AN ACT relating to financial services; prohibiting a person who is licensed to operate certain loan services from making certain short-term loans to a customer under certain circumstances; requiring the Commissioner of Financial Institutions to develop, implement and maintain a database storing certain information relating to short-term loans made to customers in this State; providing that information in such a database is confidential; revising requirements for the contents of written loan agreements between licensees and customers; revising various provisions governing short-term loans; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law establishes standards and procedures for the licensing and regulation of certain short-term loans. (Chapter 604A of NRS) Existing law: (1) prohibits a licensee who makes deferred deposit loans, single-advance, single-payment loans or high-interest loans from making more than one such loan to the same customer at one time or before any outstanding balance on an existing loan made by that licensee to the customer is paid in full unless certain conditions are satisfied; and (2) limits the circumstances under which certain new short-term loans may be used to pay off certain outstanding loans. (NRS 604A.430, 604A.480) Section 11 of this bill repeals these provisions of existing law and, instead, section 3 of this bill prohibits a licensee from making a deferred deposit loan, single-advance, single-payment loan or high-interest loan to a customer if: (1) the customer has such a loan outstanding with any licensee; or (2) has had such a loan.
outstanding with any licensee within the 45 days immediately preceding the making
of the loan. To determine whether making a loan would violate this prohibition,
section 3 requires a licensee to search the database developed, implemented and
maintained by the Commissioner of Financial Institutions pursuant to section 4 of
this bill. Section 8 of this bill requires a written loan agreement between a licensee
and a customer for a deferred deposit loan, single-advance, single-payment loan or
high-interest loan to include a signed statement by the customer, certifying that the
customer does not have such a loan outstanding and has not had such a loan
outstanding within the 45 days immediately preceding the making of the loan.
Section 4 of this bill requires the Commissioner of Financial Institutions to
develop, implement and maintain, by contract with a vendor or service provider or
otherwise, a database of all deferred deposit loans, single-advance, single-payment
loans and high-interest loans made in this State. Under section 4, a licensee who
makes such loans must enter and update certain information concerning each
deferred deposit loan, single-advance, single-payment loan or high-interest loan
made by the licensee. Section 4 further requires the Commissioner to charge and
collect a fee from a licensee who is required to enter information into the database
to pay for the administration and operation of the database.

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

Section 1. Chapter 604A of NRS is hereby amended by
adding thereto the provisions set forth as sections 2, 3 and 4 of this
act.

Sec. 2. “Single-advance, single-payment loan” means a
transaction in which, pursuant to a loan agreement, a customer is
given a single advance equal to the amount financed with payment
in full due within 35 days after the date of the transaction.

Sec. 3. 1. A licensee shall not make a deferred deposit loan,
single-advance, single-payment loan or high-interest loan to a
customer who:
   (a) Currently has such a loan outstanding with the licensee or
another licensee; or
   (b) Has had any such loan outstanding with the licensee or
another licensee within the 45 days immediately preceding the
making of the loan.

2. Before making a deferred deposit loan, single-advance,
single-payment loan or high-interest loan, a licensee shall search
the database created pursuant to section 4 of this act for a history
of loans made to the customer to determine whether making the
loan would violate subsection 1.

Sec. 4. 1. The Commissioner shall, by contract with a
vendor or service provider or otherwise, develop, implement and
maintain a database by which:
(a) A licensee who makes a deferred deposit loan, single-advance, single-payment loan or high-interest loan to a customer may determine:

(1) Whether the customer has a deferred deposit loan, single-advance, single-payment loan or high-interest loan outstanding with any licensee;

(2) Whether the customer has had a deferred deposit loan, single-advance, single-payment loan or high-interest loan outstanding with any licensee within the immediately preceding 45 days;

(3) Whether the customer entered into a repayment plan pursuant to NRS 604A.475 for a deferred deposit loan, single-advance, single-payment loan or high-interest loan; and

(4) Any other information necessary to comply with the provisions of this chapter.

(b) The Commissioner may determine the original dollar amount of each deferred deposit loan, single-advance, single-payment loan or high-interest loan.

2. Any information entered into or stored by the database created pursuant to subsection 1 must be:

(a) Accessible to and usable by any licensee in this State; and

(b) Protected from fire, theft, loss, destruction, other hazards and unauthorized access.

3. After the development and implementation of the database created pursuant to subsection 1, a licensee making a deferred deposit loan, single-advance, single-payment loan or high-interest loan shall:

(a) Enter and update the information set forth in subsection 1 for each such loan made to a customer; and

(b) Within 10 business days after ceasing to make such loans pursuant to this chapter, submit a plan to the Commissioner for approval, outlining the manner in which the licensee will continue to comply with this section as long as any such loan made by the licensee is outstanding.

4. The Commissioner shall charge and collect a fee from each licensee required to enter information into the database pursuant to subsection 3 for the operation and administration of the database.

5. Any information in the database created pursuant to subsection 1 is confidential and shall not be considered a public book or record pursuant to NRS 239.010. The information may be used by the Commissioner for statistical purposes if the identity of the persons is not discernible from the information disclosed.

6. The Commissioner shall adopt regulations that:
(a) Prescribe the specifications for the information entered into the database;
(b) Establish standards for the retention, access, reporting, archiving and deletion of information entered into or stored by the database;
(c) Establish the amount of the fee required pursuant to this section; and
(d) Are necessary for the administration of the database.

Sec. 5. NRS 604A.010 is hereby amended to read as follows:
604A.010 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 604A.015 to 604A.125, inclusive, and section 2 of this act have the meanings ascribed to them in those sections.

Sec. 6. NRS 604A.407 is hereby amended to read as follows:
604A.407 1. Except as otherwise provided in this section, for the purposes of determining whether a loan is a high-interest loan, when determining whether a lender is charging an annual percentage rate of more than 40 percent, calculations must be made in accordance with the Truth in Lending Act and Regulation Z, 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 604A.490 or 675.365 for a check not paid upon presentment or an electronic transfer of money that fails;
(b) Interest accrued after default pursuant to paragraph (c) of subsection 1 of NRS 604A.485;
(c) Charges for an unanticipated late payment, exceeding a credit limit, or a delinquency, default or similar occurrence; and
(d) 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 high-interest loan and must not be used in compliance with the disclosure requirements of paragraph (h).
of subsection 2 of NRS 604A.410 or any other provisions of this chapter requiring disclosure of an annual percentage rate in the making of a loan.

Sec. 7. NRS 604A.408 is hereby amended to read as follows:

604A.408 1. Except as otherwise provided in this chapter, the original term of a deferred deposit loan or high-interest loan must not exceed 35 days.

2. The original term of a high-interest loan may be up to 90 days if:

(a) The loan provides for payments in installments;
(b) The payments are calculated to ratably and fully amortize the entire amount of principal and interest payable on the loan;
(c) The loan is not subject to any extension; and
(d) The loan does not require a balloon payment of any kind.

3. [Notwithstanding the provisions of NRS 604A.480, a licensee shall not agree to establish or extend the period for the repayment, renewal, refinancing or consolidation of an outstanding deferred deposit loan or high-interest loan for a period that exceeds 90 days after the date of origination of the loan.

4. The provisions of subsections 1 and 2 do not apply to a deferred deposit loan or high-interest loan if the licensee:

(a) Makes the deferred deposit loan or high-interest loan to a customer pursuant to a loan agreement which, under its original terms:

(1) Charges an annual percentage rate of less than 200 percent;
(2) Requires the customer to make a payment on the loan at least once every 30 days;
(3) Requires the loan to be paid in full in not less than 150 days; and
(4) Provides that interest does not accrue on the loan at the annual percentage rate set forth in the loan agreement after the date of maturity of the loan;

(b) Performs a credit check of the customer with a major consumer reporting agency before making the loan;
(c) Reports information relating to the loan experience of the customer to a major consumer reporting agency;
(d) Gives the customer the right to rescind the new deferred deposit loan or high-interest loan within 5 days after the loan is made without charging the customer any fee for rescinding the loan;

(e) Participates in good faith with a counseling agency that is:

(1) Accredited by the Council on Accreditation of Services for Families and Children, Inc., or its successor organization; and
(2) A member of the National Foundation for Credit Counseling, or its successor organization; and
(f) Does not commence any civil action or process of alternative dispute resolution on a defaulted loan or any extension or repayment plan thereof.

Sec. 8. NRS 604A.410 is hereby amended to read as follows:

604A.410 1. Before making any loan to a customer, a licensee shall provide to the customer a written loan agreement which may be kept by the customer and which must be written in:
(a) English, if the transaction is conducted in English; or
(b) Spanish, if the transaction is conducted in Spanish.

2. The loan agreement must include, without limitation, the following information:
(a) The name and address of the licensee and the customer;
(b) The nature of the security for the loan, if any;
(c) The date and amount of the loan, amount financed, annual percentage rate, finance charge, total of payments, payment schedule and a description and the amount of every fee charged, regardless of the name given to the fee and regardless of whether the fee is required to be included in the finance charge under the Truth in Lending Act and Regulation Z;
(d) A statement, signed by the customer, certifying that the customer does not have outstanding with any licensee a deferred deposit loan, single-advance, single-payment loan or high-interest loan and has not had such a loan outstanding within the 45 days immediately preceding the making of the loan;
(e) A disclosure of the right of the customer to rescind a loan pursuant to the provisions of this chapter;
(f) A disclosure of the right of the customer to pay his or her loan in full or in part with no additional charge pursuant to the provisions of this chapter;
(g) A disclosure stating that, if the customer defaults on the loan, the licensee must offer a repayment plan to the customer before the licensee commences any civil action or process of alternative dispute resolution or, if appropriate for the loan, before the licensee repossesses a vehicle; and
(h) Any other disclosures required under the Truth in Lending Act and Regulation Z or under any other applicable federal or state statute or regulation.

Sec. 9. NRS 604A.485 is hereby amended to read as follows:

604A.485 1. If a customer defaults on a loan or on any extension or repayment plan relating to the loan, whichever is later, the licensee may collect only the following amounts from the customer, less all payments made before and after default:
(a) The unpaid principal amount of the loan.
(b) The unpaid interest, if any, accrued before the default at the annual percentage rate set forth in the disclosure statement required by the Truth in Lending Act and Regulation Z that is provided to the customer. If there is an extension, in writing and signed by the customer, relating to the loan, the licensee may charge and collect interest pursuant to this paragraph for a period not to exceed 60 days after the expiration of the initial loan period. [unless otherwise allowed by NRS 604A.480.]

(c) The interest accrued after the expiration of the initial loan period or after any extension or repayment plan that is allowed pursuant to this chapter, whichever is later, at an annual percentage rate not to exceed the prime rate at the largest bank in Nevada, as ascertained by the Commissioner, on January 1 or July 1, as the case may be, immediately preceding the expiration of the initial loan period, plus 10 percent. The licensee may charge and collect interest pursuant to this paragraph for a period not to exceed 90 days. After that period, the licensee shall not charge or collect any interest on the loan.

(d) Any fees allowed pursuant to NRS 604A.490 for a check that is not paid upon presentment or an electronic transfer of money that fails because the account of the customer contains insufficient funds or has been closed.

The sum of all amounts collected pursuant to paragraphs (b), (c) and (d) must not exceed the principal amount of the loan.

2. Except for the interest and fees permitted pursuant to subsection 1 and any other charges expressly permitted pursuant to NRS 604A.420, 604A.445 and 604A.475, the licensee shall not charge any other amount to a customer, including, without limitation, any amount or charge payable directly or indirectly by the customer as an incident to or as a condition of the extension of the period for the payment of the loan or the extension of credit. Such prohibited amounts include, without limitation:

(a) Any interest, other than the interest charged pursuant to subsection 1, regardless of the name given to the interest; or

(b) Any origination fees, set-up fees, collection fees, transaction fees, negotiation fees, handling fees, processing fees, late fees, default fees or any other fees, regardless of the name given to the fee.

Sec. 10. NRS 239.010 is hereby amended to read as follows:

and section 4 of this act, sections 35, 38 and 41 of chapter 478, Statutes of Nevada 2011 and section 2 of chapter 391, Statutes of Nevada 2013 and unless otherwise declared by law to be confidential, all public books and public records of a governmental entity must be open at all times during office hours to inspection by any person, and may be fully copied or an abstract or memorandum may be prepared from those public books and public records. Any such copies, abstracts or memoranda may be used to supply the general public with copies, abstracts or memoranda of the records or may be used in any other way to the advantage of the governmental entity or of the general public. This section does not supersede or in any manner affect the federal laws governing copyrights or enlarge, diminish or affect in any other manner the rights of a person in any written book or record which is copyrighted pursuant to federal law.

2. A governmental entity may not reject a book or record which is copyrighted solely because it is copyrighted.

3. A governmental entity that has legal custody or control of a public book or record shall not deny a request made pursuant to subsection 1 to inspect or copy or receive a copy of a public book or record on the basis that the requested public book or record contains information that is confidential if the governmental entity can redact, delete, conceal or separate the confidential information from the information included in the public book or record that is not otherwise confidential.

4. A person may request a copy of a public record in any medium in which the public record is readily available. An officer, employee or agent of a governmental entity who has legal custody or control of a public record:
(a) Shall not refuse to provide a copy of that public record in a readily available medium because the officer, employee or agent has already prepared or would prefer to provide the copy in a different medium.

(b) Except as otherwise provided in NRS 239.030, shall, upon request, prepare the copy of the public record and shall not require the person who has requested the copy to prepare the copy himself or herself.

Sec. 11. NRS 604A.430, 604A.480 and 604A.487 are hereby repealed.

Sec. 12. This act becomes effective:

1. On July 1, 2017, for the purpose of adopting any regulations and performing any other preparatory administrative tasks that are necessary to carry out the provisions of this act; and

2. On January 1, 2018, for all other purposes.

TEXT OF REPEALED SECTIONS

604A.430 Prohibited acts by licensee regarding multiple loans to same customer.

1. A licensee shall not make more than one deferred deposit loan, single-advance, single-payment loan or high-interest loan to the same customer at one time or before any outstanding balance is paid in full on an existing loan made by that licensee to the customer unless:
   (a) The customer is seeking multiple loans that do not exceed the limits set forth in NRS 604A.425;
   (b) The licensee charges the same or a lower fee or service charge per $100 if it is a deferred deposit loan or single-advance, single-payment loan, or the same or a lower annual percentage rate of interest if it is a high-interest loan that is not a single-advance, single-payment loan, for any additional loans as the licensee charged for the initial loan;
   (c) Except for that part of the finance charge which consists of interest only, the licensee does not impose any other charge or fee to initiate any additional loans, except that a licensee who makes deferred deposit loans or high-interest loans in accordance with the provisions of subsection 2 of NRS 604A.480 may charge a reasonable fee for preparing documents in an amount that does not exceed $50; and
   (d) If the additional loans are deferred deposit loans and the customer provides one or more additional checks that are not paid
upon presentment or one or more electronic transfers of money fail, the licensee does not charge any fees to the customer pursuant to NRS 604A.490, except for the fees allowed pursuant to that section for the first check that is not paid upon presentment or electronic transfer of money that failed.

2. As used in this section, “single-advance, single-payment loan” means a transaction in which, pursuant to a loan agreement, a customer is given a single advance equal to the amount financed with payment in full due within 35 days after the date of the transaction.

604A.480 Limitations on using proceeds of new loan to pay balance of outstanding loan; exceptions.

1. Except as otherwise provided in subsection 2, if a customer agrees in writing to establish or extend the period for the repayment, renewal, refinancing or consolidation of an outstanding loan by using the proceeds of a new deferred deposit loan or high-interest loan to pay the balance of the outstanding loan, the licensee shall not establish or extend the period beyond 60 days after the expiration of the initial loan period. The licensee shall not add any unpaid interest or other charges accrued during the original term of the outstanding loan or any extension of the outstanding loan to the principal amount of the new deferred deposit loan or high-interest loan.

2. This section does not apply to a new deferred deposit loan or high-interest loan if the licensee:

(a) Makes the new deferred deposit loan or high-interest loan to a customer pursuant to a loan agreement which, under its original terms:

(1) Charges an annual percentage rate of less than 200 percent;
(2) Requires the customer to make a payment on the loan at least once every 30 days;
(3) Requires the loan to be paid in full in not less than 150 days; and
(4) Provides that interest does not accrue on the loan at the annual percentage rate set forth in the loan agreement after the date of maturity of the loan;
(b) Performs a credit check of the customer with a major consumer reporting agency before making the loan;
(c) Reports information relating to the loan experience of the customer to a major consumer reporting agency;
(d) Gives the customer the right to rescind the new deferred deposit loan or high-interest loan within 5 days after the loan is made without charging the customer any fee for rescinding the loan;
(e) Participates in good faith with a counseling agency that is:
(1) Accredited by the Council on Accreditation of Services for Families and Children, Inc., or its successor organization; and
(2) A member of the National Foundation for Credit Counseling, or its successor organization; and
(f) Does not commence any civil action or process of alternative dispute resolution on a defaulted loan or any extension or repayment plan thereof.

604A.487 Limitations on fees licensees may charge after default on installment payments. In addition to the amounts authorized to be collected pursuant to NRS 604A.485, a licensee who makes a high-interest loan in accordance with the provisions of subsection 2 of NRS 604A.480 may charge a fee of not more than $15, payable on a one-time basis, for any installment payment that remains unpaid 10 days or more after the date of default.