

*(a) Condition the granting of the grace period on the customer making any new loan agreement or adding any addendum or term to an existing loan agreement; or*

*(b) Charge the customer interest at a rate in excess of that described in the existing loan agreement.*

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

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

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

*(b) A notice that states that if the customer defaults on a 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 repossesses a vehicle.*

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

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

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

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

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

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

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



**Sec. 5.5.** 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 ~~or~~;  
*and*

*(e) The loan is not a deferred deposit loan.*

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.

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

604A.440 A licensee shall not:

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

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

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

4. Include in any written agreement:

(a) A promise by the customer to hold the licensee harmless;  
(b) A confession of judgment by the customer;  
(c) An assignment or order for the payment of wages or other compensation due the customer; or

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





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

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

7. *Reinitiate an electronic debit transaction that has been returned by a customer's bank except in accordance with the rules prescribed by the National Automated Clearing House Association or its successor organization.*

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

**Sec. 6.5.** NRS 604A.445 is hereby amended to read as follows:

604A.445 Notwithstanding any other provision of this chapter to the contrary:

1. The original term of a title loan must not exceed 30 days.

2. The title loan may be extended for not more than six additional periods of extension, with each such period not to exceed 30 days, if:

(a) Any interest or charges accrued during the original term of the title loan or any period of extension of the title loan are not capitalized or added to the principal amount of the title loan during any subsequent period of extension;

(b) The annual percentage rate charged on the title loan during any period of extension is not more than the annual percentage rate charged on the title loan during the original term; and

(c) No additional 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 fees, are charged in connection with any extension of the title loan.

3. The original term of a title loan may be up to 210 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 ~~and~~ ;  
*and*

*(e) The loan is not a deferred deposit loan.*

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

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



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

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

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

~~3.]~~ *determining that the customer has the ability to repay the title loan, as required by section 1.3 of this act. In complying with this subsection, the licensee shall not consider the income of any person who is not a legal owner of the vehicle securing the title loan but may consider a customer's community property and the income of any other customers who consent to the loan pursuant to subsection 5 and enter into a loan agreement with the licensee.*

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

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

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

5. *Make a title loan secured by a vehicle with multiple legal owners without the consent of each owner.*

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

604A.930 1. Subject to the affirmative defense set forth in subsection 3, in addition to any other remedy or penalty, if a person violates any provision of NRS 604A.400, 604A.410 to 604A.500, inclusive, *and sections 1.3 and 1.7 of this act*, 604A.610, 604A.615, 604A.650 or 604A.655 or any regulation adopted pursuant thereto, the customer may bring a civil action against the person for:

(a) Actual and consequential damages;

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

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

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

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



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

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

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

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

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

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

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

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

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

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

(a) Was not intentional;

(b) Was technical in nature; and

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

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

**Sec. 9.** 1. Any contract or agreement that is entered into pursuant to chapter 604A of NRS before July 1, 2017 and that does not comply with sections 1, 1.3, 2, 3, 4, 5.5 to 6.5, inclusive, 8 and 9 of this act remains in effect in accordance with the provisions of the contract or agreement.

2. Any contract or agreement that is entered into pursuant to chapter 604A of NRS before October 1, 2017, and that does not comply with sections 1.7, 3.5, 5 and 7 of this act remains in effect in accordance with the provisions of the contract or agreement.



**Sec. 10.** 1. This section and sections 1, 1.3, 2, 3, 4, 5.5, 6, 6.5, 8 and 9 of this act become effective on July 1, 2017.

2. Sections 1.7, 3.5, 5 and 7 of this act become effective on October 1, 2017.



# **EXHIBIT “4”**



CHAPTER.....

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; requiring a person who makes a deferred deposit loan to offer an extended payment plan under certain circumstances; providing that certain contracts for the lease of an animal are subject to certain requirements imposed on high-interest loans; revising provisions governing defaults, lengths of term 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:**

Existing law establishes standards and procedures governing the making of certain short-term loans, commonly referred to as "payday loans," "high-interest loans" and "title loans." (Chapter 604A of NRS) **Section 1.3** of this bill: (1) prohibits a person from making such a loan unless the person has determined that the customer has the ability to repay the loan; and (2) establishes the factors that the person making the loan must consider when determining whether a customer has the ability to repay the loan. **Section 1.3** also requires that the loan comply with the statutory requirements applicable to the type of loan involved. **Section 1.7** of this bill requires a person who makes a deferred deposit loan to offer an extended payment plan to the customer under certain circumstances.

**Section 3.5** of this bill includes in the definition of "high-interest loan" a contract for the lease of an animal for a purpose other than a business, commercial or agricultural purpose which charges an annual percentage rate of more than 40 percent. Thus, under **section 3.5**, such lease contracts would be subject to the requirements of existing law for high-interest loans.

Existing law allows for a person making a payday loan, high-interest loan or title loan to offer the customer a grace period concerning repayment of the loan. (NRS 604A.210) **Section 3** of this bill distinguishes a grace period from an extension of a loan that complies with certain statutory requirements. **Section 4** of this bill prohibits a person making the loan from granting a grace period for the purpose of artificially increasing the amount a customer qualifies to borrow, or, with certain exceptions, from conditioning the grace period on the customer's agreement to a new loan or a modification of the terms of the existing loan or the charging of interest at a rate in excess of that provided by the existing loan agreement.

Existing law requires a person making a payday loan, high-interest loan or title loan to post certain notices in a conspicuous place in every location at which the person conducts business. (NRS 604A.405) **Section 5** of this bill provides that the person must post a notice of the existing requirement that the person must offer a repayment plan to a customer who defaults on a loan before the person commences specified collection actions. **Section 5** also provides that the person must post a





notice that states the process for customers to file a complaint with the Office of the Commissioner of Financial Institutions.

Existing law sets forth certain restrictions on the actions of a person licensed to operate certain loan services. (NRS 604A.440) **Section 6** of this bill adds to those restrictions a limitation on the reinitiation of electronic debit transactions.

Existing law provides restrictions on the making of title loans. (NRS 604A.450) **Section 7** of this bill adds to those restrictions by specifying that the customer must legally own the vehicle which secures the loan and that the person making the loan cannot consider the income, except for the customer's community property, of anyone who is not a legal owner of the vehicle who enters into a loan agreement with the licensee when determining whether the customer has the ability to repay the loan.

**Section 8** of this bill makes conforming changes.

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

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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 1.3 and 1.7 of this act.

**Sec. 1.3. 1. *A licensee shall not make a loan pursuant to this chapter unless the licensee determines pursuant to subsection 2 that the customer has the ability to repay the loan and that the loan complies with the provisions of NRS 604A.425, 604A.450 or subsection 2 of NRS 604A.480, as applicable.***

**2. *For the purposes of subsection 1, a customer has the ability to repay a loan if the customer has a reasonable ability to repay the loan, as determined by the licensee after considering, to the extent available, the following underwriting factors:***

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

**(b) *The current employment status of the customer based on evidence including, without limitation, a pay stub or bank deposit;***

**(c) *The credit history of the customer;***

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

**(e) *Other evidence, including, without limitation, bank statements, electronic bank statements and written representations to the licensee.***



3. For the purposes of subsection 1, a licensee shall not consider the ability of any person other than the customer to repay the loan.

**Sec. 1.7. 1.** A licensee shall allow a customer with an outstanding deferred deposit loan to enter into an extended payment plan if the customer:

(a) Has not entered into an extended payment plan for the deferred deposit loan during the immediately preceding 12-month period; and

(b) Requests an extended repayment plan before the time the deferred deposit loan is due.

2. An extended payment plan entered into pursuant to subsection 1 must:

(a) Be in writing and be signed by the licensee and customer; and

(b) Provide a payment schedule of at least four payments over a period of at least 60 days.

3. An extended payment plan entered into pursuant to subsection 1 must not:

(a) Increase or decrease the amount owed under the deferred deposit loan.

(b) Include any interest or fees in addition to those charged under the terms of the deferred deposit loan.

4. If a customer defaults under an extended payment plan entered into pursuant to this section, the licensee may terminate the extended payment plan and accelerate the requirement to pay the amount owed.

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

604A.045 1. "Default" means the failure of a customer to:

(a) Make a scheduled payment on a loan on or before the due date for the payment under the terms of a lawful loan agreement *that complies with the provisions of NRS 604A.408, 604A.445 or subsection 2 of NRS 604A.480, as applicable,* and any grace period that complies with the provisions of NRS 604A.210 ; ~~for under the terms of any lawful extension or repayment plan relating to the loan, and any grace period that complies with the provisions of NRS 604A.210;~~ or

(b) Pay a loan in full on or before ~~the~~

~~(1) The~~ *the* expiration of the ~~initial~~ loan period as set forth in a lawful loan agreement *that complies with the provisions of NRS 604A.408, 604A.445 or subsection 2 of NRS 604A.480, as applicable,* and any grace period that complies with the provisions of NRS 604A.210 . ~~the~~





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

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

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

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

**2. The term does not include an extension of a loan that complies with the provisions of NRS 604A.408, 604A.445 or subsection 2 of NRS 604A.480, as applicable.**

**Sec. 3.5.** NRS 604A.0703 is hereby amended to read as follows:

604A.0703 **1.** "High-interest loan" means a loan made to a customer pursuant to a loan agreement which, under its original terms, charges an annual percentage rate of more than 40 percent.

**2. The term includes, without limitation, any single-payment loan, installment loan, ~~or~~ open-ended loan or contract for the lease of an animal for a purpose other than a business, commercial or agricultural purpose** which, under ~~its~~ **the** original terms ~~of the loan or contract~~, charges an annual percentage rate of more than 40 percent.

**3. The term does not include:**

- (a) A deferred deposit loan;
- (b) A refund anticipation loan; or
- (c) A title loan.

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

604A.210 **1.** The provisions of this chapter do not prohibit a licensee from offering a customer a grace period on the repayment of a loan or an extension of a loan, except that the licensee shall not ~~charge the customer:~~

~~—— 1. Any fees for granting such a grace period; or~~

~~—— 2. Any additional fees or additional interest on the outstanding loan during such a grace period.]~~ **grant a grace period for the purpose of artificially increasing the amount which a customer would otherwise qualify to borrow.**

**2. Except in compliance with the provisions of NRS 604A.408, 604A.445 or subsection 2 of NRS 604A.480, where they apply, a licensee shall not:**



# **EXHIBIT “1”**



**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.: A720959

**DECLARATION OF EDWARD ANDERSON IN SUPPORT OF  
DLC'S PETITION FOR REHEARING**

Patrick J. Reilly, Esq.  
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HOLLAND & HART LLP  
9555 Hillwood Drive, Second Floor  
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preilly@hollandhart.com

*Attorneys for Respondent*

I, Edward Anderson, declare as follows:

1. I am over eighteen years of age and have personal knowledge of the matters set forth in this Declaration, except as to the matters stated upon information and belief, and as to those matters, I believe them to be true. If called as a witness, I could and would competently testify about the information that this Declaration contains.

2. I am currently the Chief Operating Officer for Dollar Loan Center, LLC (“DLC”) and have been since September 2017. From 2011 to 2017 I was DLC’s Director of Operations, and was a DLC Regional Manager prior to that. I am familiar with DLC’s lending practices and products over the past decade. I am also familiar with the regulation of DLC by the State of Nevada Department of Business and Industry, Financial Institutions Division (the “FID”) during that period, as well as the related records and documents between the two.

3. In 2007, based upon significant legislative changes made to NRS Chapter 604A, DLC petitioned the FID for the ability to underwrite original loans pursuant to NRS 604A.480(2). After verbal discussions with the FID, DLC expressly confirmed through its counsel that it could issue original loans unconnected to any prior loan under NRS 604A.480(2). Attached to the Petition as **Exhibit 2** is a true and correct copy of a letter dated July 25, 2007, written by DLC’s counsel, confirming with the FID that DLC’s NRS 604A.480(2) original loan product was permitted by statute.

4. Since the FID gave its permission in 2007 for DLC to underwrite original loans under NRS 604A.480(2), DLC has offered original loans under NRS 604A.480(2) without any objection by the FID.

5. In reliance on the FID’s approval of original loans under NRS 604A.480(2), DLC has made the Section 604A.480(2) loan its primary loan product.

6. Each year, the FID has examined DLC as DLC's regulator and has issued a report of examination following each examination. The FID's periodic reports of examination are required by statute and are designed to identify violations of NRS Chapter 604A, giving a licensee an opportunity to correct those violations. In a decade of examinations and reports of examination, the FID has never identified the issuance of an original loan under NRS 604A.480(2) as a violation of Nevada law. To the contrary, many reports of examination over the years specifically reference DLC's underwriting of original loans under NRS 604A.480(2) as a lawful loan product.

7. For example, attached to the Petition as **Exhibit 3** is a true and correct copy of the FID's 2011 Report of Examination for DLC, which is based on the FID's annual investigation and review of the legality of DLC's lending practices under NRS Chapter 604A. On page 3 of the report, the FID expressly notes that DLC offers a high-interest loan product whose "structure is designed to be in compliance with a high interest loan product as defined by NRS 604A.480(2)." In a separate section on page 5, the report again recognizes that DLC offers a new loan product "consistent with a high interest loan defined by NRS 604A.480(2)." Page 7 similarly references DLC's underwriting of loans under NRS 604A.480(2). All three references are to DLC's NRS 604A.480(2) original loan product. Yet the report never objects to that product and in fact on page 11 awards DLC a "satisfactory" rating to DLC, "indicat[ing] that the licensee and the management of the licensee have demonstrated substantial compliance with the applicable laws and regulations."

8. Since 2007, DLC has issued over 880,000 loans under NRS 604A.480(2), a mix of new loans and refinance loans. DLC also believes that other licensees similarly underwrite original loans under Section 604A.480(2), and that at least half of high-interest loans in Nevada are original loans made

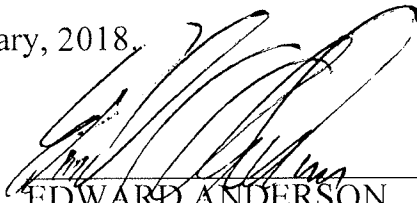
under NRS 604A.480(2).

9. Footnote 2 of this Court's Opinion is sure to cause great confusion in the industry where there was none before. Lenders and the FID have been in agreement for nearly a decade that original loans may be underwritten under NRS 604A.480(2). DLC and lenders like it have based this decade-long business model, among other things, by relying specifically on the blessing of the FID.

10. Without the ability to underwrite original loans under NRS 604A.480(2), DLC believes it would be forced to offer a different loan product that, among other things, would double the interest rate and actually increase the number of borrower defaults and the number of law suits initiated by DLC.

I do hereby swear under penalty under the laws of the United States and the State of Nevada that the foregoing assertions are true and correct to the best of my knowledge.

DATED this 16th day of January, 2018.

  
EDWARD ANDERSON



# **EXHIBIT “2”**

# HALE LANE

ATTORNEYS AT LAW

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Direct: (775) 684-6011

July 25, 2007

Mendy Elliott, Director  
Department of Business and Industry  
State of Nevada  
555 E. Washington Ave., Ste. 4900  
Las Vegas NV 89101

Dear Director Elliott:

We are writing on behalf of Dollar Loan Center to confirm our recent discussions regarding the proper interpretation of the language of Assembly Bill 478 of the 2007 Legislative Session with regard to certain loan products. Specifically, we discussed the interpretation of Sections 5 and 22 of AB 478.

Section 22 of AB 478 provides that:

*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;*

## HALE LANE PEEK DENNISON AND HOWARD

RENO OFFICE: 5441 Kietzke Lane | Second Floor | Reno, Nevada 89511 | Phone (775) 327-3000 | Facsimile (775) 786-6179  
LAS VEGAS OFFICE: 3930 Howard Hughes Parkway | Fourth Floor | Las Vegas, Nevada 89169 | Phone (702) 222-2500 | Facsimile (702) 365-6940

- (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 for 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.

Subsection 2 of Section 22 could arguably be read to apply to an extension, renewal, refinance or consolidation of an outstanding loan, a brand new loan, or both. When subsection 2 of NRS 604A.480 was added to section 43 of Assembly Bill 384 of the 2005 legislative session (AB 384), however, the mock-up of the amendment stated that it “provide[s] an exemption for certain licensees.” Minutes of the Senate Committee on Commerce and Labor (May 6, 2005), Exhibit F, p.15. The fact that creating an exemption for certain licensees offering loans on the terms specified in subsection 2 of NRS 604A.480 was the intent of the amendment is supported by the remainder of NRS 604A.480. *Southern Nevada Homebuilders v. Clark County*, 117 P.3d 171, 173-74 (2005) (“[I]t is the duty of this court, when possible, to interpret provisions within a common statutory scheme ‘harmoniously with one another in accordance with the general purpose of those statutes.’”).

For example, the use of the phrase “under its original terms” in paragraph (a) of subsection 2 indicates that the loan referred to in subsection 2 is a new loan, not an extension or renewal of an existing loan.<sup>1</sup> Paragraph (b) of subsection 2 requires the licensee to perform a credit check before making the loan, similarly indicating that the provision was meant to apply to new loans. Moreover, Section 22 of AB 478 amends NRS 604A.480 by inserting the word “new” throughout subsection 2 of NRS 604A.480 to clarify that subsection 2 applies to new deferred deposit or high interest loans, and not to extensions, renewals, refinancing or consolidation of outstanding loans. *Assembly Bill 478 of the 74<sup>th</sup> Session of the Nevada Legislature*, §22, pp.16-17 (enacted June 1, 2007).

In *Hughes Properties v. State*, 680 P.2d 970, 972, 100 Nev. 295 (1984), Hughes Properties sought a refund of gross revenue taxes it allegedly overpaid. Hughes Properties relied upon NRS 463.0114 which, during the relevant period, defined “gross revenue” as “the total of all sums received as *winnings* less only the total of all sums paid out as losses by a licensee . . . .”

<sup>1</sup> While a new loan might be used to refinance or consolidate outstanding loans, an extension or renewal of an outstanding loan would not be a new loan. Under the existing statute, we believe that either a brand new loan or a new loan refinancing or consolidating outstanding loans would be permitted. As discussed further below, however, subsection 3 of section 5 of AB 478 places additional limits on loans refinancing or consolidating outstanding loans.

680 P.2d at 971 (emphasis added). Hughes Properties claimed that “rake-offs and buy-ins” from percentage games such as poker, where the casino is not an actual participant in the game and does not “win” or “lose”, were not “winnings” and, therefore, not taxable as “gross revenue.” *Id.*

In 1981, after the relevant tax period, the Legislature amended NRS 463.0114 and specifically included “rake-offs and buy-ins” in the definition of “gross revenue”. In holding that the rake-offs and buy-ins were taxable as gross revenue during the period prior to amendment of the statute, the Nevada Supreme Court stated that:

Where a former statute is amended or a doubtful interpretation of a former statute rendered certain by subsequent legislation, it has been held that such amendment is persuasive evidence of what the Legislature intended by the first statute.

680 P.2d at 972 (quoting *Sheriff v. Smith*, 91 Nev. 729, 734, 542 P.2d 440, 443 (1975)). Here, as in the *Hughes Properties* case, the recent amendment to NRS 604A.480 “is persuasive evidence of what the Legislature intended by the first statute.” *Id.*

In addition, Section 5 of AB 478 adds a new section to Chapter 604A of NRS and provides that:

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.*

AB 478, §5, p.3 (emphasis added).

It is important to note that subsection 1 of section 5 of AB 478 applies to “the original term” of deferred deposit loans or high interest loans in general, and reads “[e]xcept as otherwise provided in this chapter.” If subsection 2 of section 5 of AB 478 was the only exception to subsection 1, it would read “except as other provided in this section.” The only other provision in Chapter 604A that allows a longer “original term” for deferred deposit and high interest loans is subsection 2 of Section 22 of AB 478.

Subsection 3 of section 5 of AB 478 makes a specific reference to NRS 604A.480, clearly indicating that the Legislature was aware of NRS 604A.480. Subsection 3 of section 5 of AB 478 provides that a licensee may not extend the repayment period, renew, refinance or



consolidate “an outstanding deferred deposit loan or high interest loan” for more than 90 days beyond the date of origination of the loan. Subsection 2 of Section 22 requires a loan made under that provision to be paid in full in not less than 150 days.

If subsection 2 of section 22 applies only to the extension, renewal, refinance or consolidation of an “outstanding” deferred deposit loan or high interest loan, therefore, it is completely meaningless. It would never apply, because the provisions of subsection 3 of section 5 of AB 478 apply “[n]otwithstanding the provisions of NRS 604A.480.”

As the Nevada Supreme Court stated in *Board of County Commissioners v. CMC of Nevada, Inc.*, 99 Nev. 739 (1983), “[a] reading of legislation which would render any part thereof redundant or meaningless, where that part may be given a separate substantive interpretation, should be avoided.” 99 Nev. 739, 744. If possible, therefore, subsection 2 of NRS 604A.480 must “be given a separate substantive interpretation.” *Id.*; see also *Gilman v. State Board of Veterinary Medical Examiners*, 120 Nev. 263, 271 (2004) (“[i]t is a well-recognized tenet of statutory construction that multiple legislative provisions be construed as a whole, and where possible, a statute should be read to give plain meaning to all its parts.”)

The only way to interpret subsection 3 of section 5 of AB 478 and subsection 2 of NRS 604A.480 in harmony with one another and to give meaning to all of AB 478 is to interpret subsection 3 of section 5 of AB 478 as applying to the extension, renewal, refinance or consolidation of an “outstanding” loan and to interpret subsection 2 of NRS 604A.480 as applying to “new” loans. If the Legislature intended to limit all loans, including new loans, to the terms provided in section 5 of AB 478, it could have and would have repealed subsection 2 of NRS 604A.480 in its entirety.

To the extent that subsection 2 of NRS 604A.480 may have previously been read to allow an extension, renewal, refinance or consolidation of an outstanding loan for more than 90 days after the date of origination of the outstanding loan, such loans will be subject to the limitations of subsection 3 of section 5 of AB 478 as of October 1, 2007. “New” loans complying with the terms of subsection 2 of NRS 604A.480 are, however, still permitted.

Subsection 2 of section 22 applies 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;*

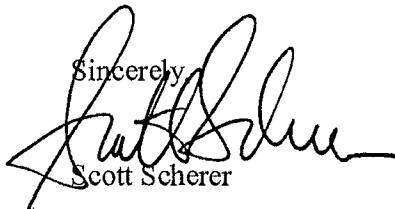
July 11, 2007  
Page 5

**HALE LANE**  
ATTORNEYS AT LAW

- (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 for 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.*

Unlike subsection 2 of section 5 of AB 478, loans made pursuant to subsection 2 of section 22 do not have to be fully amortized and may require a balloon payment. Under section 5, loans are limited to a maximum term of 90 days. Under section 22, they must be *at least* 150 days. On the other hand, under section 22, a licensee must perform a credit check, participate in good faith with a counseling agency, and agree not to commence any civil action or alternative dispute resolution on a defaulted loan.

We appreciate the time you have taken to meet with us and assist us in understanding the appropriate interpretation of Chapter 604A of NRS. Based on our discussions, Dollar Loan Center is working to design loan products that meet the terms of subsection 2 of NRS 604A.480, as amended by AB 478. If you have any questions or comments, please do not hesitate to contact us.

Sincerely,  
  
Scott Scherer

SS:cle

cc: Bruce Cooley, Dollar Loan Center

# **EXHIBIT “3”**



BRIAN SANDOVAL  
Governor

STATE OF NEVADA  
DEPARTMENT OF BUSINESS AND INDUSTRY  
FINANCIAL INSTITUTIONS DIVISION

TERRY JOHNSON  
Director

GEORGE E. BURNS  
Commissioner

CHAPTER 604A  
REPORT OF EXAMINATION

DOLLAR LOAN CENTER, LLC  
DBA DOLLAR LOAN CENTER  
3051 N RAINBOW BLVD  
LAS VEGAS, NV 89108  
WWW.DONTBEBROKE.COM

Examiner In Charge:	Monica Hedrick	Examined as of:	February 3, 2011
Examination Started:	February 3, 2011	Examination Closed:	April 12, 2011
Total Exam Hours:	7.5	Examination Number:	55341

**THIS REPORT IS STRICTLY CONFIDENTIAL**

The information contained in this report is based on the books and records of the licensee as licensed under NRS 604A, on statements made to the examiner by the directors, officers, and employees, and on information obtained from other sources believed to be reliable and presumed by the examiner to be correct. It is emphasized that this report is a report of examination, and not an audit of the licensee, and should not be construed as such. This report of examination does not replace nor relieve the principals of their responsibility for performing or providing for adequate audits of the business.

This copy of the report is the property of the Department of Business and Industry of the State of Nevada, and is furnished to the licensee for its confidential use. Under no circumstances shall the licensee, or any of its directors, officers, or employees disclose in any manner the report or any portion thereof to any person or organization not officially connected with the licensee as officer, director, attorney, or auditor unless otherwise directed. Should any legal process document be served calling for the surrender of this report or any portion thereof, the Commissioner of the Financial Institutions Division shall be notified immediately.

Each principal has the responsibility to review the contents of this report.

State of Nevada  
Department of Business and Industry, Financial Institutions Division

Monica Hedrick  
Monica Hedrick  
Examiner In Charge



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## EXAMINATION COMMENTS AND CONCLUSIONS

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### INTRODUCTION

Dollar Loan Center, LLC to be known as the licensee from this point has been granted thirty-three separate licenses by the State of Nevada, Financial Institutions Division in accordance with Nevada Revised Statute (NRS) 604A and Nevada Administrative Code (NAC) 604A. The licensee is one of five similar entities owned by DLC Empire, LLC. The licensee as well as the DLC Empire, LLC are incorporated and headquartered in Sioux Falls, South Dakota and maintain the same principal owners Charles Breenan, Keith Bergh and Bruce Coocy. The licensee is currently registered with the Nevada Secretary of State as an active domestic corporation with entity number LLC3946-2002 and Nevada business identification NV020021041148.

The licensee is within compliance of NRS 76.100 at the time of the examination.

The following licensed locations were examined as of March 2010 in Southern Nevada by the State of Nevada, Financial Institutions Division:

1. 1631 W Craig Rd #3A Las Vegas, NV 89032
2. 7345 S Durango Dr Ste B-109 Las Vegas, NV 89113
3. 2654 W Horizon Ridge Pkwy Ste B-3, Henderson, NV 89052
4. 5335 S Decatur Blvd #A, Las Vegas, NV 89118
5. 642 E Horizon Dr Ste 100, Henderson, NV 89015
6. 3051 N Rainbow Las Vegas, NV 89108
7. 6122 W Sahara, Las Vegas, NV 89146
8. 1010 W Sunset Rd, Henderson, NV 89014
9. 280 S Decatur Blvd, Las Vegas, NV 89107
10. 6420 S Pecos Rd Ste A-2, Las Vegas, NV 89120
11. 1680 E Flamingo Rd Ste B, Las Vegas, NV 89119
12. 5693 S Jones Blvd Ste 121, Las Vegas, NV 89118
13. 8665 W Flamingo Rd Ste 118, Las Vegas, NV 89147
14. 1550 E Sahara Ave, Las Vegas, NV 89104
15. 1060 W Pioneer Blvd Ste 106, Mesquite, NV 89027
16. 4160 E Sahara Ste 125, Las Vegas, NV 89104
17. 3080 S Needles Hwy #2700, Laughlin NV 89029
18. 321 Frontage Rd, Pahrump NV 89048
19. 7875 S Rainbow Blvd Ste 101, Las Vegas, NV 89130
20. 4310 E Tropicana Ave Ste 14, Las Vegas, NV 89121
21. 3799 E Desert Inn Rd Ste 4, Las Vegas, NV 89121
22. 625 N Lamb Blvd, Las Vegas, NV 89110
23. 4669 W Ann Rd Ste 100, North Las Vegas, NV 89031
24. 7390 S Las Vegas, Blvd Ste 115, Las Vegas, NV 89123



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## EXAMINATION COMMENTS AND CONCLUSIONS

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The following licensed locations were examined as of July 2010 in Northern Nevada by the State of Nevada, Financial Institutions Division:

1. 748 South Meadows Parkway, Suite A2, Reno, NV 89521
2. 3325 Retail Drive, Suite 105, Carson City, NV 89706
3. 1201 Penny Lane, Suite 160 Fernley, NV 89408
4. 3790 US Highway 395 South, Suite 101, Carson City, NV 89705
5. 889 Sparks Blvd. Sparks, NV 89434
6. 3324 South McCarran Blvd. Reno, NV 89502
7. 5105 Sun Valley Blvd., Suite 101, Sun Valley, NV 89433
8. 595 Keystone Avenue Reno, NV 89503
9. 490 East Plumb Lane Reno, NV 89502

The licensee implemented changes in internal routines and procedures as well as the overall structure of the high interest loan offered as of November 2010 throughout all the above licensed locations. The measures were in response to the above noted examinations conducted by the State of Nevada, Financial Institutions Division.

A regular examination commenced February 3, 2011 for both the Southern and Northern Nevada licensed locations. The review of all loan documents was performed at 6122 West Sahara Avenue, Las Vegas, Nevada. This location functions as the main office for Southern Nevada.

The licensee's product offered to consumers is a high interest loan. The loan structure is designed to be in compliance with a high interest loan product as defined by NRS 604A.480 (2). Refer below to Internal Controls and Routines for details regarding the loan product type.

The licensee's strategy includes providing consumers with internet-only loans through the separate licensed entity, and subsidiary, under the name of Loan Shack of Nevada LLC. A part of the licensee's strategy includes maintaining control of written off loans for both entities through the use of a separate licensed entity, and subsidiary, under the name of Clark County Collection Agency (refer below to collection agency utilized). A separate examination was conducted for both entities mentioned above concurrent to this examination.

### SCOPE OF EXAMINATION

The primary purpose of the examination was to ascertain compliance with NRS 604A and NAC 604A as well as applicable federal laws including overall compliance with the Truth and Lending Act (Regulation Z), the Equal Credit Opportunity Act (Regulation B), and the Fair Debt Collection Practices Act (FDCPA).



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## EXAMINATION COMMENTS AND CONCLUSIONS

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The scope was based on the previous examination as well as the results of information and documentation provided by the licensee. The scope included but was not limited to: Financial Institutions Division Licensing, Nevada Secretary of State, licensee website and advertising, manager's questionnaire, compliance questionnaire, business licenses, annual report of operations to the Financial Institutions Division, complaints, surety bonding, random accounts (active, delinquent, paid, denied), form letters and sample forms, operating accounts, payment tracing, policies and procedures, as well as internal and external audits. All communications and discussions during the examination were held with: Edward Anderson, Regional Manager; Kevin Miller, Regional Manager; Kathy Dunn, Compliance Officer and Natalie Hatch Vice President and Chief Operations Officer.

### **Annual Report**

Annually, on or before April 15, each licensee shall file with the Commissioner a report of operations of the licensed business for the preceding calendar year.

The State of Nevada Financial Institutions Division received the licensee's Annual Report of Operations April 14, 2010.

The licensee is within compliance of NRS 604.750(1) at the time of the examination.

### **Surety Bond**

The licensee maintains bond number 70844146 in the amount of \$215,000 with Western Surety Company. The amount includes the required initial \$50,000 for the first location and an additional \$5,000 for each of the thirty three locations (\$215,000).

### **Internal / External Review**

The licensee's business strategy emphasizes consistency and implements structural and procedural consistency through informal and formal internal reviews. The licensee's structure includes the regional managers and assistant regional managers being responsible for ensuring that company's operational policies and procedures are being adhered to by all employees.

The regional managers and assistant managers perform informal reviews through store visits and account reviews. Formal internal assessments are also conducted in the areas of standardized underwriting, collections, store appearance and telephone call monitoring.

There was no written documentation provided for internal or external reviews at the time of the examination.



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## EXAMINATION COMMENTS AND CONCLUSIONS

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### **Financial Audit / CPA**

The CPA of the State of Nevada Financial Institutions Division reviewed the key financial figures that were submitted along with the licensee's Annual Report of Operations. The review is noted to be without comment.

### **Internal Routine and Control**

During the course of the examination, the internal routines and controls were observed by the Examiners. The following were the major areas of control:

#### Security:

Access to stores via a key and security code is provided only on an as-needed basis. The licensee's security department maintains records of all key assignments and transfers. The licensee has two SSL certificates to ensure the security of customer data on the company's website. The software utilized automatically requires employees to change their password every thirty days. Employee passwords are automatically disabled after a certain number of failed attempts. "Challenge Questions" are utilized to ensure security of customer information.

#### Loan Product:

The licensee identified in response to the Manager's Questionnaire that a new loan product is offered. The loan product is consistent with a high interest loan as defined by NRS 604A.480 (2). The loan is described in the Manager's Questionnaire: as fully amortized; charging an annual percentage rate of less than 200 percent (197.60 percent) and the loan term of 65 weeks. The product still maintains: a payment is required at least once every 30 days; no prepayment penalties and the right for the consumer to rescind the loan within 5 days of initiating the loan. The licensee does not pursue civil action and therefore does not extend the offer for repayment plans.

#### Loan Process:

The high interest loan process includes receiving from the consumer: a completed loan application, proof of income, and a valid state issued picture identification. A consumer may submit the initial application online but must go to an office to provide identification, proof of current income and sign the loan agreement. A consistent implemented change as of November 2010 includes the licensee performing a credit check for all new loans prior to approving the loan. All documents are scanned and stored electronically. The licensee shreds documentation not taken by the consumer. Receipts are system generated and can be printed upon the customer's request. All loan agreements are stamped PAID when a loan is paid in full and a receipt is generated for the customer that states PAID IN FULL reflecting a zero balance. The licensee pursues collections internally for the first 90 days after default. All collection calls are made from the originating branch through the 90th late day. If there has been no response from the



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## EXAMINATION COMMENTS AND CONCLUSIONS

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debtor by the 91st day the account is written off and sent to Clark County Collection Services for further collection efforts.

### Advertising:

The licensee is noted to advertise on their website, radio and television. The advertisement is noted to be misleading. The maturity of the loans advertised and days of interest paid are contradicting to the five day rescission period mandated by statute.

The licensee is not within compliance of NRS 604A.440 (6) and NAC 604A.210 (2) at the time of the examination. Refer below to current state violations.

### **Training**

Training is designed as a downward flow by the licensee. Managers are provided with formal training sessions conducted by the regional and assistant regional managers on a monthly basis. The material varies by session, but can include subjects such as training on Red Flag Rules (identity theft), corporate privacy policy, and OFAC. The managers are then responsible for dissemination of the information with their staff.

### **Display of License, Notices, and Disclosures**

All licenses, notices and disclosures were displayed appropriately in the branches that were visited during this examination. The licensee's commitment to consistency was found with all locations maintaining the same notices, disclosures and advertisements posted in the same way.

### **Record Retention**

The licensee maintains records electronically indefinitely and only purges consumer income verification when new income verification is obtained. It is recommended that the licensee maintain income verification for each individual consumer for at least six months to a year from the most recent loan application

### **Collection Agency Utilized by the Licensee**

The licensee utilizes Clark County Collection Service which has been granted a collection license by the State of Nevada, Financial Institutions Division pursuant to NRS 649 and NAC 649. This is an affiliate of the licensee.



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## EXAMINATION COMMENTS AND CONCLUSIONS

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paid and declined loans for the period of November 1, 2010 to January 31, 2011. The time period was determined based on implemented changes and to achieve a consistent pool of samples.

### PREVIOUS VIOLATIONS OF STATUTES AND REGULATIONS

#### Regulation Z

#### Truth in Lending

#### § 226.22 Determination of annual percentage rate.

- (a) *Accuracy of annual percentage rate.* (1) The annual percentage rate is a measure of the cost of credit, expressed as a yearly rate, that relates the amount and timing of value received by the consumer to the amount and timing of payments made. The annual percentage rate shall be determined in accordance with either the actuarial method or the United States Rule method. Explanations, equations and instructions for determining the annual percentage rate in accordance with the actuarial method are set forth in appendix J to this regulation.<sup>45d</sup>
- (2) As a general rule, the annual percentage rate shall be considered accurate if it is not more than 1/8 of 1 percentage point above or below the annual percentage rate determined in accordance with paragraph (a)(1) of this section.

NRS 604A.150 Additional terms defined under federal law; calculation of amount financed, annual percentage rate and finance charge.

2. For the purposes of this chapter, proper calculation of the amount financed, annual percentage rate and finance charge for a loan must be made in accordance with the Truth in Lending Act and Regulation Z.

The previous examination found one loan to have the annual percentage rate incorrectly calculated.

The current examination did not identify any loans reviewed with an incorrect annual percentage rate calculation.

This violation has been rectified

NRS 604A.425 Prohibited acts by licensee regarding amount of loan.

1. A licensee shall not:

(b) Make a high-interest loan which, under the terms of the loan agreement, requires any monthly payment that exceeds 25 percent of the expected gross monthly income of the customer.

The previous examination found one loan to be extended for more than twenty-five percent of the expected monthly income.

The current examination did not identify any loans reviewed that exceeded twenty-five percent of the monthly expected gross income.



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## EXAMINATION COMMENTS AND CONCLUSIONS

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### FDCPA

The licensee is responsible for adhering to applicable federal statutes such as the Fair Debt Collection ACT (FDCPA) in the course of operations. The licensee initiates collection calls from the individual branches where the loan was originated. To ensure compliance the licensee maintains ongoing training that includes:

1. initial new hire employee training
2. monthly store manager training and subsequent loan processor training
3. direct observation
4. comprehensive collection reviews (calls and notes) at the direction of the regional manager

### FinCen Registration

The licensee does not conduct business of a money service business as defined under the Bank Secrecy Act and therefore is not registered with FinCen.

### Complaints Filed Since the Previous Examination

The State of Nevada, Financial Institutions Division identified four consumer complaints received since the previous examination. All complaints were responded to timely and are closed as of the examination period.

### Total Sample Size

As of Exam Date	February 3, 2011
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	Population	Sample Size	Penetration
<b>LOAN TYPES:</b>			
Active Loans	1446	5	0.35%
Delinquent Loans	344	5	1.45%
Closed Loans	1017	5	0.49%
Declined Loans	5	5	100.00%
<b>Total Loans =</b>	<b>2812</b>	<b>20</b>	<b>0.71%</b>

The licensee extends loans as defined by NRS 604.480(2). The licensee revised the loan structure as of November 2010. The sample size is understated in as much as the consumer loan and all previous loans, applications and activities for the individual consumer were reviewed. A comprehensive review was conducted to confirm consistency in implemented changes.

The licensee's response in the Manager's Questionnaire only identified current active loans. The licensee provided a separate report for active and delinquent loans. The licensee provided a separate report for





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## EXAMINATION COMMENTS AND CONCLUSIONS

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This violation has been rectified.

**NRS 604A.435 Prohibited acts by licensee: Accepting certain collateral or other types of security; failing to make certain disclosures; taking incomplete instruments; requiring the purchase of insurance or other goods or services; failing to comply with payment plan; charging fee to cash certain checks. A licensee shall not:**

**3. Take any instrument, including a check or written authorization for an electronic transfer of money, in which blanks are left to be filled in after the loan is made.**

The previous examination noted a majority of the licensee's customer files contained blank signed verification of employment.

The current examination identified that as of November 2010 the licensee ceased the utilization of the fill in the blank forms and implemented a new form that granted the licensee general permission to verify employment. All consumer files reviewed noted the new form with consumer signatures.

This violation has been rectified.

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

**2. This section does not apply to a new deferred deposit loan or high-interest loan if the licensee:**  
**(b) Performs a credit check of the customer with a major consumer reporting agency before making the loan;**

The previous examination noted inconsistency on the licensee's part when performing an updated credit check prior to originating all new loans.

The current examination identified that as of November 2010 the licensee performed a credit check for all consumer loans reviewed.

This violation has been rectified.

### EXIT MEETING

Examiner Monica Hedrick would like to extend her gratitude and appreciation to the licensee for the level of professionalism, excellence and organization of all documentation and information provided for the current exam. It is based on the aforementioned and the licensee's ongoing commitment to excellence that the examiners were able to substantiate the recommended rating.

The exit meeting was held on February 24, 2011 telephonically. The following were in attendance:



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## EXAMINATION COMMENTS AND CONCLUSIONS

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### Dollar Loan Center:

Natalie Hatch, Director of Operations  
Ed Anderson Regional Manager (Southern Nevada)  
David Gaudette Assistant Regional Manager (Southern Nevada)  
Kevin Miller Regional Manager (Northern Nevada)  
Vicki Miller, Assistant Regional Manager (Northern Nevada)  
Kathy Dunn, Compliance Officer  
John Thomas, Manager  
Adrian Orozco, Manager  
Kent Quaschnick

### Financial Institutions Division:

Monica Hedrick, Examiner  
Shawn Atwood, Examiner  
Shontarius Webb, Examiner

## CURRENT VIOLATIONS OF APPLICABLE STATUTES AND REGULATIONS

### STATE

**NRS 604A.440 Prohibited acts by licensee: Improper lending and collection practices; deceptive trade practices; false, misleading and deceptive advertising; using agent, affiliate or subsidiary to avoid requirements or prohibitions of chapter. A licensee shall not:**

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

**NAC 604A.210 Restrictions on advertising. A licensee shall not advertise in any manner that:**

- 1. May tend to confuse the identity of the licensee with any other unrelated licensee.**
- 2. States or implies that a loan of a prospective borrower with another licensee will be paid or increased if the loan is transferred to the advertising licensee.**

The current examination identified that the licensee's advertisements on their website, radio and television were all same in content. The advertisement included "...keep the loan for three days and pay three days of interest".

1. the loan product mandates that the consumer has the right to rescind within 5 business days while the licensee is advertising 3 day loans

This advertisement approach is misleading based on the consumer's rights to rescind versus an advertisement that may be taken as a statement of fact. A review of the licensee's process and notes did



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## EXAMINATION COMMENTS AND CONCLUSIONS

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not identify that consumers are advised of the right to rescind in 5 days. A review of the contract found the right of rescission to be included.

*Management responded that counsel would be referred to. The licensee responded on March 15 via email that their attorney was consulted and the verbiage on the website was revised and the Marketing Department advised the licensee that the television and radio ads will be revised within 30 days-possibly even as early as April 2011.*

### FEDERAL

No violations of Federal laws were noted during the scope of this examination. However, this examination should not be considered a compliance examination relative to Federal statutes.

### SUMMARY

Each licensee, upon completion of an examination, is rated "Satisfactory," "Needs Improvement," or "Unsatisfactory," based primarily on compliance with applicable statutes and regulations and the perceived capability of management to achieve and maintain such compliance. The rating of the licensee at this examination is "Satisfactory."

A rating of "Satisfactory" indicates that the licensee and the management of the licensee have demonstrated substantial compliance with applicable laws and regulations and that any deficiencies noted in the report made by the examiner pursuant to state and federal laws and regulations can be corrected by the licensee with a minimum of regulatory supervision. A rating of "Satisfactory" may be given if there is more than one minor violation or deficiency, but only if the licensee and management take immediate action towards correcting the violations or deficiencies and the action taken by the licensee is likely to prevent future violations or deficiencies.



**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.: A720959  
Electronically Filed  
Jan 16 2018 03:33 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**PETITION FOR REHEARING**

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NRAP 40(c) ..... 1, 6,

NRS 29.010 ..... 3, 8

NRS 604 ..... 10

NRS 604A.480 ..... 2, 3, 4, 5

NRS 604A.480(2) ..... passim

## **INTRODUCTION**

Dollar Loan Center, LLC (“DLC”) respectfully petitions for a very narrow rehearing of the Court’s December 26, 2017 decision in the above-captioned case under NRAP 40(c). Specifically, DLC objects to the portion of Footnote 2 stating that “original loans can’t be made pursuant to NRS 604A.480(2).” Given that licensees like DLC have issued hundreds of thousands of original loans under NRS 604A.480(2) with the express blessing of the Financial Institutions Division (“FID”) over the last decade, Footnote 2’s conclusion will have a far greater effect than the Opinion’s primary holding. The underlying action concerned only a creditor’s ability to bring an enforcement action under NRS 604A.480(2) loans. Neither the parties nor the District Court have ever addressed the separate issue of whether or not a lender can issue original loans (those unrelated to paying off a prior loan) under that provision. Footnote 2 thus not only exceeds the scope of these limited proceedings but also represents an unconstitutional advisory opinion.

## **BACKGROUND**

### ***A. The District Court Issues Narrow Declaratory Relief to DLC.***

In July 2015, DLC filed the underlying Complaint for declaratory relief on the following limited issue: “[W]hether [NRS 604A.480(2)(f)] prohibits a high-interest lender from commencing a civil action or alternative dispute resolution proceedings upon the default of an original or initial loan to a customer.” *Id.* 1 AA

0005 ¶14. The Complaint did not seek any declaration as to whether lenders like DLC could issue original loans under NRS 604A.480(2).

Nor could DLC have done so. The FID expressly agreed with DLC that it may issue original loans under NRS 604A.480(2). Declaration of Edward Anderson (the “Anderson Decl.”), attached as **Exhibit 1**.<sup>1</sup> Indeed, when the Legislature amended NRS 604A.480 in 2007 (2007 Nev. Stat. ch. 265 § 22 at 940–41), DLC expressly confirmed with the FID that it could issue original loans unconnected to any prior loan under NRS 604A.480(2). *Id.* ¶3; **Exhibit 2**. In reliance on the FID’s approval of original loans under NRS 604A.480(2), DLC has made the Section 604A.480(2) loan its primary loan product. *Id.* ¶5. DLC has issued over 880,000 original loans under NRS 604A.480(2) since 2007. *Id.* ¶8. DLC also believes that other licensees issue original loans under NRS 604A.480(2), and that at least half of high-interest loans in Nevada are original loans under NRS 604A.480(2). *Id.*

Additionally, the FID has not only known of this practice but has regulated DLC’s original NRS 604A.480(2) loans for nearly a decade, during which it never objected. Anderson Decl. ¶¶6-7. This is evident from its annual regulatory examinations of DLC, which expressly discuss and bless DLC’s practice of

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<sup>1</sup> DLC acknowledges that it is unusual to submit evidence before an appellate court. But because the issue of whether original loans could be issued under NRS 604A.480(2) was not raised before the district court, DLC never had the opportunity to put such evidence on the record.



originating loans under NRS 604A.480(2). *Id.* **Exhibit 3** (FID’s 2011 Report of Examination specifically noting that DLC offers a loan product “consistent with a high interest loan as defined by NRS 604A.480(2)” and concluding that DLC has “demonstrated substantial compliance with applicable laws and regulations”).

After filing the complaint in this matter, DLC and the FID stipulated to convert the case into an NRS 29.010 proceeding such that the District Court would decide the matter on the parties’ briefs alone and without the benefit of any evidence or discovery. 1 AA 0057–58. Because the parties submitted their dispute by agreement under NRS 29.010, the parties’ briefs were limited to whether licensees could bring suit or ADR proceedings under NRS 604A.480(2)(f). *Id.* at 79–85, 148–54.

In February 2016, the District Court entered an order in DLC’s favor, concluding that “NRS 604A.480 does not prohibit licensees from initiating civil suits or alternative dispute resolution proceedings against a debtor that is in default.” III AA 0466. The District Court, however, did not (and could not under NRS 29.010) opine on whether lenders could issue original loans under NRS 604A.480(2).

***B. This Court Rules in the FID’s Favor.***

The FID then filed the underlying appeal. The sole issue presented was whether “the district court err[ed] in ruling that ‘NRS 604A.480 . . . contains no

prohibition against a [lender] for initiating civil suits or alternative dispute resolution proceedings against a debtor that is in default’?” Appellant’s Opening Brief at 4–5. *See also* Docketing Statement. Accordingly, both the FID and DLC focused their briefs solely on that issue.

After oral argument, the FID filed a one-page Notice of Clarification, clarifying its position “that subsection (2)(f) of NRS 604A.480 operates as a forward-looking bar precluding a lender from commencing any civil action or process of alternative dispute resolution against a consumer who defaults on any sub 2 loan—whether issued as a *new* loan or a *refinance* loan.” Notice of Clarification at 1 (emphasis in original). The FID, however, pointedly explained that DLC’s ability to issue original loans under NRS 604A.480(2) is not at issue in this appeal: “The parties in this case have not litigated the issue of whether an original loan can be issued under NRS 604A.480(2), and the State takes no position on that issue in this case.” *Id.* at n.1. DLC objected to the notice on the basis that whether lenders could legally enforce original loans (as opposed to refinance loans) under NRS 604A.480(2) was outside the scope of the proceedings and consequently had not been adequately briefed. Response to Appellant’s Notice of Clarification 1-3.

This Court rendered the Opinion on December 26, 2017, noting that it was “presented with the narrow question of whether a licensee can sue to collect on the

recovery of a loan under NRS 604A.480(2) made for the purpose of refinancing prior loans.” Opinion at 2. It concluded the statute “bars a licensee from bring any type of enforcement action on a refinancing loan made under NRS 604A.480(2).” *Id.* at 5. The Opinion specifically directs that original loans may be made under NRS 604A.480(2): “We conclude that the plain language of NRS 604A.480(2) expressly permits a licensee to offer a new deferred deposit or high-interest loan that is not subject to the sixty-day restriction or principal-adjustment prohibition of subsection 1.” *Id.* at 7. Nevertheless, Footnote 2 seems to contradict the foregoing language by stating that original loans cannot be issued under NRS 604A.480(2):

Following oral argument, FID sought clarification concerning the application of NRS 604A.480(2)(f) to original loans purportedly made pursuant to NRS 604A.480(2). By the terms of the statute, the proceeds of a “new deferred deposit loan or high-interest loan” made under either subsection 1 or 2 of NRS 604A.480 are for “the repayment, renewal, refinancing or consolidation of an outstanding loan” only. Thus, *we conclude that original loans can't be made pursuant to NRS 604A.480(2).*

*Id.* (emphasis added).

***C. Footnote 2’s Dramatic Impact on Nevada Lending Dwarfs that of the Opinion’s Substantive Ruling.***

While DLC was disappointed in the Court’s determination that NRS 604A.480(2)(f) barred it from seeking legal enforcement of either original or refinanced loans, the implications of Footnote 2 are much greater. DLC estimates

that at least half of the high-interest lending in Nevada involves original loan products under NRS 604A.480(2). Anderson Decl. ¶8. Footnote 2 is sure to cause great confusion in the industry where there was none before. First, Footnote 2 contradicts the holding on page 7 of the Opinion. Second, lenders and the FID have been in agreement for nearly a decade that original loans may be underwritten under NRS 604A.480(2). Lenders like DLC have based this decade-long business model by relying specifically on the blessing of the FID, and have made original loans under NRS 604A.480(2) their primary loan product. *Id.* ¶5. As a result, Footnote 2 threatens to unnecessarily open a regulatory “can of worms” on an issue that was not in dispute, not placed before the Court, not briefed, and not argued.

### **ARGUMENT**

This Court may entertain a petition for rehearing under NRAP 40 when it has (a) “overlooked or misapprehended a material fact in the record or a material question of law in the case, or” (b) “overlooked, misapplied or failed to consider a statute, procedural rule, regulation or decision directly controlling a dispositive issue in the case.” NRAP 40(c)(1)–(2). As set forth below, the Court’s dicta in Footnote 2 inadvertently ruled on an important yet tangential issue never previously addressed by the parties or District Court.

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***A. Footnote 2 Represents an Unconstitutional Advisory Opinion.***

The existence of an actual controversy is a constitutional prerequisite to any judicial determination:

This court is confined to controversies in the true sense. The parties must be adverse and the issues ripe for determination. We do not have constitutional permission to render advisory opinions.

*City of N. Las Vegas v. Cluff*, 85 Nev. 200, 201, 452 P.2d 461, 462 (1969).

Accordingly, the duty of the Court, “as of every other judicial tribunal, is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it.” *Univ. of Nevada v. Tarkanian*, 95 Nev. 389, 394, 594 P.2d 1159, 1162 (1979).

Here, there has never been any controversy between DLC and the FID as to whether DLC could issue original loans under NRS 604A.480(2). The FID agreed DLC could do so in 2007 and countenanced the hundreds of thousands of original loans that DLC issued under NRS 604A.480(2) over the next decade. Anderson Decl. ¶¶3-8. Indeed, the FID expressly took “no position on that issue in this case.” Motion for Clarification at n.1. Nor, as explained above, was the issue ever addressed by DLC, the FID, or the District Court. Rather, the sole focus of the litigation at every stage was solely on whether lenders like DLC could sue in a court or ADR proceeding to enforce NRS 604A.480(2) loans. Further, Footnote 2’s

conclusion was unnecessary and gratuitous to the Court’s ultimate determination in the case. *See Reply in Support Of Appellant’s Notice of Clarification 3* (“Whether to treat original and refinance loans issued under Subsection 2 differently is obviously a legal question for this Court to decide, *and Appellant is content to rest on the arguments made in its briefing and at oral argument in that regard.*”) (emphasis added).

Accordingly, the parties were not adverse on the issue of whether lenders may issue original loans under NRS 604A.480(2). Footnote 2’s conclusion therefore represents an unconstitutional advisory opinion.

***B. Footnote 2 Exceeds the Scope of Relief Sought by the Parties.***

As the Opinion notes, this case focused exclusively on “the narrow question of whether a licensee can sue to collect on the recovery of a loan under NRS 604A.480(2) made for the purpose of refinancing prior loans.” Opinion at 5. The procedural posture was narrower still: It was an action for declaratory relief on that single question that the parties stipulated would proceed to judgment solely on the briefs and without evidence or discovery under NRS 29.010. Section 29.010 proceedings are, by their inherent nature, limited to the issues agreed to by the parties.

Footnote 2, however, exceeded the scope of the requested declaratory relief and parties’ NRS 29.010 agreement by addressing the distinct issue of whether



original loans could be issued under NRS 604A.480(2). Several courts have held that exceeding the scope of the declaratory relief sought is improper. *See Black v. St. Joseph's Hosp. of Buckhannon, Inc.*, 764 S.E.2d 335, 341 (W. Va. 2014) (“After review, we find that the validity and time frame in which the option could be exercised were issues not properly before the circuit court because the hospital’s complaint for declaratory judgment only sought a determination of whether the ‘Option to Repurchase’ agreement was an option contract rather than a ‘right of first refusal.’”); *Gagne v. Gagne*, 338 P.3d 1152, 1165–66 (Colo. Ct. App. 2014) (“[W]e conclude that the court erred in entering a declaratory judgment on . . . never-pleaded claims.”); *Murdaugh v. Patterson*, 435 S.W.3d 689, 698 (Mo. Ct. App. 2014) (holding that the trial court erred in deciding an issue related to but outside the scope of relief sought to be determined in a declaratory action concerning an easement); *Belleville v. David Cutler Group*, 118 A.3d 1184, 1200 (Pa. Commw. Ct. 2015) (“[A] trial court generally exceeds its authority if it grants relief outside of that requested.”).

***C. Whether Original Loans May Be Issued under NRS 604A.480(2) Is a Complicated Issue that Requires Focused Briefing and Evidence.***

Setting aside the absence of an actual controversy between DLC and the FID as to whether original loans may be issued under NRS 604A.480(2) that fell within the scope of the declaratory relief requested, pragmatically, that issue warrants focused briefing in a separate action before a district court. While DLC

emphatically maintains that this question is outside the scope of this appeal, Footnote 2’s conclusion was reached without the benefit of any pleadings that addressed the issue. Nevertheless, there are strong arguments against the Court’s brusque reasoning in Footnote 2. *See* Exhibit 2 (setting forth in detail how the statutory language, legislative history, and policy behind NRS 604A.480(2) strongly supports the conclusion that it authorizes original loans). Nor does the policy undergirding the Opinion’s substantive holding concerning legal enforcement—avoidance of the “debt treadmill” of new loans to cover past loans—apply to original loans.

Finally, DLC notes that the Legislature made substantial changes to NRS Chapter 604A in 2017 with significant input from industry and the FID. *See Exhibit 4*. However, the Legislature did not touch NRS 604A.480(2). Had there been a dispute regarding whether original or new loans could be written under Section 604A.480(2), there would have been changes, or at least proposed changes to the statute in this regard. There were none, plainly indicating that this has not been an issue for anyone until the recent issuance of Footnote 2.

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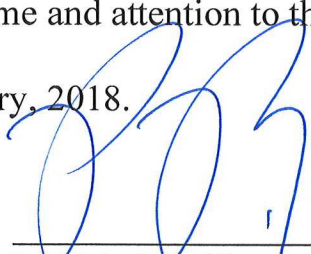
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## CONCLUSION

DLC therefore asks the Court to edit Footnote 2 solely to remove the dicta that original loans may not be issued under NRS 604A.480(2). That determination represents an unconstitutional advisory opinion and was also outside the scope of the limited proceedings in this matter. At a minimum, because it dramatically impacts the payday lending industry in Nevada, it warranted focused briefing and argument, which was wholly absent in this case.

DLC thanks the Court for its time and attention to this matter.

DATED this 16th day of January, 2018.



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## CERTIFICATE OF COMPLIANCE

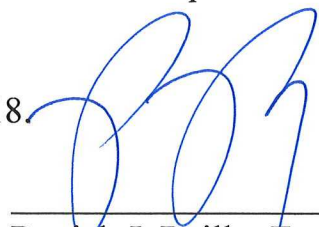
I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally-spaced typeface using Microsoft Word 14 pt. Times New Roman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

I further certify that this brief complies with the page or type-volume limitations of NRAP 40(b)(4) 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 2,953 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 16th day of January, 2018.



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## **CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I electronically filed the foregoing **PETITION FOR REHEARING** with the Clerk of Court for the Supreme Court of Nevada by using the Supreme Court of Nevada's E-filing system on January 16, 2018.

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:

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