IN THE SUPREME COURT OF THE

STATE OF NEVADA

THE STATE OF NEVADA DEPARTMENT OF BUSINESS AND INDUSTRY, FINANCIAL INSTITUTIONS DIVISION, Appellant, vs. DOLLAR LOAN CENTER, LLC, a DOMESTIC LIMITED-LIABILITY COMPANY, Respondent.	**Supreme Court No.** 70002 District Court Case No.: A-11-639950-C

RESPONDENT'S ANSWERING BRIEF

Patrick J. Reilly, Esq.
Nevada Bar No. 6103
Erica C. Smit, Esq.
Nevada Bar No. 13959
HOLLAND & HART LLP
9555 Hillwood Drive, Second Floor
Las Vegas, Nevada 89134
Tel: (702) 669-4600
Fax: (702) 669-4650
Email: preilly@hollandhart.com
ecsmit@hollandhart.com

Attorneys for Respondent
Dollar Loan Center

NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as required by NRAP 26.1(a), and must be disclosed. Respondent Dollar Loan Center, LLC is a Nevada limited-liability company. It is owned by DLC Empire, LLC.

The following attorneys have appeared for the Respondent:

Patrick J. Reilly and Erica C. Smit, Holland & Hart, LLP—Appeal

Patrick J. Reilly, Joseph G. Went and Nicole E. Lovelock, Holland & Hart, LLP—District Court

These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

DATED this 21st day of October, 2016.

Patrick J. Reilly, Esq.
Erica C. Smit, Esq.
HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134

Attorneys for Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

STATUTES

OTHER AUTHORITIES

JURISDICTIONAL STATEMENT

This matter falls under this jurisdiction of the Nevada Supreme Court pursuant to Rule 3A(b)(1) of the Nevada Rules of Appellate Procedure ("NRAP") as it is a final order of the Eighth Judicial District Court, entered on February 25, 2016. *See* 3 AA 463-66.

ROUTING STATEMENT

This case is presumptively retained by the Nevada Supreme Court under NRAP 17(a)(14), which applies in part to "[m]atters raising as a principal issue a question of statewide public importance." Here, this is an issue of statewide public importance. Specifically, this appeal involves an issue of first impression and statutory interpretation—whether NRS 604A.480(2)(f) prohibits a licensee from commencing a civil action or alternative dispute resolution proceedings against a debtor that is in default.

STATEMENT OF ISSUES

This case raises one issue on appeal: Whether NRS 604A.480(2)(f) prohibits licensees from initiating civil suits or alternative dispute resolution proceedings against a debtor that is in default.

INTRODUCTION

NRS Chapter 604A regulates the payday and title lending industry. There are three kinds of loans governed by Chapter 604A—title loans, deferred deposit loans, and high-interest loans. NRS 604A.415 specifically allows for the commencement of a civil action to collect on a defaulted loan, and details certain amounts that may be recovered (*i.e.*, attorney's fees and costs) in such lawsuits. The term "loan" as used in NRS 604A.415 is broad, and specifically encompasses high-interest loans. *See* NRS 604A.080. High-interest loans are limited to thirty-five days or ninety days in length, depending on how they are structured. *See* NRS 604A.408. With certain exceptions, Nevada law generally prohibits a borrower from taking out a new loan to pay off an existing loan. *See* NRS 604A.430(1).

Two of those exceptions are set forth in NRS 604A.480. The rule is split into two parts. NRS 604A.480(1) allows a borrower to enter into a written agreement "to establish or extend the period for repayment, renewal, refinancing or consolidation of an outstanding loan by using the proceeds of a new . . . loan to pay off the balance of the outstanding loan . . . ." NRS 604A.480(1) [hereinafter a "Subsection 1 Loan"]. Subsection 1 Loans are limited to sixty (60) days in duration and include other limitations. A Subsection 2 Loan is longer in duration (up to 150 days), but there are caps on the amount of interest, and several other

conditions precedent a lender must satisfy before being eligible to offer a borrower a Subsection 2 Loan.

One of these conditions precedent is contained in paragraph (f), which is the provision at issue in this appeal. Paragraph (f) provides that the repayment limitation of NRS 604A.480 "does not apply . . . if the licensee . . . [d]oes not commence any civil action or process of alternative dispute resolution on a defaulted loan or any extension or repayment plan thereof."

The Financial Institutions Division (the "FID") contends that NRS 604A.480(2)(f) operates as a *blanket prohibition* to sue on any and all high-interest loans and deferred deposit loans, regardless of whether or not a there is a Subsection 1 Loan or a Subsection 2 Loan entered into by the borrower. *See* 1 AA 154: 5-11.

Respondent Dollar Loan Center's interpretation, which aligns with that of the Legislative Counsel Bureau, is that subparagraph (f) prohibits a licensee from offering a Subsection 2 Loan if the licensee has already filed a lawsuit or alternative dispute resolution proceeding against a borrower. NRS 604A.480(2)(f) does not operate as a blanket prohibition on the licensee's right to sue on the loan, and does not prohibit a licensee from suing if the borrower later defaults on a Subsection 2 Loan. The District Court rejected the FID's view based on its

interpretation of NRS 604A.480. Dollar Loan Center respectfully requests that this Court affirm the District Court's order.

STATEMENT OF THE FACTS AND CASE

I. Enactment of A.B. 384 and its Legislative History.

In 2005, the Nevada Legislature adopted a comprehensive overhaul to payday and title lending. Assembly Bill ("A.B.") 384 resulted in the creation of NRS Chapter 604A, including the statute at issue in this appeal, NRS 604A.480. *See* A.B. 384, 73d Leg. (Nev. 2005); 2005 Nev. Stat., ch. 414, § 43, at 1696-97. Among the provisions in this chapter, NRS 604A.415 expressly empowers a lender to collect on a defaulted loan, which includes the right to commence a civil action to collect upon that loan. With certain exceptions, NRS 604A.430(1) generally prohibits a borrower from taking out a new loan to pay off an existing loan.

NRS 604A.480 regulates the conditions upon which a borrower may enter into a written agreement "to establish or extend the period for repayment, renewal, refinancing or consolidation of an outstanding loan by using the proceeds of a new . . . loan to pay off the balance of the outstanding loan . . . ." Generally, deferred deposit loans and high-interest loans[1] are limited to thirty-five days. *See*

---

[1]Deferred deposit loans are loans in exchange for a post-dated check, whereas high-interest loans are loans in exchange for a promissory note. *See* Hearing on A.B. 478 Before the Assembly Comm. on Commerce & Labor, 74th Leg. (Nev., March 28, 2007); *see also* NRS 604A.050; NRS 604A.0703.

NRS 604A.408(1). In some cases, however, a borrower may not be able to repay his or her debt within thirty-five days and, thus, takes out a new loan to pay off his or her outstanding loan. This is when NRS 604A.480 is implicated.

NRS 604A.480 is split into two subsections: Subsection 1 and Subsection 2. Subsection 1 sets forth the general limitations that apply to a licensee (lender) when a borrower agrees to establish or extend 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." NRS 604A.480(1). As part of an agreement entered into under Subsection 1, the licensee "shall not": (1) "establish or extend the period beyond 60 days after the expiration of the initial loan period"; and (2) "add any unpaid interest or other charges accrued during the original terms 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." *Id.*

Subsection 2 provides an exception to the Subsection 1 requirements, allowing a licensee to offer a new loan to pay off an outstanding loan without being subject to the sixty-day limitation or prohibition on adding unpaid interest from the original loan to the principal of the new loan. However, a licensee can only be exempt from the Subsection 1 requirements if the licensee meets the conditions precedent listed in Subsection 2. Among these conditions is paragraph (f), which provides that a licensee may be exempt from the restrictions of

Subsection 1 if the licensee "[d]oes not commence any civil action or process of alternative dispute resolution on a defaulted loan or any extension or repayment plan thereof." NRS 604A.480(2)(f).

In 2007, the Legislature amended NRS 604A.480 by adding, among other things, the adjective "new" before deferred deposit and high interest loan in certain provisions. *See* 2007 Nev. Stat., ch. 265, § 22, at 940-41; A.B. 478, 74th Leg. (Nev., 2007). The adjective "new" appears to have been added to clarify that the restrictions of subsection 2 were applicable solely to a Subsection 2 Refinance Loan, and not to the original loan. 2007 Nev. Stat., ch. 265, § 22, at 941.

II. Conflicting Interpretations of Subsection 2, Paragraph (f).

Excluding the District Court, there have been three interpretations of NRS 604A.480, including an FID advisory opinion, an Attorney General opinion, and an opinion from the Legislative Counsel Bureau ("LCB"). In 2009, the FID issued a "Declaratory Order and Advisory Opinion Regarding the Mandatory Disclosures for Loans Pursuant to NRS 604A.480." 1 AA 163. Although the FID's analysis focused on a different, but related, issue, the FID concluded in dicta that "civil action and alternative dispute resolution are specifically prohibited in loans made pursuant to NRS 604A.480." *Id.* at 167.

In 2011, upon request from a member of the State assembly, the LCB issued its opinion on NRS 604A.480(2)(f). *Id.* at 7. The question presented was

> whether the provisions of NRS 604A.480 prohibit a licensee under chapter 604A of NRS from commencing a civil action or process of alternative dispute resolution against a customer upon his or her default on a new deferred deposit loan or high-interest loan which is made by the licensee in compliance with the conditions of subsection 2 of NRS 604A.480 and used to pay the balance of an outstanding loan of the customer.

Id. The LCB concluded "paragraphs (a) to (f), inclusive, of subsection 2 of NRS 604A.480 are not affirmative prohibitions against a licensee, but are conditions with which a licensee must comply to qualify for exemption from the general requirements of subsection 1 . . . ." *Id.* at 8. Because the LCB opined that paragraphs (a) to (f) are conditions precedent, the LCB determined that paragraph (f) "does not impose upon a licensee a prohibition against commencing any civil action or process of alternative dispute resolution against a customer who subsequently defaults on a new deferred deposit or high-interest loan . . . ." *Id.* at 8-9.

In 2012, the Attorney General's Office issued an informal and unpublished opinion interpreting NRS 604A.480(2)(f), which agreed with the FID. *Id.* at 157. However, the analysis was extremely limited, as it deferred to the FID's interpretation without conducting its own independent analysis. *Id.* at 159-60. The Attorney General concluded paragraph (f) barred a licensee from commencing civil action or alternative dispute resolution to collect on an outstanding loan and a new loan. *Id.* at 160. Although the Attorney General maintained that the statute is

plain, it argued that two policies from the legislative history support its interpretation: (1) to avoid borrowers from entering a "debt treadmill"; and (2) to ensure licensees only lend what a borrower can repay. *Id.* at 160-61. No specific discussions from the legislative history or statutory analysis were included, and the Attorney General did not address the LCB's opinion that paragraphs (a)-(f) of Subsection 2 were simply conditions precedent for a lender to be exempt from Subsection 1.

III. Proposals to Amend Subsection 2, Paragraph (f).

In 2011, a representative of DLC proposed A.B. 541, which would have amended paragraph (f) to clarify the statute. *See* Hearing on A.B. 541 Before the Assembly Comm. on Commerce & Labor, 76th Leg. (Nev., April 6, 2011) ("[W]e are here today to request a clarification of language."). An assemblyman questioned whether such a clarification was even necessary. *Id.* at 9. The DLC representative responded: "There has been a difference in interpretation between different entities about this chapter and we are looking for your clarification."[2] *Id.* An assemblywoman stated that she "would like our staff to look into that," which

---

[2]The FID misconstrues the legislative history, stating DLC "conceded" that paragraph (f) bars civil suits on a new deferred deposit loan. AOB 10. However, the legislative history makes clear DLC sought clarification based on the differing interpretations of paragraph (f). *See* Hearing on A.B. 541 Before the Assembly Comm. on Commerce & Labor, 76th Leg., at 9 (Nev., April 6, 2011).

likely gave rise to the LCB opinion. *Id.* at 10. Without further substantive discussion, the hearing closed, and A.B. 541 subsequently died in committee.

In 2015, with conflicting opinions from the FID, Attorney General, and LCB, another clarifying proposal was offered for paragraph (f). S.B. 123, 78th Leg. (Nev. 2015); *see* Hearing on S.B. 123 Before the Senate Comm. on Commerce, Labor & Energy, 78th Leg., at 7 (Nev., Feb. 13, 2015) (demonstrating DLC representative was seeking clarification because "[t]here are two legal opinions issued on this matter. One from the Legislative Counsel Bureau (LCB) as represented by Mr. Yu, and one from the Office of the Attorney General, which indicates the opposite conclusion."). The 78th Legislature did not have a clear consensus on the parameters of paragraph (f). Rather, legislators asked DLC's representative[3]: "Are you saying that without this bill, you will not be able to take people to court, and with it, you will?" *Id.* at 8; *see also id.* at 13 (*Senator*: "Are your members ever allowed to go to court, including small claims court, by statute?" *Mr. Alonso of Community Financial Services Association of America*:

---

[3]DLC was not privy to the negotiations with Barbara Buckley when A.B. 384 was originally enacted in 2005. Thus, DLC's interpretation and request for clarification is not instructive on the intent of the Legislature. *See* Hearing on S.B. 123 Before the Senate Comm. on Commerce, Labor & Energy, 78th Leg. (Nev., Feb. 13, 2015) ("In 2007, there was a deal made when NRS 604A.480 was crafted; Dollar Loan Center was not part of that deal").

"We do not go to court even if the statute allows it." *Senator*: "Who is allowed to go to court by statute?" *Mr. Alonso*: "I would have to check the statutes.").

In a subsequent hearing, the Committee Chair clarified with the LCB that licensees *do* have a remedy at law and, thus, S.B. 123 was unnecessary. *See* Hearing on S.B. 123 Before the Senate Comm. on Commerce, Labor & Energy, 78th Leg., at 25 (Nev., March 16, 2015); 1 AA 41-42. Counsel for the LCB testified that lenders do have a right to seek access to the courts as a remedy at law. 1 AA 41. Thus, the Legislature determined: "With clarification from counsel, it is determined that S.B. 123 is no longer relevant. I will now close the work session on S.B. 123." *Id.* at 42. S.B. 123 subsequently died in committee.

IV. The Underlying Action Between DLC and the FID.

On July 6, 2015, after receiving inconsistent interpretations of NRS 604A.480(2)(f), DLC filed its declaratory relief action against the FID to obtain a judicial interpretation of paragraph (f). 1 AA 2-5. On September 15, 2015, the parties stipulated to convert the civil action to a proceeding as set forth in NRS 29.010, which meant that the parties agreed that there was a good faith dispute regarding the interpretation of NRS 604A.480 and would submit briefing to the district court solely on that issue. *Id.* at 57-58. Both parties submitted their briefs to the district court on October 13, 2015. *Id.* at 79-86, 148-55. On January 28, 2016, the district court held a hearing, in which it "stated it was persuaded by the

Plaintiff's [Dollar Loan Center's] position." 3 AA 460. Accordingly, on February 24, 2016, the district court entered its order and judgment in favor of Dollar Loan Center. *Id.* at 463-66. The FID filed its notice of appeal on March 16, 2016. *Id.* at 489-90.

SUMMARY OF THE ARGUMENT

NRS 604A.480 does not create a blanket prohibition against the filing of lawsuits and alternative dispute resolution ("ADR") proceedings on defaulted loans. Such a position contradicts NRS 604A.415, which plainly provides for the commencement of civil actions upon defaulted loans made under NRS Chapter 604A. The plain language of NRS 604A.480 directs that paragraphs (a) through (f) are merely conditions precedent for a licensee to qualify to offer a Subsection 2 Loan. Under the canons of statutory construction, this Court should adopt DLC's interpretation because it gives effect to every word in paragraph (f), it comports with the statute and chapter as a whole, and it is reflective of the Legislature's specific amendments to Subsection 2.

Even if this Court determined paragraph (f) was ambiguous, the legislative history also supports DLC's interpretation. Though the legislative history at the time of enactment of paragraph (f) is silent regarding its ramifications, this silence is instructive because any waiver of a licensee's rights to sue would certainly have been debated, as A.B. 384 was the product of extensive collaboration with the

lending industry. More telling, however, is the subsequent legislative history, which expressly shows how the Legislature interpreted paragraph (f), which aligned with the LCB's (and DLC's) interpretation. Thus, paragraph (f) prohibits a licensee from offering a Subsection 2 loan if the licensee has already sued a borrower on the original, defaulted loan—nothing more.

STANDARD OF REVIEW

A de novo standard of review applies because this case involves the interpretation of NRS 604A.480(2)(f). *See Zohar v. Zbiegien*, 130 Nev., Adv. Op. 74, 334 P.3d 402, 405 (2014) ("[W]e review issues of statutory interpretation de novo."). "Questions of law, including the administrative construction of statutes, are subject to independent appellate review." *Harrah's Operating Co. v. State, Dep't of Taxation*, 130 Nev., Adv. Op. 15, 321 P.3d 850, 852 (2014); *State, DMV v. Taylor-Caldwell*, 126 Nev. 132, 134, 229 P.3d 471, 472 (2010).

When a statute is clear on its face, this Court "will not look beyond its plain language." *Zohar*, 130 Nev., Adv. Op. 74, 334 P.3d at 405. However, "when a statute is susceptible to more than one reasonable interpretation, it is ambiguous, and this court must resolve that ambiguity by looking to the statute's legislative history and construing the statute in a manner that conforms to reason and public policy." *Id.* (internal quotation marks omitted).

When interpreting an ambiguous statute, this Court's primary consideration is the Legislature's intent. *See Hardy Co. v. SNMARK, LLC*, 126 Nev. 528, 533, 245 P.3d 1149, 1153 (2010). This Court also "has a duty to construe statutes as a whole, so that all provisions are considered together and, to the extent practicable, reconciled and harmonized." *Id.* at 534, 245 P.3d at 1153. Thus, this Court "will not render any part of the statute meaningless, and will not read the statute's language so as to produce absurd or unreasonable results." *Id.*

ARGUMENT

I. The Plain Language of Paragraph (f) Does Not Apply to New Loans.

The FID inexplicably posits that Subsection (2)(f) of NRS 604A.480 operates as a blanket prohibition against the commencement of any civil action or alternative dispute resolution proceeding in the event of a default, even a default on a loan that has never been refinanced under NRS 604A.480. This position is directly contradicted by NRS 604A.415, which expressly provides for a right of action in the event of a default on a loan. The FID also fails to recognize that NRS 604A.480 is limited by its very terms to instances in which a borrower seeks to repay an existing loan by taking out a new loan. No plausible interpretation can be made where NRS 604A.480(2)(f) can be applied to prevent an action to recover on the original loan, and the FID offers no authority justifying such an obvious attempted rewrite of NRS Chapter 604A.

NRS 604A.480 merely limits the use of proceeds of a new loan to pay the balance of an outstanding loan, with some exceptions. NRS 604A.480 states:

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.

Under the plain language of the statute, there are four grounds to support the LCB and DLC's interpretation that paragraph (f) means a licensee cannot offer a Subsection 2 loan if the licensee has already commenced a civil action or process of alternative dispute resolution ("ADR") against the borrower on the outstanding loan, and it does not prohibit such action on an original loan or a new Subsection 2 Loan.

A. The FID's Interpretation Renders Part of Paragraph (f) Meaningless.

First, the FID's interpretation that paragraph (f) bars civil suits or ADR on a new Subsection 2 loan would render the language "any extension . . . thereof" meaningless because a licensee cannot offer an additional extension on a Subsection 2 loan. *See Hardy*, 126 Nev. at 534, 245 P.3d at 1153 (stating this Court "will not render any part of the statute meaningless"). NRS 604A.408 limits

the original term of a deferred deposit loan or high-interest loan to 35 days, but allows loans to be up to 90 days if, among other things, "[t]he loan is not subject to any extension." NRS 604A.408(2)(c). NRS 604A.480 provides the only exception to this 90-day limitation. *See* NRS 604A.408(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.").

Loans made under NRS 604A.480 may not be extended beyond the terms provided in each subsection. Subsection 1 only provides a period of repayment on the new loan to be an additional 60 days after the expiration of the initial loan period. Subsection 2 Loans allow a period of repayment up to 150 days. Beyond these dates listed in Subsections 1 and 2, a licensee cannot further extend a loan under either of these subsections because it would violate NRS 604A.408. Thus, the FID's interpretation that paragraph (f), which states a "defaulted loan or any extension or repayment plan thereof," applies to a new deferred deposit loan or high-interest loan is wrong because it would render "any extension" meaningless as Subsection 2 loans cannot be extended. Because this Court gives effect to every word in a statute, DLC's interpretation should be adopted because it does not render meaningless any part of Subsection 2. *See JED Prop. v. Coastline RE*

Holdings NV Corp., 131 Nev., Adv. Op. 11, 343 P.3d 1239, 1240-41 (2015); Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 174 (Thomson/West 2012) ("[E]very word and every provision is to be given effect (*verba cum effectu sunt accipienda*).").

B. NRS 604A.480 Must Be Read as a Whole.

When reading Subsection 2 as a whole,[4] it is clear that paragraphs (a) through (f) are conditions precedent for a licensee to qualify to offer a Subsection 2 loan. The use of active verbs in paragraphs (a) through (f) demonstrates a licensee's present obligations instead of future obligations. *Cf. Jordon v. N.Y. Mercantile Exch.*, 571 F. Supp. 1530, 1556 (S.D.N.Y. 1983) (recognizing the use of an "active verb suggests a deliberate effort to avoid placing an affirmative duty on exchanges concerning the terms of their future contracts"), *aff'd in part, rev'd in part*, 735 F.2d 653 (2d Cir. 1984). All six paragraphs speak in terms of an obligation the licensee has at the time it enters into the Subsection 2 Loan. Thus, to qualify for a Subsection 2 Loan, a licensee must have satisfied the following: (a) make the loan less than 200 percent interest and not longer than 150 days with a payment at least once per thirty days; (b) perform a credit check before making the

---

[4]Going beyond Subsection 2, NRS 604A.480(2)(f) should be read in harmony with other provisions of the chapter. For instance, NRS 604A.415 allows a licensee to commence a civil action to collect a debt. However, it does not provide any limitations for a licensee that lends under Subsection 2.

loan; (c) report the loan information to a consumer reporting agency; (d) give the borrower the right to rescind the loan within five days; (e) participate with certain counseling agencies; and (f) not have filed a lawsuit or other ADR proceedings on the original, outstanding loan and any extensions or repayment plans thereto.

These paragraphs essentially serve as prerequisites for a licensee to offer a longer loan than Subsection 1 allows, which is evident by the careful verb choice the Legislature used throughout Subsection 2. For instance, paragraph (d) states: "Gives the customer the right to rescind the new [loan] within 5 days after the loan is made without charging the customer any fee for rescinding the loan." This paragraph is worded such that the licensee has an obligation at the time of entering into the Subsection 2 loan. The Legislature could have worded paragraph (d) to provide the customer a future right, such as stating: "The customer has the right to rescind the new loan within 5 days." Instead, however, to parallel the language of the other paragraphs, the Legislature worded the statute to provide a present obligation at the time of entering the new Subsection 2 loan, rather than a future obligation. Paragraph (f) is no exception.

Here, the FID argues that "[a] Subsection 2 loan must be considered an 'extension or repayment plan' of a 'defaulted' payday loan if Subsection 2 of NRS 604A.480 is to be read consistently with Subsection 1." AOB 22. This is wrong. NRS 604A.065 defines extension to mean "any extension or rollover of a loan

beyond the *date* on which the loan is required to be paid in full under the original terms of the loan agreement." (emphasis added). Extensions are limited to affecting the due date and do not affect other terms of the original loan. A loan under NRS 604A.480, on the other hand, is treated as a "new" loan by the very terms of the statute: "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*." NRS 604A.480(1) (emphasis added). Subsection 2 similarly refers to the transaction as a "new" loan. If a "new deferred deposit loan or high-interest loan" were considered an "extension," the Legislature would not have specifically referred to "extension" separately.[5]

Additionally, a Subsection 2 Loan is not considered a "repayment plan." NRS 604A.475 specifically governs repayment plans, which a licensee *must* offer to a debtor before filing a lawsuit or initiating ADR proceedings. Unlike a repayment plan, however, a licensee is not required to enter into a Subsection 2 loan, and the terms of a repayment plan differ from those of a Subsection 2 loan.

---

[5]The FID argues, because paragraph (f) bans "*any* civil action" on "*any* extension," it must be applied to a Subsection 2 Loan. This is incorrect. First, a Subsection 2 Loan is not an "extension." Second, paragraph (f) references a "defaulted loan or any extension or repayment plan *thereof*." (emphasis added). The extension is related to the "defaulted loan," which under Subsection 2 is the original, initial loan that the debtor is borrowing a new loan to pay the balance of.

Thus, a Subsection 2 loan is neither an "extension" or "repayment plan" as both of those terms are statutorily defined and said definitions do not encompass a Subsection 2 loan.

C. The 2007 Amendments to Subsection 2 Are Instructive.

The FID's argument that paragraph (f) prohibits a licensee from initiating a lawsuit or ADR proceeding to collect on a new deferred deposit or high-interest loan is defeated by the 2007 amendments to NRS 604A.480. In 2007, the Legislature amended NRS 604A.480 by adding, among other things, the adjective "new" before deferred deposit and high interest loan in certain provisions. *See* 2007 Nev. Stat., ch. 265, § 22, at 940-41; A.B. 478, 74th Leg. (Nev., 2007). Notably, the adjective "new" was not added to paragraph (f), which specifically refers to a "defaulted" loan. Also, the Legislature specifically stated "the new deferred deposit loan or high-interest loan" in Section 2, paragraph (a), and paragraph (d), but did not include that term in paragraph (f). Thus, the Legislature clarified in 2007 which provisions relate solely to the "new deferred deposit loan or high-interest loan" by adding the adjective "new." The Legislature's decision not to include the same term in paragraph (f) is telling. *See, e.g., State v. Javier C.*, 128 Nev., Adv. Op. 50, 289 P.3d 1194, 1197 (2012) ("Nevada follows the maxim 'expressio unius est exclusion alterius,' the expression of one thing is the exclusion of another.").

D. The FID's Interpretation Leads to Absurd Results.

"[A] statute should always be construed to avoid absurd results." *GES, Inc. v. Corbitt*, 117 Nev. 265, 270, 21 P.3d 11, 14 (2001). Here, the FID's interpretation that paragraph (f) bars a licensee from suing "on the original or refinanced loan" leads to absurd results. AOB 3.

For instance, if a licensee can sue to collect on an original loan, but the licensee would waive that right—and the right to sue on the new loan—by offering a Subsection 2 loan, the licensee would have no incentive to refinance the original loan knowing that it has no recourse if the borrower defaults. This interpretation actually encourages licensees to sue on original loans instead of offering refinancing options because licensees would avoid "waiving" their rights to collect on a debt. Also, a borrower would never have an incentive to repay a Subsection 2 Loan if he or she knew that the licensee could not sue or initiate ADR proceedings.

II. If Ambiguous, the Legislative History Supports DLC's Interpretation.

When interpreting an ambiguous statute, this Court's primary consideration is the Legislature's intent. *See Hardy Co. v. SNMARK, LLC*, 126 Nev. 528, 533, 245 P.3d 1149, 1153 (2010). To determine what the framers intended, this Court "will look to the provision's legislative history and the scheme as a whole." *Clark Cty. v. S. Nev. Health Dist.*, 128 Nev., Adv. Op. 58, 289 P.3d 212, 215 (2012) (internal quotation marks omitted). This Court construes the statute to conform "to

reason and public policy" and examines it in "the context and the spirit of the law or the causes which induced the legislature to enact it." *See Valenti v. State, Dep't of Motor Vehicles*, 131 Nev., Adv. Op. 87, 362 P.3d 83, 85 (2015); *Clark Cty.*, 128 Nev., Adv. Op. 58, 289 P.3d at 215. However, it is a "false notion that the spirit of a statute should prevail over its letter." Scalia & Garner, *supra*, at 343.

In this case, the legislative history defeats the FID's argument. First, the 2005 and 2007 Legislatures were silent on the meaning of paragraph (f).[6] While the Legislature considered the impact payday and title lending have on the judicial system, the Legislature never stated that paragraph (f) deprives lenders of their right to commence a civil action or initiate ADR proceedings to collect on a debt. Such a substantial deprivation of the constitutional rights of an entire class of lenders would certainly have been discussed. Rather, testimony made clear that the court system is usually the only recourse lenders have to collect on a defaulted loan. *See* Hearing on A.B. 478 Before the Senate Comm. on Commerce & Labor, 74th Leg. (Nev., May 10, 2007) ("Since most high-interest loans are not collateralized, the only redress the lenders have is through the court system.").

---

[6]The FID argues that the legislative history "sets forth a clear statement of the Legislature's intent" to bar the use of litigation as an enforcement and collection tool. *See* AOB 25. This is a misstatement of the legislative history, as evidenced by the fact the FID does not cite to any legislative history to support such an assertion because no such legislative history exists. This statement also completely ignores NRS 604A.415, which provides a right of civil action in the event of default on a loan.

In 2013, the Legislature passed S.B. 94, amending NRS 604A.485, which limits the amount of interest and fees licensees may collect after default. NRS 604A.485 specifically referenced NRS 604A.480, meaning that licensees may collect certain fees and interest *after* default for loans made under NRS 604A.480. The allowance of collection after default in NRS 604A.485 was not limited to Subsection 1 Loans. Rather, the legislative history to S.B. 94, coupled with NRS 604A.487, makes clear that licensees may collect certain fees and interest after default on a Subsection 2 Loan.[7] *See* Hearing on S.B. 94 Before the Assembly Comm. on Commerce & Labor, 77th Leg., at 10 (Nev., May 13, 2013). The Legal Aid Center of Southern Nevada ("LACSN") testified that a licensee under a Subsection 2 loan should be allowed to collect a fee *after* default because such loans are the "more consumer-friendly business model" as interest charges are less than 200 percent. *Id.* The LACSN representative then listed off the "other conditions" of a Subsection 2 Loan to demonstrate to the Legislature why said

---

[7]Clearly, NRS 604A.485 and NRS 604A.487 allow licensees to collect certain fees and interest *after* default on a Subsection 2 loan, while NRS 604A.415 allows licensees to commence a civil action to collect upon a debt. Under the FID's interpretation, which would prohibit licensees from filing a lawsuit or initiating ADR proceedings, it is not clear how a licensee would be able to collect its debt. The Legislature would not have included specific provisions for licensees under Subsection 2 loans regarding what they can collect *after* default if a licensee is prohibited from collecting on a Subsection 2 loan.

loans are the "more consumer-friendly business model."[8] *Id.* Notably absent from the list of other conditions is the alleged prohibition on a licensee from filing a lawsuit or initiating ADR proceedings. *See id.*

Most telling of the Legislature's intent regarding paragraph (f) is its refusal to consider S.B. 123 in 2015 after learning from the LCB that paragraph (f) does not constitute a prohibition on a licensee's right to file a lawsuit or initiate ADR proceedings. *See* Hearing on S.B. 123 Before the Senate Comm. on Commerce, Labor & Energy, 78th Leg., at 25 (Nev., March 16, 2015) ("With clarification from counsel, it is determined that S.B. 123 is no longer relevant. I will now close the work session on S.B. 123."); 1 AA 41-42. The Legislature was well aware that the Attorney General had a conflicting opinion, and it still decided to let S.B. 123 die in committee after concluding it "is no longer relevant." *Id.*

Because the legislative history does not support the FID's interpretation, the FID argues that the spirit and public policies of A.B. 384 were to prevent

---

[8]The LACSN was referring to the business practices of a lender that lends under Subsection 2. In one part of that lender's testimony, he stated: "With no collateral, it is typically a loan that is written off very quickly because we have no recourse through the court system." *See* Hearing on S.B. 94 Before the Assembly Comm. on Commerce & Labor, 77th Leg. (Nev., May 13, 2013). However, that lender clarified later that it does not typically pursue defaults through the court system because "the risk is so high. . . . If a consumer defaults on a $600 loan, the cost to recover that through the court system is not justified. The economics are not there." *Id.* Thus, this lender was not saying he is *prohibited by law* from filing suit. Rather, this lender was discussing how filing suit was cost prohibitive for him, as costs typically outweighed his recovery.

borrowers from entering a debt treadmill, and thus, this Court should adopt its interpretation of paragraph (f). *See* AOB 25. However, the FID's argument would have the overall spirit of A.B. 384 prevail over the letter of NRS 604A.480 and the testimony from the legislative history. *See* Scalia & Garner, *supra*, at 343 (stating it is a "false notion that the spirit of a statute should prevail over its letter"). This is improper—the public policy tail should not wag the legislative dog, and this Court should refrain from the FID's invitation to ignore principles of comity and rewrite NRS Chapter 604A in such a brazen manner.

Setting that aside, the FID's proposed public policy arguments do not support DLC's interpretation for three reasons. First, the "debt treadmill" the FID cautions against occurs when a borrower takes out one loan to pay off another, then takes out a third loan to pay off the second, and so on. NRS 604A.430 and NRS 604A.480, by their very terms, prevent the debt treadmill from ever starting. And, the commencement of a civil action has nothing to do with the debt treadmill. To the contrary, the debt treadmill *cannot* continue once a lawsuit of ADR proceeding is commenced. Indeed, Subsection 2 Loans are considered "consumer-friendly" because of their lower percentage rates and defined terms. As a result, borrowers are better protected under Subsection 2 Loans, which are designed specifically to stop borrowers from entering onto a debt treadmill.

Second, A.B. 384 was passed with extensive collaboration from the lending industry. *See* Hearing on A.B. 384 Before the Senate Comm. on Commerce & Labor, 73d Leg., at 9 (Nev., May 6, 2005) (statement of Assemblywoman Barbara Buckley that she has "been working with these industry groups for about a year" on the draft of A.B. 384); *id.* at 20 (statement of Jim Marchesi, CEO of Check City and a representative of the lending industry, approving A.B. 384). It is, therefore, more reasonable to assume that if the Legislature intended licensees under Subsection 2 to be barred from filing a lawsuit or initiating ADR proceedings to collect upon their debt, there would have been (1) great debate on the subject; (2) a stand-alone provision specifically barring civil actions and ADR proceedings; and (3) no need whatsoever for NRS 604A.415, which was enacted as part of A.B. 384. The policy of A.B. 384 was to avoid debt treadmills and abuses from excessive fees once cases are brought to litigation. However, nowhere in the history of A.B. 384 did the Legislature state that paragraph (f) constitutes a waiver of a licensee's right to file a lawsuit or to initiate ADR proceedings.

Finally, borrowers avoid a debt treadmill under the DLC's interpretation. For example, if a borrower defaults on the original loan, a licensee could file a lawsuit against the borrower. *See* NRS 604A.415. However, any interest accrued is generally limited to the length of the loan, which can be up to ninety days. *See* NRS 604A.408. If a licensee could say to a borrower, "I will drop my lawsuit if

you take out a new loan to pay the old debt and all the fees," borrowers that do so would be in a worse position (*i.e.*, a debt treadmill) because they would now be charged additional interest on the Subsection 2 loan (up to 200 percent) for a longer period of time (up to 150 days), rather than having interest cease while in default. Thus, licensees are prohibited from offering a Subsection 2 Loan if they have already commenced a civil action or initiated ADR proceedings against a debtor. This interpretation prevents borrowers from entering into a debt treadmill, while also protecting a licensee's right to collect upon a loan.

III. The FID's Prior Interpretation Is Not Entitled to Deference.

The FID argues that this Court should defer to the FID's interpretation of NRS 604A.480 because the FID is the agency charged with the duty of administering NRS Chapter 604A. *See* AOB 26. This is wrong. This Court does not defer to an agency's interpretation of a statute—such is the province of the judiciary, not the executive branch of government. *See Corbett v. Bradley*, 7 Nev. 106, 108 (1871) ("It is the province of the courts to enforce the will of the legislature, as express in the statutes."). Rather, this Court interprets de novo all questions of law, including statutory interpretation, and does not give any weight to an agency's interpretation of a statute. *Harrah's Operating Co.*, 130 Nev., Adv. Op. 15, 321 P.3d at 852 ("Questions of law, including the administrative construction of statutes, are subject to independent appellate review. Although we

normally defer to an agency's conclusions of law that are closely related to its view of the facts, because this case concerns the construction of a statute, independent review is necessary." (citations and internal quotation marks omitted)).

The FID mischaracterizes this Court's holding in *Granite Construction* by stating that this Court must defer to an agency's statutory interpretation. *See* AOB 26. The issue in *Granite Construction* was whether construction workers that worked for but not directly on a public worksite were still entitled to prevailing wages. *See State, Dep't of Bus. & Indus. v. Granite Constr. Co.*, 118 Nev. 83, 87, 40 P.3d 423, 426 (2002). This Court conducted a de novo review of the statute in question, NRS 338.040, to determine the scope of the phrase "at the site of the work." *Id.* Granite Construction argued that federal cases were controlling because the statute was based on the Federal Davis-Bacon Act. *Id.* However, this Court rejected that view because the federal statute stated "directly upon," while NRS 338.040 stated "at the site of the work," and was, thus, broader than the federal act. *Id.* Based on a de novo review, this Court held that "'at the site of the work' includes all locations where workers perform work necessary to the execution of a public works contract, as well as transporting materials to and from such locations." *Id.* Thereafter, this Court stated that an agency's construction of a statute is entitled to deference, but this statement meant that an agency's application of the law to facts is entitled to deference as long as it is supported by

substantial evidence. *Id.* at 90, 40 P.3d at 428. This Court then reviewed the facts and concluded that the hearing officer's determination was supported by substantial evidence. *Id.* at 91, 40 P.3d at 428.

Here, the agency's interpretation is not entitled to deference. This is an appeal of a proceeding under NRS Chapter 29. The proceeding solely concerned the interpretation of NRS 604A.480 as a pure question of law, which this Court reviews de novo. Unlike *Granite Construction*, where this Court deferred to an agency's application of law to the facts, in this case, there are no facts because this action was brought as an NRS Chapter 29 proceeding in which both parties sought an interpretation of the statute. Thus, this Court must conduct an independent appellate review of NRS 604A.480 and must not defer to the FID's interpretation.

IV. The District Court's Order Does Not Go Beyond the Complaint.

The FID argues, without legal authority, that the district court's order "goes beyond the assertions in Dollar Loan's initial complaint." AOB 28. This, again, is wrong. DLC's initial complaint was for declaratory relief, which sought an interpretation of NRS 604A.480. *See* 1 AA 5. The FID contends that DLC "appeared to concede that the civil remedies bar *was* deliberately enacted to *prohibit* the use of litigation as a collection remedy when the lender elects to use the refinance option in Subsection 2." AOB 28. DLC did not concede this. Rather, the complaint laid out the general allegations, including the fact that the

"State of Nevada has provided conflicting authorities to licensees as to the interpretation of the 'right to sue' provisions of NRS 604A.480." 1 AA 4.

Even taking the FID's argument at face value, the district court is not limited to a party's interpretation of a statute. Instead, because DLC sought a declaration of the district court interpreting NRS 604A.480, the district court (just as this Court) was required to conduct a de novo interpretation of the statute. *See Harrah's Operating Co.*, 130 Nev., Adv. Op. 15, 321 P.3d at 852. Additionally, the FID's stipulation to convert DLC's declaratory relief action into an NRS Chapter 29 proceeding obviates its claim as the Stipulation and Order specifically requested the district court to interpret NRS 604A.480. *See* 1 AA 57-58. Therefore, the district court's order did not go beyond the requested relief in the initial complaint.

CONCLUSION

In light of the foregoing, respondent Dollar Loan Center respectfully requests that this Court affirm the district court's order and judgment.

DATED this 21st day of October, 2016.

Patrick J. Reilly, Esq.
Erica C. Smit, Esq.
HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134

Attorneys for Respondent

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally-spaced typeface using Microsoft Word 14 pt. Times New Roman type style.

I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more and contains 8,072 words.

Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found.

I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 21st day of October, 2016.

Patrick J. Reilly, Esq.
Erica C. Smit, Esq.
HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134
Attorneys for Respondent

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I electronically filed the foregoing **RESPONDENT'S ANSWERING BRIEF** with the Clerk of Court for the Supreme Court of Nevada by using the Supreme Court of Nevada's E-filing system on October 21, 2016.

I further certify that all participants in this case are registered with the Supreme Court of Nevada's E-filing system, and that service has been accomplished to the following individuals through the Court's E-filing System:

Adam Paul Laxalt
Attorney General
William J. McKean
Chief Deputy Attorney General
David Pope
Senior Deputy Attorney
Vivienne Rakowsky
Deputy Attorney General
Rickisha Hightower-Singletary
Deputy Attorney General
STATE OF NEVADA
555 E. Washington Ave., Suite 3900
Las Vegas, NV 89101
Email: wmckean@ag.nv.gov
dpope@agn.nv.gov
vrakowsky@ag.nv.gov
rsingletary@ag.nv.gov
Attorney for Appellant

Dan L. Wulz, Esq.
Tennille K. Pereira, Esq.
Bar bara E. Buckley, Esq.
LEGAL AID CENTER OF SOUTHERN NEVADA, INC.
725 E. Charleston Blvd.
Las Vegas, Nevada 89104
Email: dwulz@lacsn.org

Attorneys for Legal Aid Center of Southern Nevada, Inc.

Susan Thompson
An Employee of Holland & Hart LLP

9158954_5