

**PROPOSED REGULATION OF THE
DIVISION OF FINANCIAL INSTITUTIONS**

LCB FILE NO. R036-201

**The following document is the initial draft regulation proposed
by the agency submitted on 03/12/2020**

**PROPOSED REGULATION OF THE
COMMISSIONER OF THE FINANCIAL INSTITUTIONS DIVISION (“Division”)**

The following document is the initial draft regulation proposed by the Division. The Division solicited comments from the industry on the proposed regulations pursuant to NRS 233B.0608(1) to determine whether the regulations would likely impose a direct and significant economic burden upon a small business or directly restrict the formation, operation or expansion of a small business.

The Division considered all comments but addressed only the comments it could. The revisions and/or omissions are in the following proposed regulations.

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

(Consumer Litigation Funding)

Purpose: To adopt regulations under the Nevada Administrative Code, as provided by Senate Bill No. 432 (2019), requiring the Commissioner of Financial Institutions to license and regulate consumer litigation funding in Nevada to customers in this State; and providing other matters properly relating thereto.

Authority: Senate Bill No. 432, Chapter 378, Statutes of Nevada 2019, sections 2 through 41. Chapter 604C

Explanation: All comments received from the small business impact notice were considered but not all could be addressed. The matters addressed are referenced in this draft as *italics* for revised and matters in brackets ~~[omitted material]~~ is material to be omitted.

Cites are highlighted for ease of reference in review and revision. Statutory cites to be determined once bill is codified.

Section 1. [S.B. 432, §2-§41] Title 52/Chapter 604C of NAC is hereby created by adding thereto the provisions set forth as sections 2 to 38, inclusive, of this regulation.

Sec. 2. [S.B. 432, §3-§16] Unless the context otherwise requires, the words and terms used in this chapter have the meanings ascribed to them in sections 3 through 16 of Senate Bill No. 432 and section 3 of this chapter.

Sec. 3. [S.B. 432, §18-§19.7] “Promptly” means the action must occur within one business day.

Sec. 4. [S.B. 432, §4] For the purpose of section 4 of Senate Bill No. 432 and this chapter, denominated means any amount over the funded amount to include, without limitations, interest, fees or charges. Denominated does not include the one-time document preparation fee.

Sec. 5. [S.B. 432, §7- §10] A license is required for any person who solicits or engages in consumer litigation funding or provides funds to a consumer based upon a legal claim, regardless if the transaction is a nonrecourse or recourse transaction.

Sec. 6. [S.B. 432, §8.1(b) and (d)] For the purpose of section 8.1(b) and (d) of Senate Bill No. 432, the chapter does not apply to an attorney who is in compliance with Model Rule 1.8, an accountant, or medical factoring company that provides services to a client in the usual course of the practice of their profession. If an attorney, an accountant; or medical factoring company engages in the business of consumer litigation funding, regardless of how often the funding is provided or the funded amount provided to a consumer shall be considered a consumer litigation funding company as defined in Senate Bill No. 432, and shall require licensing accordingly.

Sec. 7. [S.B. 432, §10] The funded amount cannot exceed \$500,000 per consumer, per legal claim, regardless of the number of draws the consumer may seek, or regardless if the transaction is rolled over, refinanced, extended, or consolidated.

Sec. 8. [S.B. 432, §10.5] Only one document preparation fee may be charged per consumer, per legal claim, regardless of the number of draws the consumer may seek, or regardless if the transaction is rolled over, refinanced, extended, or consolidated.

Sec. 9. [S.B. 432, §11, §19, and §21] Under no circumstances may a consumer litigation funding company refinance, rollover, extend, or consolidate, a consumer litigation funding transaction at the end of the 180 day period, which would have the effect, impact, or result of compounding interest, charges, fees, or any of the like on the transaction. The funded amount plus charges, however denominated, of each transaction must not exceed a rate of 40 percent of the funded amount annually, regardless of how many transactions are provided each year.

Sec. 10. [S.B. 432, §18-§19.7 and §30] All required notices from the consumer litigation funding company to the consumer's attorney must occur promptly.

Sec. 11. [S.B. 432, §18 and §19.3] All consumer litigation funding contracts, notices, or any of the like that require a signed acknowledgement must have the consumer, the consumer's attorney and licensee's signature.

Sec. 12. [S.B. 432, §19(4)] For the purpose of section 19(4) of Senate Bill No. 432, the consumer will not owe the consumer litigation funding company anything if there are no proceeds ~~for~~ ~~inadequate proceeds~~ from the legal claim, *nor will the consumer owe a deficiency should the amount funded plus allowable charges exceed the proceeds from the legal claim.*

Sec. 13. [S.B. 432, §19.7] *If a consumer chooses to cancel a consumer litigation funding contract pursuant to Senate Bill No. 432 section 18(c)(1) and (2),* a licensee shall promptly notify the attorney representing the consumer in the legal claim.

Sec. 14. [S.B. 432, §20(1)(c)] For the purpose of section 20(1)(c) of Senate Bill No. 432, intentionally advertise includes advertising false or deceptive statements, results, testimonials, or any of the like.

Sec. 15. [S.B. 432, §3 and §20(1)(c)]1. No licensee may advertise in any manner that may tend to confuse the identity of the licensee with any other unrelated licensee.

2. No licensee may advertise in any manner that a loan or transaction of a prospective consumer with another licensee will be paid or increased if the loan or transaction is transferred to the advertising licensee. This includes a license holder of any chapter regulated by the Division.

3. No unethical advertising by licensees will be permitted and the Commissioner of Financial Institutions reserves the right to require all licensees to submit proposed advertising for approval before its dissemination through the press, by radio or television.

Sec. 16. [S.B. 432, §20(5)] For the purpose of section 20(5) of Senate Bill No. 432, a consumer litigation funding company must file its consumer litigation funding contract with the

Commissioner upon application for licensure, during an examination or investigation, when any changes are made to the contract, or at the request of the Commissioner or his or her authorized representatives. Filing of a consumer litigation funding contract does not deem it to be approved or endorsed by the Division. It is the responsibility of a licensee to comply with statutes and regulations. The contract is subject to the examination process and will be reviewed for compliance during that time.

Sec. 17. [S.B. 432, §22] For the purpose of section 22 of Senate Bill No. 432, a court of competent jurisdiction includes an administrative law hearing.

Sec. 18. [S.B. 432, §22 and §38.6] The Commissioner or designee of the Commissioner may bring suit to any licensee that violates the provisions of this chapter or Senate Bill No. 432. The district court or any judicial district may grant injunctions to prevent and restrain such practices or transactions in violation of this chapter or Senate Bill No. 432.

Sec. 19. [S.B. 432, §24] Any claimed attorney-client privilege or work-product doctrine shall not apply to the Commissioner or his or her authorized representatives, as it pertains to activities licensed under Senate Bill No. 432 and this chapter. The Division shall have and be given full and complete access to any office and place of business, to any and all documents, files, and any of the like, relating to consumer funding transactions and the consumer funding transaction company..

Sec. 20. [S.B. 432, §24] Electronic communication is acceptable if *the consumer consents to electronic delivery set forth in the contract.* ~~[it's agreed upon, in writing, by the consumer and the consumer's attorney, and at least two email addresses are provided by the retained attorney. The consumer litigation funding company must email all email addresses provided by the consumer's attorney and copy the consumer via email on all communications.]~~

Sec. 21. [S.B. 432, §26 and §30] An application submitted pursuant to this chapter must be accompanied by:

1. A nonrefundable application fee of \$1,000;
2. A nonrefundable investigation fee of \$50 for each individual Owner, Partner, Officer, Director and Manager; and
3. An initial licensing fee of \$1,000

Sec. 22. [S.B. 432, §26 and §36] If the Commissioner approves the application, a license will be issued. Each licensee shall prominently display the license at the location where the licensee is authorized to operate. A license will be issued for each location in which the Commissioner grants the authority to a licensee to operate.

Sec. 23. [S.B. 432, §26-§28 and §31-§33] A licensee shall **[promptly]** notify the Commissioner *in writing* of any change of control, ownership, officer, director, address or name of the licensee, or any other material change. Such changes require prior approval from the Division.

Sec. 24. [S.B. 432, §26-§28 and §31-§33]1. A person who acquires stock, partnership or member interests resulting in a change of control of the licensee shall apply to the Commissioner for approval of the transfer. The application must contain information which shows that the requirements for obtaining a license pursuant to the provisions of this chapter will be satisfied after the change of control. If the Commissioner determines that those requirements will not be satisfied, he or she may deny the application and prohibit the applicant from participating in the business of the licensee.

2. As used in this section, “change of control” means:

(a) A transfer of voting stock, partnership or member interests which results in giving a person, directly or indirectly, the power to direct the management and policy of a licensee; or

(b) A transfer of at least 25 percent of the outstanding voting stock, partnership or member interests of the licensee.

Sec. 25. [S.B. 432, §26-§28 and §31-§33] If an application for a license is submitted by a business entity, the Commissioner will not issue a license to the applicant unless each partner, principal officer, member, manager, director and trustee, whichever are applicable to the business entity, satisfies the requirements of section 27 of Senate Bill No. 432.

Sec. 26. [S.B. 432, §26, §36 and §36.2] Books, records, and accounts of each consumer must be kept and maintained separately and in compliance with section 36 of Senate Bill No. 432.

Sec. 27. [S.B. 432, §26-§28 and §31-§33] A person shall not engage in the business of consumer litigation funding in this State unless:

1. The person possesses each license, certificate and permit required by this chapter, Senate Bill No. 432 and a local governmental entity; and
2. The location of the business complies with any applicable planning and zoning ordinances.

Sec. 28. [S.B. 432, §30 and §38.6] 1. A licensee shall pay annually to the Division a fee of \$1,000 for the renewal of a license on or before the license expiration date of January 31 of each year.

2. If a licensee does not submit a complete application for renewal of its license and the required fee by the expiration date, the company cannot operate until such time the license is reinstated. If not reinstated, a new initial application for licensure must be submitted and approved by the Division and a new license issued prior to operating.

3. The Commissioner may reinstate an expired license if the licensee notifies the Division within 10 days after the expiration of the license of its intent to reinstate its license, submits the renewal application, and pays a reinstatement fee of \$400 in addition to the renewal fee prescribed in subsection 1.

4. It is the responsibility of the licensee to renew a license issued pursuant to this chapter and Senate Bill No. 432 on or before the expiration of the license. A lack of notice from the Division to any person concerning the expiration of a license or the renewal of a license is not justification for the failure of a person to renew a license in a timely manner and does not constitute grounds for the waiver of any of the requirements of this chapter or Senate Bill No. 432.

Sec. 29. [S.B. 432, §36.2] 1. The Commissioner of the Financial Institutions Division will charge and collect a fee of \$75 per hour, or as determined by NRS 658.101, from a consumer litigation funding company for any supervision, examination, audit, investigation or hearing conducted pursuant to Senate Bill No. 432.

2. The Commissioner will bill each consumer litigation funding 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 a consumer litigation funding company to pay the fee required by subsection 1 as provided in this section constitutes grounds for revocation of its license.

Sec. 30. [S.B. 432, §36.4] Annual assessments to cover costs related to performance of audits and examinations.

1. Except as otherwise provided in NAC 658.030, each licensee shall pay to the Division of Financial Institutions 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.

2. The Division will bill each licensee for the assessment. The assessment must be paid within 30 days after the date the bill is received.

3. A charge of 10 percent of the assessment will be imposed on any licensee whose assessment is received by the Division after the date on which the assessment is due.

Sec. 31. [S.B. 432, §38.95] 1. Annual assessments to cover the cost of legal services provided by the Attorney General to the Commissioner and to the Division as determined in section 38.95 of Senate Bill No. 432, shall be paid to the Division within 30 days after the date the bill is received.

2. A charge of 10 percent of the assessment will be imposed on any licensee whose assessment is received by the Division after the date on which the assessment is due.

Sec. 32. [S.B. 432, §38(3)] Except as otherwise provided in section 38(3) of Senate Bill No. 432, an application for a license and financial records submitted by an applicant pursuant to the provisions of this chapter and Senate Bill No. 432, financial records or other documents submitted by a licensee pursuant to an audit, examination, or investigation conducted by the Division and any report of examination made by the Division are confidential and may be disclosed only to ~~the~~

~~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 a court order subpoena.* ~~the~~

~~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. 33. [S.B. 432, §38.9] 1. If a licensee, or an authorized representative of that licensee, fails to respond to the Commissioner of Financial Institutions Division within 10 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 Division, 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. 34. [S.B. 432, §38.9] For the purpose of section 38.9 of Senate Bill No. 432, a licensee shall post the following notice in substantially the following form, *on its website, at the licensed location and as a disclosure in the contract*:

NOTICE OF RIGHT TO FILE A WRITTEN COMPLAINT TO THE
COMMISSIONER OF THE FINANCIAL INSTITUTIONS DIVISION

You may file a written complaint with the Commissioner of the Financial Institutions Division by submitting a signed complaint form to the Office of the Commissioner. The required complaint form can be found on the homepage of the Financial Institution's website: www.fid.nv.gov, or you may request a complaint form via telephone by calling the toll-free telephone number: 1 (866) 858-8951.

- If printed, the notice must 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.
- If handwritten or displayed digitally or by other electronic means, the notice must be in characters that are equivalent in intensity, legibility and size to the characters required for printed notice.
- A licensee who uses a form or contract written in a language other than English should also post this notice in that language. The notice must be translated by an interpreter who is certified

by the Court Administrator in accordance with NRS 1.510, and comply with section 20 of this chapter.

Sec. 35. [S.B. 432, §18-§23] 1. A licensee who uses a form or contract written in a language other than English shall cause the document to be translated into English and maintain together a copy of the document and its English translation.

2. A document translated pursuant to this section must be:

(a) Translated by an interpreter who is:

(1) Certified by the Court Administrator in accordance with the provisions of NRS 1.510 and regulations adopted pursuant thereto; or

(2) Approved in writing by the Division.

(b) Accompanied by a certificate issued by the interpreter. The certificate must:

(1) Declare that the translated document is a true and complete translation of the document written in the language other than English;

(2) Identify the document written in a language other than English and its English translation;

(3) Include the date of translation; and

(4) Include the name, address, telephone number and electronic mail address, if any, of the interpreter.

3. The Commissioner may require a licensee to provide a translation of any nonstandard document that is written in a language other than English.

4. The Commissioner may assess a licensee for all costs incurred by the Commissioner to verify the licensee's compliance with this section.

Sec. 36. [S.B. 432, §36-§36.6] If the Commissioner finds that a licensee's records are not maintained in compliance with this chapter or Senate Bill No. 432, the Commissioner may require the licensee to deliver an audited, compiled, or reviewed financial statement prepared from his or her records by a certified public accountant who holds a certificate to engage in the practice of public accounting in this State. The statement must be submitted within 60 days after the Commissioner requests it. The Commissioner may grant a reasonable extension for the submission of the financial statement if an extension is requested before the statement is due.

Sec. 37. [S.B. 432, §38] For the purpose of section 38 of Senate Bill No. 432, the report due on or before January 31 of each year shall:

- (a) Be filed with the Division with the renewal application on a form prescribed by the Commissioner; and
- (b) List each consumer litigation transaction to include:
 - I. Consumer name;
 - II. Amount funded to each consumer;
 - III. The annual percentage charged to each consumer; and
 - IV. A detail of all charges and the document preparation fee charged to the consumer.

Sec. 38. [S.B. 432, §38.6]The Commissioner of Financial Institutions may revoke or suspend a license in accordance with this chapter and Senate Bill No. 432, if a licensee violates any provision of this chapter including, without limitation, a provision that imposes a fee or assessment on a licensee.