

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

**LCB FILE NO. R037-201**

**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 and removed language and/or requirements that were confusing or would cause unnecessary efforts on the part of the NRS 604A licensee, if it did not impact the consumer protection responsibility of the Division.**

**The revisions and/or omissions are in the following proposed regulations.**

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

(Revises Provision Governing Loans- NRS 604A Database)

- Purpose:** To adopt regulations under the Nevada Administrative Code, as provided by Senate Bill No. 201 (2019), requiring the Commissioner of Financial Institutions to develop, implement and maintain a database storing certain information relating to deferred deposit loans, title loans and high-interest loans made to customers in this State; and providing other matters properly relating thereto.
- Authority:** Senate Bill No. 201, Chapter 177, Statutes of Nevada 2019, sections 2 through 31. As enrolled, S.B. 201 specifically amends NRS Chapter 604A, Deferred Deposit Loans, High-Interest Loans, Title Loans and Check-Cashing Services.
- 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.

**Section 1.** Chapter 604A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 29, inclusive, of this regulation.

**Sec. 2.** *Unless the context otherwise requires, the words and terms used in this chapter have the meanings ascribed to them in sections 2 through 4 of Senate Bill No. 201 and sections 3 through 10 of this chapter.*

~~**Sec. 3.** *“Full amount of loan” is defined as any principal, interest or finance charge, fees and charges that the customer must repay subject to all statutory requirements and legal contractual stipulations.*~~

~~**Sec. 4.**~~ **Sec. 3.** *“Due date” is defined as the date, based upon the payment schedule, subject to all statutory requirements and legal contractual stipulations, that the customer is scheduled to*

*make a payment, either to pay the full amount of the loan (principal, finance charge and fees) and extinguish the debt, or if applicable, makes an installment payment.*

~~Sec. 5.~~ *Sec. 4. “Immediately” means the action must occur within one business day.*

~~Sec. 6.~~ *Sec. 5. “Net disposable income” is defined as the verifiable gross income minus (i) any and all deductions from income; and (ii) all verifiable and/or stated expense obligations including, but not limited to, rent or mortgage payments, utilities, ~~groceries, transportation, fuel,~~ and any other debt ~~payments~~ obligations.*

~~Sec. 7.~~ *Sec. 6. “Extent Available” is defined as if a document exists, it is presumed to be readily available or easily obtainable in a reasonable amount of time from a customer prior to making the loan.*

~~Sec. 8.~~ *Sec. 7. “Archive” means to copy data to a long-term storage mechanism apart from the database.*

~~Sec. 9.~~ *Sec. 8. “Delete” means to erase data by overwriting the data.*

~~Sec. 10.~~ *Sec. 9. "Identifying customer information" means the name of the customer, his or her social security number or alien registration number ~~or naturalization or certificate of citizenship number,~~ driver license number, or other state-issued identification number, address and any account numbers ~~or information specific to a check or draft drawn by a customer on a bank, savings bank, savings and loan association, or credit union, and any other nonpublic personal information of a customer entered into the database. or that comes into the possession of the database provider through customer or licensee inquiry or report.~~*

*Sec. 10. “Closed Loan” indicates a final status of a loan that is no longer active. When a loan is closed it may include, but is not limited to, a paid-in-full loan agreement, a repossessed vehicle, or charged-off loan.*

**Sec. 11.** *The service provider shall charge and collect a fee from a licensee for each loan the licensee enters and approves in the database. The fee is based upon a competitive procurement process but shall not exceed \$3.00 per approved loan. A licensee shall not collect from a customer an amount in excess of the actual cost charged to the licensee by the service provider. A licensee shall not collect any fee, charge or cost from a customer if a loan is not approved. The service provider shall not collect any fee, charge or cost from a licensee if a loan is not approved. The charge only occurs at origination and cannot be charged to extend, rollover, renew, refinance or consolidate or any action that would extend the due date or any of the like. The service provider fee must be itemized on the loan agreement, regardless of whether the fee is required to be included in the finance charge under the Truth in Lending Act and Regulation Z.*

**Sec. 12.** *The service provider shall do all the following:*

- (a) Retain data in the database only as required to ensure licensee compliance with this chapter and chapter 604A of NRS;*
- (b) Archive data in the database concerning a customer transaction within two years after a customer transaction is closed unless notified by the Commissioner that such data is needed for a pending investigation or enforcement action;*
- (c) Delete any identifying customer data from the database when data is archived; and*
- (d) Delete data concerning a customer transaction from the database 3 years after the customer transaction is closed unless notified by the Commissioner that such data is needed for a pending investigation or enforcement action.*

**Sec. 13.** *1. Access to the database is limited to:*

- (a) Licensee staff members that underwrite and process the loans;*

- (b) Licensee staff members that collect and post payments made on the loans;*
- (c) Licensee senior staff members;*
- (d) Office of the Commissioner staff members; and*
- (e) Service provider staff members.*

*Each user will be required to:*

- (a) Create a password that meets the service provider's password criteria; and*
- (b) Safeguard the password by not sharing the password with any person or writing the password down.*

*2. A customer has the right to request a copy of their loan history, file, record, or any documentation relating to their loan or the repayment of a loan, from a licensee, without a charge, fee or cost.*

**Sec. 14.** *A licensee shall enter into the database, **in real time**, all loans originated under the provisions of chapter 604A of NRS; all renewals; extensions; grace periods; payments; refinances; **when a repayment plan offer is sent; when a repayment plan is entered into; ~~payment receipts; collection notes~~**; declined loans; and any transaction pertaining to the loan, as applicable, and in compliance with this chapter and chapter 604A of NRS.*

**Sec. 15.** *A licensee shall retain all data and documentation collected and reviewed for any loan, loan transaction, or any query made in the database for at least 3 years. Documentation includes, but is not limited to, all copies of the documents considered in determining the ability to repay, including the method used by a licensee to calculate a customer's net disposable income. In addition to the above mentioned, for title loans, the third-party vendor documentation showing the fair market value of the vehicle securing the title loan.*

*Sec. 16. A licensee shall not delete any consumer information entered into the database. If a loan or loan transaction is void or rescinded, a licensee must notate on the loan file and in the database that the loan or loan transaction is void and the reason the loan or loan transaction is void but shall not delete the loan or the loan transaction from the database. The service provider fee cannot be charged pursuant to this chapter and chapter 604A of the NRS for a voided or rescinded loan.*

~~*Sec. 17. If a licensee verifies a customer's income by an electronic bank statement, or any other permitted electronic document, a licensee must retain the evidence as a digital or paper copy. The information provided to a licensee must be safeguarded in accordance with Gramm Leach Bliley Act and Chapter 603A of the NRS.*~~

~~*Sec. 18.*~~ *Sec. 17. Before making a deferred deposit loan, title loan or high-interest loan, a licensee shall query the database and shall retain evidence of the query for the Office of the Commissioner's review. The database shall allow a licensee to make a deferred deposit loan, title loan or high-interest loan only if making the loan is permissible under the provisions of this chapter and chapter 604A of NRS. At a minimum, the query should include the below to verify the identity of a customer and verify eligibility of the loan:*

- (a) The customer's full name: first and last name, and middle initial;*
- ~~*(a) The customer's residential address;*~~
- ~~*(b) The customer's telephone number;*~~
- ~~*(e) (b) The customer's social security number or alien registration number or naturalization certificate or certificate of citizenship number;*~~
- ~~*(d) (c) The customer's valid government-issued photo ID number;*~~
- (d) The customer's date of birth, mm/dd/yyyy;*

- (e) The customer's gross income;*
- (f) The customer's total obligations; and*
- (g) Net disposable income of the customer.*

*Sec. 18. The database will provide the licensee information on:*

- (a) Whether a customer has a deferred deposit loan, title loan or high-interest loan outstanding with more than one licensee;*
- (b) Whether a customer has had such a loan outstanding with one or more licensees within the 30 days immediately preceding the making of a loan;*
- (c) Whether a customer has had a total of three or more such loans outstanding with one or more licensees within the 6 months immediately preceding the making of the loan.*

*In determining a customer's ability to repay a loan under chapter 604A of NRS, a licensee must consider if any of the above factors, in conjunction with all other available information, will make a customer ineligible for a loan and only approve the loan if permissible under the provisions of this chapter and chapter 604A of NRS.*

*Sec. 19. During any period that the database is unavailable due to technical issues on the service provider side, a licensee may rely on a customer's written representation and assess the customer's ability to repay by obtaining the documentation required by this chapter to verify that making the loan applied for is permissible under the provisions of this chapter. A customer's written representation includes, without limitation, a customer does not have any outstanding loans at the time the loan was made. If a customer does have an outstanding deferred deposit and/or high-interest loan, the customer affirms that an additional deferred deposit or high-interest loan they are about to enter into would not cause the customer to exceed*

*25% of the expected monthly gross income and they have the ability to repay the loan. If a customer has an outstanding title loan, the customer affirms that they have the ability to repay the outstanding loan and the additional title loan that they are about to enter into, and that the title is not perfected with another lender or licensee. A licensee must immediately notify the Office of the Commissioner when the database is unavailable. If a licensee makes a loan to a customer during a time the database is unavailable, whether scheduled or for technical issues, a licensee must:*

- (a) Enter the loan into the database within 24 hours of the system being operational;*
- (b) Notate on the loan file that such loan was originated during a period the database was unavailable; and*
- (c) Retain all record of the loan transaction as required for any loan made by a licensee pursuant to this chapter and chapter 604A of NRS.*

**Sec. 20.** *The database provider shall maintain the database, take all actions it deems necessary to protect the confidentiality and security of the information contained in the database, and be responsible for the confidentiality and security of such information. The Office of the Commissioner shall have access to and utilize the database as an enforcement tool to ensure licensees' compliance with the provisions of this chapter and chapter 604A of NRS.*

**Sec. 21.** *Upon a licensee's query, the database shall inform a licensee whether a customer is eligible for a new loan and, if the customer is ineligible, the reason for such ineligibility. If the database informs a licensee that a customer is ineligible for a loan, then a licensee shall provide written notice to a customer with the reason for ineligibility, the database provider's contact information, and a statement advising the customer to submit an inquiry to the database provider should they have questions regarding the specific reason for such ineligibility. **The***

*licensee must also provide the customer with an Adverse Action Notice pursuant to Regulation B.*

*Sec. 22. The information contained in the database is confidential and exempt from the Freedom of Information Act and Nevada Public Records Law.*

*Sec. 23. A licensee shall enter the following information in the database, in real time, for each payment made on the loan, without limitation:*

- (a) The scheduled payment amount;*
- (b) The scheduled date of the payment;*
- (c) The actual payment amount;*
- (d) The date the payment was made;*
- (e) The allocation of the total payment, dollar amount applied to principal and dollar amount applied to interest and fees;*
- (f) Method of each payment received from a customer;*
- (g) Method and amount of payment received from a customer when the loan is paid in full;*
- (h) If a scheduled payment was missed:
  - (1) The date the payment was missed;*
  - (2) If the missed payment changed the interest rate;*
  - (3) The new interest rate, if applicable;*
  - (4) Whether or not a repayment was offered;*
  - (5) Did a customer enter a repayment plan;*
  - (6) Whether or not a grace period was offer; and*
  - (7) The duration of the grace period, if applicable.**

*If a customer enters into a loan agreement requiring installment payments, the licensee shall enter the information required pursuant to this section for each installment payment.*

**Sec. 24.** *In addition to items (a) – ~~(f)~~ (g) in Section ~~18~~ 17, a licensee shall enter the following information in the database, in real time, ~~for~~ prior to each loan made pursuant to NRS 604A.501- NRS 604A.5034 and NRS 604A.5035- NRS 604A.5064, without limitation:*

- (a) The customer's current employer;*
- (b) If the customer is a covered service member;*
- (c) If the customer is a dependent of a covered service member;*
- (d) The origination date of the loan;*
- (e) The term of the loan;*
- (f) ~~Full amount of the loan~~ The principal amount of the loan;*
- (g) The total finance charge associated with the loan;*
- (h) The fee charged for the loan;*
- (i) Due date of the loan;*
- (j) The annual percentage rate of the loan;*
- (k) The scheduled payment amount;*
- (l) The payment details as described in section 23; and*
- ~~(m) The customer's gross income;~~*
- ~~(n) The customer's total obligations;~~*
- ~~(o) Net disposable income of the customer; and~~*
- (p) Type of loan product; and*
- ~~(q) Status of the loan, without limitations:~~*

*~~(1) If in collection, whether first party or third party, the date entered into collection and payment history.~~*

~~(2) If the loan is in default, the date entered into default and payment history. If an interest rate changed, the rate and date it changed.~~

~~(3) If the loan is in grace period, the date entered into a grace period and payment history.~~

~~(4) If in a repayment plan, the date entered into a repayment plan and payment history.~~

Sec. 25. In addition to items (a) – ~~(f)~~ (g) in Section ~~18-17~~, a licensee shall enter the following information in the database, in real time, ~~for~~ prior to each loan made pursuant to NRS 604A.5065- NRS 604A.5089, without limitation:

(a) Verification that the customer is the legal owner of the vehicle securing the loan;

(b) The customer's current employer;

(c) If the customer is a covered service member;

(d) If the customer is a dependent of a covered service member;

(e) The origination date of the loan;

(f) The term of the loan;

(g) ~~Full amount of the loan~~ The principal amount of the loan;

(h) The total finance charge associated with the loan;

(i) The fee charged for the loan;

(j) Due date of the loan;

(k) The annual percentage rate of the loan;

(l) The scheduled payment amount;

(m) The payment details as described in section 23;

(n) ~~The customer's gross income;~~

(o) ~~The customer's total obligations;~~

- ~~(p) Net disposable income of the customer;~~
- ~~(q) The year, make, **and** model, and Vehicle Identification Number (VIN) of the vehicle; and~~
- ~~(r) The fair market value of the vehicle from a third-party vendor. The total amount of the loan cannot exceed the fair market value of the vehicle.~~
- ~~(s) The legal co-owner's name and consent from co-owner, if applicable; **and**~~
  - ~~(t) Status of the loan, without limitations:~~
    - ~~(1) If in collection, whether first party or third party, the date entered into collection and payment history.~~
    - ~~(2) If the loan is in default, the date entered into default and payment history.~~
    - ~~(3) If the loan is in grace period, the date entered into a grace period and payment history.~~
    - ~~(4) If in a repayment plan, the date entered into a repayment plan and payment history.~~
    - ~~(5) The date repossession of the vehicle was ordered, if applicable.~~
    - ~~(6) The date repossession occurred, if applicable.~~

**Sec. 26.** A licensee shall retain the following documentation and any and all documentation collected and reviewed in this chapter or chapter 604A of NRS for each loan made pursuant to NRS 604A.501-604A.5034, without limitation, copies of:

- (a) Documents used to verify identity;
- (b) Documents used to verify the ability to repay;
- (c) Documents used to verify customer's income; and
- (d) The customer's credit history.

**Sec. 27.** *In addition to items (a) – (d) in Section ~~25~~ 26, a licensee shall retain the following documentation and any and all documentation collected and reviewed in this chapter or chapter 604A of NRS for each loan made pursuant to NRS 604A.5065- NRS 604A.5089, without limitation:*

- (a) The vehicle title used to secure the loan. A copy of the title should be retained after the loan is closed;*
- (b) The third-party vendor documentation showing the fair market value of the vehicle securing the title loan at the time the loan was made;*
- (c) If there is a co-owner on the vehicle title, identification and consent form signed by the co-owner.*

**Sec. 28.** *For the purpose of NRS 604A.5076(5), a licensee must obtain written consent from each legal owner of the vehicle securing the title loan. The legal co-owner must be available in-person with a valid government-issued photo ID in order to sign a consent form. The consent form must advise the legal co-owner that if the borrower defaults on the loan and does not enter into a repayment plan, the licensee may seek repossession and sale of the vehicle. It should further disclose that the co-owner has no personal liability to make payments under the title loan agreement and is not personally obligated to repay the title loan, unless the co-owner signed the title loan agreement as a co-borrower.*

**Sec. 29.** *The Office of the Commissioner may periodically run reports for purposes other than examinations, investigations, or internal reporting, in order to publish a report online regarding the scope of the industry. The data in a report shall not disclose personal identifying information, licensee identifying information such as the name of a licensee, address or license number. It may contain the number of loans made per loan product, number of defaulted loans,*

*number of paid loans including loans paid on the scheduled date and loans paid past the due date, total amount borrowed and collected, and any other data the Commissioner or his or her designee deems necessary.*

*Sec. 30. Status of the loan must be entered into the database, without limitations:*

- (1) If in collection, whether first party or third party, the date entered into collection and payment history;*
- (2) If the loan is in default, the date entered into default and payment history. If an interest rate changed, the rate and date it changed;*
- (3) If the loan is in grace period, the date entered into a grace period and payment history;*
- (4) If in a repayment plan, the date entered into a repayment plan and payment history.*
- (5) The date the loan was closed as defined in this chapter;*
- (6) The reason the loan was closed as defined in this chapter;*
- (7) The date repossession of the vehicle was ordered, if applicable; and*
- (8) The date repossession occurred, if applicable.*