NAC 675.090 Fees: Application for license. (NRS 675.100, 675.170) An application submitted pursuant to NRS 675.095 must be accompanied by:

1. A nonrefundable fee of ~~[\$750]~~ **\$1000**; and
2. A fee of ~~[\$800]~~ **\$1000**, prorated by the Commissioner of Financial Institutions.

Sec. 6. NAC 675.100 is hereby amended as follows:

NAC 675.100 Fees: Renewal of license; reinstatement of expired license. (NRS 675.140, 675.170)

1. A licensee shall pay annually to the Division of Financial Institutions of the Department of Business and Industry a fee of ~~[\$750]~~ **\$400** for the renewal of a license.

2. If the Commissioner of Financial Institutions reinstates an expired license, the licensee shall pay a reinstatement fee of \$400 in addition to the renewal fee prescribed in subsection 1.

Sec. 7. *Determination of interest rate for an Installment Loan. (NRS 675.060; 675.170)*

1. Except as otherwise provided in this section, the interest rate for an Installment loan pursuant to this chapter, is calculated in accordance with the Truth in Lending Act, 15 U.S.C. §§ 1601 et seq. and Regulation Z thereof, except that every charge or fee, regardless of the name given to the charge or fee, payable directly or indirectly by the customer and imposed directly or indirectly by the lender must be included in calculating the annual percentage rate, including, without limitation:

- (a) Interest;*
- (b) Application fees, regardless of whether such fees are charged to all applicants or credit is actually extended;*

(c) Fees charged for participation in a credit plan, whether assessed on an annual, periodic or nonperiodic basis; and

(d) Prepaid finance charges.

2. The following charges and fees must be excluded from the calculation of the annual percentage rate pursuant to subsection 1:

(a) Any fees allowed pursuant to NRS 675.365 for a check not paid upon presentment or an electronic transfer of money that fails;

(b) Charges for an unanticipated late payment, exceeding a credit limit, or a delinquency, default or similar occurrence; and

(c) Any premiums or identifiable charges for insurance permitted pursuant to NRS 675.300.

3. Calculation of the annual percentage rate in the manner specified in this section is limited only to the determination of whether a loan is a installment loan and must not be used in compliance with the disclosure requirements or any other provisions of this chapter requiring disclosure of an annual percentage rate in the making of a loan.

Sec. 8. NAC 675.150 is hereby amended as follows:

NAC 675.150 Complaints: Failure to respond in timely manner; confidentiality. (*NRS 675.170*)

1. If a licensee, or an authorized representative of that licensee, fails to respond to the Commissioner of Financial Institutions 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 of Financial Institutions and except as otherwise provided by specific statute, a complaint filed with the Division of Financial Institutions of the Department of Business and Industry, any documents filed with the complaint, and any report or information resulting from an investigation of the complaint are confidential.

3. All reports of investigations and examinations and all documents and records relating investigations and examinations pursuant this chapter, are confidential. This subsection does not preclude any party to an administrative or judicial proceeding from introducing into evidence any information or document otherwise available or admissible.

Sec. 9. Confidentiality of Financial Records, Applications and Examinations. (*NRS 675.090, 675.170, 675.260 and 675.470*)

The application and financial records submitted by a person pursuant to the provision of this chapter, any financial records or other documents submitted by a licensee pursuant to an audit or examination conducted by the Division and any report of examination by the Division are confidential and may be disclosed only to:

1. The Division;

2. An authorized employee of the Division who needs the records for purposes relating to the administration of this chapter; or

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

Sec. 10. Contested Hearings. (NRS 675.170)

The Commissioner may issue an order to cease and desist and/or to pay an administrative fine upon a person pursuant to this chapter. The Commissioner shall:

- 1. Provide a copy of the order by certified mail to the person;*
- 2. Provide the person notification that he has 30 days to request an administrative hearing, and if no written application for a hearing is received by the Division, the order shall become final.*

Sec. 11. Order: Amendment; continuance; withdrawal. (NRS 675.170, 675.480, 675.490)

1. If a person engages in an activity in violation of the provisions of this chapter 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 be in writing and must state that, in the opinion of the Commissioner, the person has engaged in an activity:

(a) For which the person has not received a license or certificate of exemption as required by this chapter; or

(b) In a manner that violates the provisions of this chapter or any applicable law.

3. A person who receives an order to cease and desist pursuant to this section shall not engage in any activity governed by this chapter after he receives the order unless the order is suspended or rescinded.

4. The order imposing the administrative fine or restricting the practices of the licensee may be amended at any time before and during the hearing.

5. The hearing officer assigned to the matter may grant a continuance if the amendment materially alters the facts or the legal issues related to the order or a respondent demonstrates an inability to prepare for the case in a timely manner.

6. An order may be withdrawn at any time before the hearing begins.

2. If a timely application for a hearing is received by the Division, a presiding hearing officer shall conduct a contested hearing.

7. Each party may request that the presiding hearing officer issue a subpoena to compel the attendance of witnesses. The party making the request shall be responsible for paying mileage for the witness.

8. The petitioner has the burden of proof in a contested case.

9. The decision of the presiding hearing shall be final for the purposes of judicial review.

Sec. 12. The hearing officer is not bound by strict rules of procedure and evidence. (NRS 675.170)

1. The hearing officer will not be bound by strict rules of procedure or the Nevada Rules of Evidence in the conduct of its proceedings.

2. A record of the charges and a record of all evidence produced will be filed in the office of the Financial Institutions Division.

3. A hearing held pursuant to the provisions of this chapter, will be conducted pursuant to the provisions of chapter 233B of NRS.

Sec. 13. *Hearing officer: Duties; authority. (NRS 675.170)*

1. The hearing officer may:

- (a) Conduct hearings;***
- (b) Question witnesses;***
- (c) Make rulings on motions and objections; and***
- (d) Submit findings of fact or conclusions of law at the conclusion of the case.***

2. The findings of fact and conclusions of law issued by the hearing officer is the final decision for purposes of judicial review.

Sec. 14. *Failure to appear. (NRS 675.170)* *If a party fails to appear at a hearing scheduled by the hearing officer and a continuance has not been requested or granted, upon an offer of proof by the other party that the absent party was given proper notice and upon a determination by the Board that proper notice was given, the hearing officer 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 complaint may be considered as true.*

Sec. 15. *Examination of witnesses. (NRS 675.170)*

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.