

ASSEMBLY BILL NO. 163—ASSEMBLYMAN FLORES

PREFILED FEBRUARY 13, 2017

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions governing certain short-term loans. (BDR 52-737)

FISCAL NOTE: Effect on Local Government: No.  
Effect on the State: Yes.

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

AN ACT relating to financial services; requiring a person who is licensed to operate certain loan services to verify a customer’s ability to repay the loan before making certain short-term loans to the customer; revising provisions governing defaults and grace periods relating to certain short-term loans; requiring certain notices to be posted by a person who is licensed to operate certain loan services; revising the requirements for making a title loan; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

1 Existing law establishes standards and procedures governing the making of  
2 certain short-term loans, commonly referred to as “payday loans,” “high-interest  
3 loans” and “title loans.” (Chapter 604A of NRS) **Section 1** of this bill: (1) prohibits  
4 a person from making such a loan unless the person has determined that the  
5 customer has the ability to repay the loan; and (2) establishes the factors that the  
6 person making the loan must consider when determining whether a customer has  
7 the ability to repay the loan. **Section 2** of this bill establishes that a customer  
8 defaults on such a loan whenever the customer fails to make a scheduled payment  
9 under the original terms of the loan or the original terms of an extension or  
10 repayment plan relating to the loan.

11 Existing law allows for a person making a payday loan, high-interest loan or  
12 title loan to offer the customer a grace period concerning repayment of the loan.  
13 (NRS 604A.210) **Section 3** of this bill distinguishes a grace period from an  
14 extension of a loan. **Section 4** of this bill limits the actions the person making the  
15 loan can take with regard to a grace period.

16 Existing law requires a person making a payday loan, high-interest loan or title  
17 loan to post certain notices in a conspicuous place in every location at which the  
18 person conducts business. (NRS 604A.405) **Section 5** of this bill provides that the  
19 person must post a notice of the existing requirement that the person must offer a



\* A B 1 6 3 \*

20 repayment plan to a customer who defaults on a loan before the person commences  
21 specified collection actions. **Section 5** also provides that the person must post a  
22 notice that states the process for customers to file a complaint with the Office of the  
23 Commissioner of Financial Institutions.

24 Existing law provides restrictions on the making of title loans. (NRS 604A.450)  
25 **Section 7** of this bill adds to those restrictions by specifying that the customer must  
26 legally own the vehicle which secures the loan and that the person making the loan  
27 cannot consider the income of anyone who is not a legal owner of the vehicle when  
28 determining whether the customer has the ability to repay the loan.

29 **Sections 6 and 8** of this bill make conforming changes.

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THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN  
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** Chapter 604A of NRS is hereby amended by  
2 adding thereto a new section to read as follows:

3 *1. A licensee shall not make a loan pursuant to this chapter*  
4 *unless the licensee determines that the customer has the ability to*  
5 *repay the loan.*

6 *2. For the purposes of subsection 1, a customer has the*  
7 *ability to repay a loan if the customer has a reasonable ability to*  
8 *repay the loan, as determined by the licensee after considering and*  
9 *verifying the following underwriting factors:*

10 *(a) The current or reasonably expected income of the*  
11 *customer;*

12 *(b) The current employment status of the customer;*

13 *(c) The monthly residual income of the customer;*

14 *(d) The credit history of the customer;*

15 *(e) The amount due under the original term of the loan, the*  
16 *monthly payment on the loan, if the loan is an installment loan, or*  
17 *the potential repayment plan if the customer defaults on the loan;*

18 *(f) Any monthly payments on other obligations owed by the*  
19 *customer; and*

20 *(g) Other current debt obligations owed by the customer,*  
21 *including, without limitation, alimony and child support.*

22 **Sec. 2.** NRS 604A.045 is hereby amended to read as follows:

23 604A.045 1. "Default" means the failure of a customer to ~~†~~  
24 ~~—(a) Make†~~ *make* a scheduled payment on a loan on or before the  
25 due date for the payment under the *original* terms of a lawful loan  
26 agreement ~~[and any grace period that complies with the provisions~~  
27 ~~of NRS 604A.210]~~ or under the *original* terms of any lawful  
28 extension or repayment plan relating to the loan . ~~†and any grace~~  
29 ~~period that complies with the provisions of NRS 604A.210; or~~

30 ~~—(b) Pay a loan in full on or before:~~



1 ~~\_\_\_\_\_ (1) The expiration of the initial loan period as set forth in a~~  
2 ~~lawful loan agreement and any grace period that complies with the~~  
3 ~~provisions of NRS 604A.210; or~~

4 ~~\_\_\_\_\_ (2) The due date of any lawful extension or repayment plan~~  
5 ~~relating to the loan and any grace period that complies with the~~  
6 ~~provisions of NRS 604A.210, provided that the due date of the~~  
7 ~~extension or repayment plan does not violate the provisions of this~~  
8 ~~chapter.]~~

9 2. A default occurs on the day immediately following the date  
10 of the customer's failure to perform as described in subsection 1.

11 **Sec. 3.** NRS 604A.070 is hereby amended to read as follows:

12 604A.070 1. "Grace period" means any period of deferment  
13 offered gratuitously by a licensee to a customer if the licensee  
14 complies with the provisions of NRS 604A.210.

15 2. *The term does not include an extension of a loan.*

16 **Sec. 4.** NRS 604A.210 is hereby amended to read as follows:

17 604A.210 The provisions of this chapter do not prohibit a  
18 licensee from offering a customer a grace period on the repayment  
19 of a loan or an extension of a loan, except that the licensee shall not  
20 ~~charge~~ :

21 1. *Charge* the customer ~~†~~

22 ~~—1. Any~~ *any fees , interest, costs or anything else of value*  
23 *during such a grace period or* for granting such a grace period; or

24 2. ~~†Any additional fees or additional interest on the outstanding~~  
25 ~~loan during~~ *Condition the granting of* such a grace period ~~†~~ *on*  
26 *the customer making any new loan agreement or adding any*  
27 *addendum or term to an existing loan agreement.*

28 **Sec. 5.** NRS 604A.405 is hereby amended to read as follows:

29 604A.405 1. A licensee shall post in a conspicuous place in  
30 every location at which the licensee conducts business under his or  
31 her license:

32 (a) A notice that states the fees the licensee charges for  
33 providing check-cashing services, deferred deposit loan services,  
34 high-interest loan services or title loan services.

35 (b) *A notice that states that if the customer defaults on a loan,*  
36 *the licensee must offer a repayment plan to the customer before*  
37 *the licensee commences any civil action or process of alternative*  
38 *dispute resolution or repossesses a vehicle.*

39 (c) A notice that states a toll-free telephone number to the Office  
40 of the Commissioner to handle concerns or complaints of customers.

41 (d) *A notice that states the process for filing a complaint with*  
42 *the Commissioner.*

43 ➤ The Commissioner shall adopt regulations prescribing the form  
44 and size of the notices required by this subsection.



1 2. If a licensee offers loans to customers at a kiosk, through the  
2 Internet, through any telephone, facsimile machine or other  
3 telecommunication device or through any other machine, network,  
4 system, device or means, except for an automated loan machine  
5 prohibited by NRS 604A.400, the licensee shall, as appropriate to  
6 the location or method for making the loan, post in a conspicuous  
7 place where customers will see it before they enter into a loan, or  
8 disclose in an open and obvious manner to customers before they  
9 enter into a loan, a notice that states:

10 (a) The types of loans the licensee offers and the fees he or she  
11 charges for making each type of loan; and

12 (b) A list of the states where the licensee is licensed or  
13 authorized to conduct business from outside this State with  
14 customers located in this State.

15 3. A licensee who provides check-cashing services shall give  
16 written notice to each customer of the fees he or she charges for  
17 cashing checks. The customer must sign the notice before the  
18 licensee provides the check-cashing service.

19 **Sec. 6.** NRS 604A.440 is hereby amended to read as follows:

20 604A.440 A licensee shall not:

21 1. Use or threaten to use the criminal process in this State or  
22 any other state, or any civil process not available to creditors  
23 generally, to collect on a loan made to a customer.

24 2. Commence a civil action or any process of alternative  
25 dispute resolution or repossess a vehicle before the customer  
26 defaults under the original term of a loan agreement or before the  
27 customer defaults under any repayment plan ~~†~~ or extension ~~for~~  
28 ~~grace period~~ negotiated and agreed to by the licensee and customer,  
29 unless otherwise authorized pursuant to this chapter.

30 3. Take any confession of judgment or any power of attorney  
31 running to the licensee or to any third person to confess judgment or  
32 to appear for the customer in a judicial proceeding.

33 4. Include in any written agreement:

34 (a) A promise by the customer to hold the licensee harmless;

35 (b) A confession of judgment by the customer;

36 (c) An assignment or order for the payment of wages or other  
37 compensation due the customer; or

38 (d) A waiver of any claim or defense arising out of the loan  
39 agreement or a waiver of any provision of this chapter. The  
40 provisions of this paragraph do not apply to the extent preempted by  
41 federal law.

42 5. Engage in any deceptive trade practice, as defined in chapter  
43 598 of NRS, including, without limitation, making a false  
44 representation.



1 6. Advertise or permit to be advertised in any manner any  
2 false, misleading or deceptive statement or representation with  
3 regard to the rates, terms or conditions for loans.

4 7. Use or attempt to use any agent, affiliate or subsidiary to  
5 avoid the requirements or prohibitions of this chapter.

6 **Sec. 7.** NRS 604A.450 is hereby amended to read as follows:

7 604A.450 A licensee who makes title loans shall not:

8 1. Make a title loan that exceeds the fair market value of the  
9 vehicle securing the title loan.

10 2. *Make a title loan to a customer secured by a vehicle which*  
11 *is not legally owned by the customer.*

12 3. Make a title loan without ~~regard to the ability of the~~  
13 ~~customer seeking the title loan to repay the title loan, including the~~  
14 ~~customer's current and expected income, obligations and~~  
15 ~~employment.~~

16 ~~3.]~~ *determining that the customer has the ability to repay the*  
17 *title loan, as required by section 1 of this act. In complying with*  
18 *this subsection, the licensee shall not consider the income of any*  
19 *person who is not a legal owner of the vehicle securing the title*  
20 *loan.*

21 4. Make a title loan without requiring the customer to sign an  
22 affidavit which states that:

23 (a) The customer has provided the licensee with true and correct  
24 information concerning the customer's income, obligations,  
25 employment and ownership of the vehicle; and

26 (b) The customer has the ability to repay the title loan.

27 **Sec. 8.** NRS 604A.930 is hereby amended to read as follows:

28 604A.930 1. Subject to the affirmative defense set forth in  
29 subsection 3, in addition to any other remedy or penalty, if a person  
30 violates any provision of NRS 604A.400, 604A.410 to 604A.500,  
31 inclusive, *and section 1 of this act*, 604A.610, 604A.615, 604A.650  
32 or 604A.655 or any regulation adopted pursuant thereto, the  
33 customer may bring a civil action against the person for:

34 (a) Actual and consequential damages;

35 (b) Punitive damages, which are subject to the provisions of  
36 NRS 42.005;

37 (c) Reasonable attorney's fees and costs; and

38 (d) Any other legal or equitable relief that the court deems  
39 appropriate.

40 2. Subject to the affirmative defense set forth in subsection 3,  
41 in addition to any other remedy or penalty, the customer may bring a  
42 civil action against a person pursuant to subsection 1 to recover an  
43 additional amount, as statutory damages, which is equal to \$1,000  
44 for each violation if the person knowingly:



1 (a) Operates a check-cashing service, deferred deposit loan  
2 service, high-interest loan service or title loan service without a  
3 license, in violation of NRS 604A.400;

4 (b) Fails to include in a loan agreement a disclosure of the right  
5 of the customer to rescind the loan, in violation of NRS 604A.410;

6 (c) Violates any provision of NRS 604A.420;

7 (d) Accepts collateral or security for a deferred deposit loan, in  
8 violation of NRS 604A.435, except that a check or written  
9 authorization for an electronic transfer of money shall not be  
10 deemed to be collateral or security for a deferred deposit loan;

11 (e) Uses or threatens to use the criminal process in this State or  
12 any other state to collect on a loan made to the customer, in  
13 violation of NRS 604A.440;

14 (f) Includes in any written agreement a promise by the customer  
15 to hold the person harmless, a confession of judgment by the  
16 customer or an assignment or order for the payment of wages  
17 or other compensation due the customer, in violation of  
18 NRS 604A.440;

19 (g) Violates any provision of NRS 604A.485;

20 (h) Violates any provision of NRS 604A.490; or

21 (i) Violates any provision of NRS 604A.442.

22 3. A person may not be held liable in any civil action brought  
23 pursuant to this section if the person proves, by a preponderance of  
24 evidence, that the violation:

25 (a) Was not intentional;

26 (b) Was technical in nature; and

27 (c) Resulted from a bona fide error, notwithstanding the  
28 maintenance of procedures reasonably adapted to avoid any such  
29 error.

30 4. For the purposes of subsection 3, a bona fide error includes,  
31 without limitation, clerical errors, calculation errors, computer  
32 malfunction and programming errors and printing errors, except that  
33 an error of legal judgment with respect to the person's obligations  
34 under this chapter is not a bona fide error.

35 **Sec. 9.** Any contract or agreement entered into pursuant to  
36 chapter 604A of NRS before July 1, 2017, remains in effect in  
37 accordance with the provisions of the contract or agreement.

38 **Sec. 10.** This act becomes effective on July 1, 2017.

