Case No. 79224

In the Supreme Court of Nevada

THE STATE OF NEVADA DEPARTMENT OF BUSINESS AND INDUSTRY, FINANCIAL INSTITUTIONS DIVISION,

Appellant,

vs.

TITLEMAX OF NEVADA, INC., a Delaware corporation,

Respondent.

APPEAL

from the Eighth Judicial District Court, Clark County
The Honorable JERRY A. WIESE II, District Judge
District Court Case No. A-18-786784-C

RESPONDENT'S NRAP 28(f) PAMPHLET WITH 2005 AND 2017 LEGISLATIVE HISTORY OF ENACTMENT AND AMENDMENTS TO NRS CHAPTER 604A

VOLUME 1
PAGES 1–250

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CERTIFICATE OF SERVICE

I certify that on May 20, 2020, I submitted the foregoing "Respondent's NRAP 28(f) Pamphlet with 2005 and 2017 Legislative History of Enactment and Amendments to NRS Chapter 604A" for filing *via* the Court's eFlex electronic filing system. Electronic notification will be sent to the following:

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AB 384 - 2005

Introduced on: Mar 24, 2005

By Buckley , Giunchigliani , Oceguera , Parks , Arberry Jr. , Care , Horsford

Makes various changes relating to certain short-term, high-interest loans. (BDR 52-806)

Fiscal Notes

Effect on Local Government: *No.*
Effect on State: *No.*

Most Recent History Action: Approved by the Governor. Chapter 414. **Effective July 1, 2005.**

Past Hearings

Assembly Commerce and Labor	Apr-06-2005	Pending
Assembly Commerce and Labor	Apr-13-2005	Amend, and do pass as amended
Senate Commerce and Labor	May-06-2005	No Action
Senate Commerce and Labor	May-09-2005	No Action
Senate Commerce and Labor	May-12-2005	Not Heard
Senate Commerce and Labor	May-16-2005	No Action
Senate Commerce and Labor	May-18-2005	Amend, and do pass as amended
Senate Commerce and Labor	May-20-2005	After Passage Discussion

Votes

Assembly Final Passage	Apr-26	Yea 42,	Nay 0,	Excused 0,	Not Voting 0,	Absent 0
Senate Final Passage	May-27	Yea 21,	Nay 0,	Excused 0,	Not Voting 0,	Absent 0

Bill Text (PDF) **As Introduced** **1st Reprint** **2nd Reprint** **As Enrolled**

Amendments (PDF) **Amend. No.324** **Amend. No.869**

Bill History

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Mar 24, 2005	Read first time. Referred to Committee on Commerce and Labor. To printer.
Mar 25, 2005	From printer. To committee.
Apr 25, 2005	From committee: Amend, and do pass as amended. Placed on Second Reading File. Read second time. Amended. (Amend. No. 324.) To printer.
Apr 26, 2005	From printer. To engrossment. Engrossed. First reprint. Read third time. Passed, as amended. Title approved, as amended. (Yeas: 42, Nays: None.) To Senate.
Apr 27, 2005	In Senate. Read first time. Referred to Committee on Commerce and Labor. To committee.
May 26, 2005	From committee: Amend, and do pass as amended. Placed on Second Reading File. Read second time. Amended. (Amend. No. 869.) To printer.
May 27, 2005	From printer. To reengrossment. Reengrossed. Second reprint. Read third time. Passed, as amended. Title approved, as amended. (Yeas: 21, Nays: None.) To Assembly.
May 30, 2005	In Assembly.
Jun 01, 2005	Senate Amendment No. 869 concurred in. To enrollment.
Jun 03, 2005	Enrolled and delivered to Governor.
Jun 14, 2005	Approved by the Governor. Chapter 414.

Effective July 1, 2005.

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PREPARED BY
RESEARCH DIVISION
LEGISLATIVE COUNSEL BUREAU
Nonpartisan Staff of the Nevada State Legislature

73rd REGULAR SESSION
OF THE NEVADA STATE LEGISLATURE

ASSEMBLY BILL 384

Topic

Assembly Bill 384 relates to financial services.

Summary

Assembly Bill 384 establishes a new chapter of *Nevada Revised Statutes* (NRS) that provides for the uniform regulation of services that include check-cashing, deferred deposit loans, short-term high interest loans, and title loans. The bill repeals Chapter 604 of NRS, which governs check cashing and deferred deposit services. Any person operating a business that offers loan services is required to be licensed with the Commissioner of Financial Institutions.

A licensee is prohibited from certain acts, including making a loan that exceeds 25 percent of the expected gross monthly income of the customer; making more than one loan to a person under certain circumstances; and garnishing wages of a customer on active military duty.

In addition, A.B. 384 limits the amount that may be collected on a default loan and requires a licensee to offer a repayment plan before commencing collection procedures. A customer may make a partial payment or pay a loan in full at any time without any additional charges or fees. The bill limits the amount a licensee may collect on a check presented if the account has insufficient funds or has been closed.

This measure prohibits licensees from threatening a person who issued a check with criminal prosecution unless the district attorney determines that the person intended to commit fraud by issuing a check on a deposit account that the person knew was closed or did not exist. Licensees may not engage in deceptive advertising or deceptive trade practices. Finally, a customer may commence a civil action if a licensee commits certain violations.

Effective Date

The bill is effective on July 1, 2005.

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LEGISLATIVE HEARINGS

MINUTES AND EXHIBITS

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MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON COMMERCE AND LABOR

Seventy-Third Session
April 6, 2005

The Committee on Commerce and Labor was called to order at 1:07 p.m., on Wednesday, April 6, 2005. Chairwoman Barbara Buckley presided in Room 4100 of the Legislative Building, Carson City, Nevada, and, via simultaneous videoconference, in Room 4401 of the Grant Sawyer State Office Building, Las Vegas, Nevada. Exhibit A is the Agenda. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Ms. Barbara Buckley, Chairwoman
Mr. John Oceguera, Vice Chairman
Ms. Francis Allen
Mr. Bernie Anderson
Mr. Morse Arberry Jr.
Mr. Marcus Conklin
Mrs. Heidi S. Gansert
Ms. Chris Giunchigliani
Mr. Lynn Hettrick
Ms. Kathy McClain
Mr. David Parks
Mr. Richard Perkins
Mr. Bob Seale
Mr. Rod Sherer

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COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblywoman Peggy Pierce, Assembly District No. 3, Clark County

STAFF MEMBERS PRESENT:

Brenda J. Erdoes, Legislative Counsel
Diane Thornton, Committee Policy Analyst

Russell Guindon, Deputy Fiscal Analyst
Keith Norberg, Deputy Fiscal Analyst
Vanessa Brown, Committee Attaché

OTHERS PRESENT:

James Jackson, Legislative Advocate, representing Voice Writers of America
Joseph Nataro, CEO, Voice Writers of America
Barbara Johnson, Nevada Certified Court Reporter No. 255, Registered Professional Reporter
Pat Murphy, Attorney, Nevada Certified Court Reporters Board
Terry Johnson, Deputy Director, Department of Employment, Training and Rehabilitation (DETR)
Cindy Jones, Administrator, Employment Security Division, Nevada Department of Employment, Training and Rehabilitation (DETR)
Keith Lyons, representing Nevada Trial Lawyers Association
Jon Sasser, Statewide Advocacy Coordinator, Washoe Legal Services, Nevada Legal Services, and the Washoe County Senior Law Project
John Sande, Legislative Advocate, representing the Nevada Franchise Auto Association
Troy Dillard, Administrator, Compliance Enforcement Division, Department of Motor Vehicles
Ralph Felices, Northern Region Chief Investigator, Compliance Enforcement Division, Department of Motor Vehicles
Jack Jeffrey, Legislative Advocate, representing B&E Auto Auction Incorporated, Henderson, Nevada
Bob Compan, Government Affairs Representative, Farmers Insurance Group, Las Vegas, Nevada
Michael Geeser, Media/Government Relations, American Automobile Association, Nevada
Fred Haas, Legislative Advocate, representing Las Vegas Metropolitan Police Department; and the Nevada Sheriffs and Chiefs Association
Patricia Morse Jarman, Commissioner, Consumer Affairs Division, Nevada Department of Business and Industry
Mike Harris, Officer, Nevada Collision Industry Association
Tom Wright, representing Ewing Brothers Towing, Incorporated, Las Vegas, Nevada
Clark Whitney, representing Quality Towing, Las Vegas, Nevada
Steve Holloway, Executive Vice President, Associated General Contractors of Southern Nevada
John Wiles, Division Counsel, Division of Industrial Relations, Nevada Department of Business and Industry

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Barbara Wall, Deputy Attorney for Injured Workers, Attorney for Injured Workers Division, Nevada Department of Business and Industry
Dean Hardy, representing Nevada Trial Lawyers Association
Danny Thompson, Executive Secretary-Treasurer, Nevada State AFL-CIO
Bob Ostrovsky, Legislative Advocate, representing Employer's Insurance Company of Nevada
Don Jayne, Legislative Advocate, representing Nevada Self-Insured Association
James Wilcher, C.R.C/C.D.M.S./C.C.M., Certified Rehabilitation Counselor, representing The International Association of Rehabilitation Professionals, Nevada Chapter
Barbara Gruenewald, representing Nevada Trial Lawyers Association
Barry Gold, Associate State Director for Advocacy, American Association of Retired Persons (AARP), Nevada
Bill Uffelman, President and CEO, Nevada Bankers Association
Christopher Dornan, Intern for Assemblywoman Chris Giunchigliani
Josephine Gallegos, Senior Administrative Clerk, Justice/Municipal Court, Carson City, Nevada
Berlyn Miller, Legislative and Regulatory Issues, Nevada Consumer Financial Association
Jan Gilbert, Northern Nevada Coordinator, Progressive Leadership Alliance of Nevada
Alfredo Alonso, Legislative Advocate, representing Money Tree Incorporated
Jim Marchesi, President/CEO, Check City, Las Vegas, Nevada; and Nevada Financial Services Association
Mark Thompson, representing Money Tree; and Community of Financial Services Association of America (CFSA)
Gail Burks, President and CEO, Nevada Fair Housing Center, Las Vegas, Nevada
Azucena Valladolid, Director of Counseling, Consumer Credit Counseling Service, Las Vegas, Nevada
Ernie Adler, Legislative Advocate, representing American Massage Therapist Association, Nevada Chapter

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Vice Chairman Oceguera:
[Meeting called to order. Roll called.] I'll open the hearing on A.B. 446.

Assembly Bill 446: Provides for use of voice writing by court reporters. (BDR 54-1095)

James Jackson, Legislative Advocate, representing Voice Writers of America (VWA):

The Voice Writers of America have requested this bill with the assistance of Speaker Perkins and the Assembly Judiciary Committee.

We have technical amendments (Exhibit B). They bring the bill on par with what the statute is right now and add the National Verbatim Reporters Association, which is responsible for the certification of this type of technology and certification. Currently, the stenographic reporters use the National Court Reporters Association (NCRA) standards, and this would allow voice writers to use their national association as their standard as well. In addition to stenographic notes, since voice writing does not use that same type of technology, the official verbatim record should be maintained through the eight years. Those are the amendments in a nutshell.

This bill allows for the use of this emerging technology in the state of Nevada. Our Supreme Court made a number of changes to the *Nevada Rules of Civil Procedure* that went into effect on January 1, 2005. While those changes already contemplate that voice writing can be used as a technique of recording a legal proceeding or deposition between parties, what we seek to do is only allow those who have been trained in this type of technology, possess the requisite ability, and can show the proper level of skill, to be certified in a Nevada statute. We are not asking for any different standard than what the stenographic reporters have to show with respect to their ability in terms of accuracy, knowledge, and skill. Currently, stenographic reporters have to pass the skill test with 97.5 percent accuracy, and we're asking for the same. We are asking we be allowed to take a test designed and approved by our National Accrediting Board for purposes of taking that test and nothing more. We are not seeking to do away with stenographic reporters, but we're asking to allow this technology and folks who are trained in this technology to become a part of the pool that can be used by litigants and lawyers.

Approximately 22 states have already approved voice writing as a certified method of reporting and recordation of legal proceedings, and more are in the process. You may hear some suggestions to the contrary, that this technology has not been to develop sufficiently, but not only have 22 states approved this, the United States military uses this as its approved method of recording legal proceedings. The United States Department of Labor has not only recognized the National Association for Voice Writing as the recognized accrediting body, but also that the technology and the methodology is also approved for training.

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Vice Chairman Oceguera:
Which states have approved it in the Ninth Circuit; the states surrounding Nevada?

James Jackson:
The Arizona Legislature has just approved voice writing as a certified method unanimously in both houses; but for a few technical amendments, it's going to be on its way to the governor for signature in the next couple of days. In California, they have studied voice writing. It has not been certified, but there are some changes in their laws that have to take place as well.

Joseph Nataro, CEO, Voice Writers of America:
The state of Utah passed resounding legislation in March, 2004, and the governor signed it in April, 2004, allowing voice writers. Currently, we are working with the state of California to come up with some guidelines for their potential licensure. They have conducted tests, results, comparisons, and extensive studies and are ready to go forward in looking further into this as an additional resource for their state.

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James Jackson:
Mr. Nataro and his organization have also submitted their license to the State of Nevada for post-secondary approval of an education facility.

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Assemblyman Anderson:
Looking at these amendments (Exhibit B), I want clarity on the retention of the records, whether it's subject to judicial review. Currently, we require that for the notes, those being the original notes of somebody who has transcribed in the traditional fashion. You're adding in stenographic notes, which is a term we're using here. Whether we're transcribing or not, you'll retain the original record?

James Jackson:
That's correct. The idea is that whatever method is used, the state law requires that the notes of that record or the recordation of that proceeding be maintained for eight years so that, if at some time in the future, a question arises as to what occurred at that proceeding, there is a way to go back and reconstruct, even though they are not transcribed.

Assemblyman Anderson:
Is there currently a methodology to assure that the original transcriptions are identified in some way?

Joseph Nataro:
That particular provision was in the existing law to allow records to be kept if a transcript wasn't promulgated. A reporter must retain and protect them on behalf of the state for eight years. In the case of voice writing, the voice track and the text track are stored on a CD and must be maintained the same way stenographic notes would be kept. In today's society, most of the stenographers are going to computer-aided transcription, which is the same storage component that voice writers would have to do.

Assemblyman Anderson:
How do you determine your original versus those that might be out there that are pirated?

Joseph Nataro:
A stenographic reporter has to copy, store, and preserve their notes. This isn't a case where a transcript wasn't produced. The voice writer would do the same thing on the computer. It's not public domain and no one else has that, unless they've been engaged to produce a transcript. Those records are then kept by that reporter and available to the state for up to eight years under the current law, whether it is in a computer or stenographic notes.

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James Jackson:
I want to cover the education aspect of what voice writers have to go through. They must go through virtually the same curriculum that the stenographic reporters have to go through. In 2002, the two boards standardized the curriculum. The curriculum is the same, but the difference is in the methodology in which the curriculum is done. At Mr. Nataro's facility and the one that would hopefully be opened in Nevada, it would be a 5-day week, 8-hour day curriculum, as opposed to some of the other stenographic curriculums that can take as long as one or two classes a week, stretching over 2 or 3 years. The curriculum is the same, and students are taught the same things. Their skill levels have to be at the same level. No person would be allowed to be certified in the state of Nevada until they take and pass the test we've indicated.

There's a chance someone will say we need to study this and find out if this technology works. The United States military, the United States federal government, and at least 22 other states and now Arizona coming on board very soon—this matter and technology has been fully vetted and considered. There's no reason not to allow this to occur. *Nevada Rules of Civil Procedure* already contemplate that it can occur by stipulation. We seek only to do exactly what the Nevada Court Reporters Board's mission is: to make sure the people who are doing this are certified, qualified, and are protecting the citizens of the state of Nevada by being so.

Assemblywoman Giunchigliani:
It's probably always threatening for an industry to think, "Technology is changing," but I think that's part of the encounter here. Is it still up to the judge on what type of recording they would like to have?

James Jackson:
Based on my reading of the changes in *Nevada Rules and Civil Procedure*, the parties can agree to any type of recording of a proceeding down to just punching a tape recorder and doing it that way, or not even having it recorded at all.

Barbara Johnson, Nevada Certified Court Reporter No. 255, Registered Professional Reporter, Nevada:
I believe that if this technology and voice writers are going to be allowed to be court reporters in the state of Nevada, they must go though the education necessary. That's what I went though, and it's necessary to make a good court reporter. I just retired from 24 years in the Sixth Judicial District Court as an official court reporter. I have used every bit of that education, and anything less than that would void whatever credibility we have as the recordkeepers in this state. Many students coming out of high school need much remedial English, grammar, and spelling. I'm not necessarily opposed to the technology, but I'm opposed to this technology coming in without the guidance of our State certification board and going through the rigorous testing to be sure the schooling is there. You can't do it in a matter of months. It took me three years of full-time school to go through.

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Pat Murphy, Attorney, Nevada Certified Court Reporters Board:
We oppose this bill at this time. The Nevada Certified Court Reporters currently undergo approximately 1,000 class hours just on academics, which is completely independent from the technology they use. The technology includes stenographic machine versus the voice recording machine. We have correspondence from Mr. Nataro to a court reporter stating that "he can educate them in as little as three to six months." That is not what I'd quote as "virtually the same curriculum," as Mr. Jackson said. It's a substantially different period of time. The average time for a court reporter to have enough education to take the examination in the state of Nevada is two to four years. If you're going to be cranking out people in three to six months, you're going to experience a problem.

The Nevada Certified Court Reporters Board is charged with the responsibility of administering the testing procedure to all. While we believe it is noble that they are going to be required to take the exact same exam, at this point we don't even know the administrative aspects of it. We, like the state of California,

would like to study this for a period of time before we can come up with a proper test administration.

[Pat Murphy, continued.] The Nevada Certified Court Reporters Board examination is subject to external validation. The National Verbatim Voice Writers Association standards and certifications are not. We need to make sure that the same levels of safeguards are put forward. I've been practicing here in Las Vegas for approximately 24 years and I've never had a problem obtaining a court reporter for any deposition or any proceeding, nor have I ever had a problem with a transcript. As an attorney, I want to make sure we have the same levels of certification and the same types of standards that have to be met by these people. A 3- to 6-month school is not going to accomplish what is accomplished through 1,000 hours of class hours just on academics alone.

As Mr. Jackson has stated, a minority of states have accepted this. I would say that, if the U.S. government has adopted it, I'm not sure the state of Nevada wants to use the efficiency of the U.S. government as their model.

Vice Chairman Oceguera:
I'll close the hearing on A.B. 446 and I'll open the hearing on A.B. 502.

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Assembly Bill 502: Makes various changes to provisions governing unemployment compensation. (BDR 53-323)

Terry Johnson, Deputy Director, Nevada Department of Employment, Training and Rehabilitation:
I'm joined by Cindy Jones, the Administrator of the Employment Security Division, who will be presenting this bill. I'm also here with the agency's counsel, Tom Susich and Donna Clark. We look forward to working with you on this bill.

Cindy Jones, Administrator, Employment Security Division, Nevada Department of Employment, Training and Rehabilitation (DETR):
[Read from Exhibit C.] The mission of the Employment Security Division is to provide a statewide labor exchange, conduct programs that promptly pay unemployment benefits, improve the employment stability of those collecting unemployment insurance, and administer an effective unemployment insurance tax system.

A.B. 502 makes various changes to Nevada's unemployment compensation law, including adoption of the federal State

Unemployment Tax Act (SUTA) Dumping Prevention Act of 2004 (Public Law 108-295), [42 USC 503], which establishes minimum standards upon state laws to prohibit employers from manipulating their experience rating to obtain a lower unemployment insurance (UI) tax rate.

[Cindy Jones, continued.] The practice of SUTA Dumping allows employers to escape their own claims experience and "dump" their earned tax obligations on other employers and businesses in the state. This results in unfair advantages to employers who engage in this sort of activity and results in a higher tax rate as those obligations that are dumped are passed onto other businesses who don't engage in those activities.

The SUTA Dumping Prevention Act was unanimously passed by Congress and signed into law by the president in August of 2004. The state unemployment insurance programs are administered through a state-federal partnership. Because of this, state laws must be consistent with federal law to avoid sanctions. Federal sanctions could include denial by the Secretary of Labor of Federal Unemployment Tax Act (FUTA) and offset credits to Nevada employers, which would cost these employers $388 million a year.

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There are four minimum requirements, which all state laws must meet in order to be found in conformance with the SUTA Dumping Prevention Act of 2004.

The first requirement calls for mandatory transfers. Under this provision, whenever there is substantially common ownership, management, or control between two employers, and one of these employers transfers its trade or business, including its workforce, to the other employer, unemployment experience must be transferred. This requirement applies to both total and partial transfers of business.

Prohibited transfers are defined in the second provision. If the state unemployment insurance agency finds that a person acquired a business solely or primarily for the purpose of obtaining a lower tax rate, the unemployment experience may not be transferred.

The third provision requires meaningful civil and criminal penalties for SUTA Dumping. The penalties must be imposed on persons who knowingly violate or attempt to violate SUTA Dumping

provisions. These penalties must also be applicable to any person, including the person's employer, who knowingly gives advice leading to such a violation.

[Cindy Jones, continued.] The last provision requires states to establish procedures to detect SUTA dumping activities.

Beginning with Section 1, A.B. 502 amends *Nevada Revised Statutes* (NRS) Chapter 612 to add a new section related to the SUTA Dumping Prevention Act. This new section meets mandatory provisions related to the establishment of procedures to identify or detect rate manipulation activities and provide civil penalties for SUTA Dumping violations.

Lines 1 through 7 on page 1 of the bill, and continuing on page 2, lines 1 through 3, requires the establishment procedures to identify activities related to the transfer or acquisition of a business for the sole purpose of obtaining a lower UI contribution rate, or the existence of common ownership, management or control between two or more business entities, indicated by activities such as the movement of workforce between the entities.

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Assemblywoman Buckley:
Would you tell us which provisions of the bill are not required to conform Nevada's law to the new federal law that was passed?

Cindy Jones:
There are four other areas that have been rolled into this bill. Those related to the changes with *Nevada Rules of Civil Procedure*, changing our timelines from 10 days to 11 days, are not related to the Dumping Prevention Act. The addition of the word "covered" related to separation issues in determining eligibility for unemployment insurance is not related to the Act. The deletion of the "Job Training Partnership Act" is not related, nor is returning the returned check fee back to the control of the administrator. Those four other issues are not related; however, they are contained in the same bill. All of the other provisions, as outlined in the bill and in the testimony (Exhibit C), so relate to the Dumping Prevention Act and are required to meet conformance. The Department of Labor has reviewed our proposed language prior to it being in the form that has been distributed today while it was still in bill draft form. They found the proposed language isn't in conformance with federal law.

Chairwoman Buckley:
I read through your testimony (Exhibit C), and the only section I was not comfortable with was Section 5 with regard to adding "covered employment." For example, a worker quits a job to start a small business, which fails, and then gets a new job and is laid off. If those periods match properly, they wouldn't then qualify for unemployment and it's through no fault of their own. Similarly, with the term "misconduct," perhaps it means that they did something wrong, but there can also be circumstances where there's just a disagreement at work and then there's a subsequent job, they're laid off, and again, they wouldn't be eligible for unemployment. I certainly feel it's defeating the whole purpose of unemployment insurance by tightening it up to prevent good-faith situations where someone just finds themselves ultimately laid off.

Cindy Jones:
The intent of the Unemployment Insurance Program is to provide unemployment insurance benefits to those who find themselves unemployed through no fault of their own. In Nevada, we do look at the separation from the last employer and, depending on the length of time with that employer, that separation from the next-to-last employer. The purpose of requesting this is to tighten this loophole that is only taken advantage of by those who have in-depth knowledge of unemployment compensation law. Specifically, we find that previous employees of the Division are those who typically avail themselves of that loophole of going and finding uncovered employment to avoid disqualification. This has occurred in at least seven instances in the last couple of years. If someone is discharged from employment for misconduct, which is defined though case law as knowingly violating a policy or procedure, typically of an employer, not an inability to perform the work as required. If they were discharged for something that was considered misconduct and then worked for a friend for two different weekends cleaning their garage, and those are considered the last two periods of employment, the discharge would not be considered at all. We want to close that loophole so benefits are only paid to those who are truly unemployed through no fault of their own.

Chairwoman Buckley:
Only seven people have ever taken advantage of this?

Cindy Jones:
We don't know the number because there isn't a way to track it in our system. We know at least seven previous Division employees have taken advantage of this loophole.

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Chairwoman Buckley:
Maybe you could get that data and supply it to the Committee. I also know of situations with regard to misconduct. I did a few unemployment cases a decade ago and I'll never forget one case I had, because of all the cases in my legal career that I lost, I hated losing this the most. It was a porter in a casino and the room guest kept making him go down and get more alcohol, and the guest got very drunk. The porter was African American, and the room guest said, "Come on, boy, can't you go faster?" It kept on over a long period of time. At the end, they threw him a casino chip as a tip, and he caught it and placed it on the dresser and walked out of the room. He didn't say a word. He was fired and denied unemployment because he willfully refused a tip. I tried to talk him into appealing it to the Supreme Court, but he said, "I've been discriminated against my whole life. It matters more to you than it does to me. Let's just let it go." I feel for people in this situation. He didn't mouth off. He just stood up for himself a little bit and he still got fired. I'd hate to change this so that people like him don't get denied unemployment, because I think they deserve it.

Cindy Jones:
We'll do our best to obtain the data that you've requested and provide it to the Committee. Throughout the bill, there are different sections that implement the SUTA Dumping Prevention Act. The area regarding the change of the time from 10 days to 11 days is related to change in the *Nevada Rules of Civil Procedure*. Without this change, we would find it difficult to meet our timeliness standards as established by the Department of Labor, because the new rule takes into account non-judicial days in considering the calculation of time. By adding a day, we are reducing the amount of time for a response by various parties for various deadlines related to eligibility and the payment of taxes.

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The removal of the Job Training Partnership Act is the repealed section. This section is no longer applicable due to the implementation of the Workforce Investment Act of 1998 [29 USC 2801].

It is very important for us to pass this bill this session, because without it we could risk the few offset tax credits for Nevada employers at a cost of approximately $388 million.

Keith Lyons, representing Nevada Trial Lawyers Association:
In Section 1, subsection 1(b), it talks about "common ownership, management or control between two or more business entities, including, without limitation, through the movement of workforce between such business entities." In Nevada, we're a very liberal state with setting up corporations, so you have a lot of individuals who have two or three corporations for different purposes. For example, a doctor is required to have a professional corporation. The doctor

may set up a separate billing corporation simply to do his billing and may also attempt to get other doctors to use his billing service. Nevertheless, the doctor would own his professional corporation and the billing service, so you would have common ownership or management or control between the two corporations. Under this, this individual may be liable for damages for setting up something that is permissible under Nevada law.

[Keith Lyons, continued.] There are several tests that different courts have used to set out when there is liability for common ownership, management, or control. Especially in the Title 7 area, a lot of people try to start corporations to evade liability by having fewer than 15 employees. If you're going to have this type of a test, it needs to be more specific so the administrator has more guidance as to what the law is and what factors they have to use.

In paragraph 3 of Section 1, part of an attorney's role is to advise corporations on the law, including grey areas in the law. You may have liability if you do this; you may not. We can't advise someone to do something that is per se illegal, but you can interpret the law and advise your client that there may be a court challenge down the road and you could win or lose the challenge. The problem with subsection 3, Section 1, is that the administrator determines whether an attorney can advise a business entity what the law is and different things it can try to do to minimize tax liability. If the administrator comes in and says that attorney has knowingly advised another person or business entity to violate or attempt to violate any provision of this chapter, now the attorney is liable for 10 percent of the total amount of any resulted underreporting. This takes away the role of the attorney in giving legal advice by subjecting them to liability for a vague test of what common ownership is. Because of those problems, we believe that the proposed amendments should not be passed.

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Another issue deals with the time periods. I recognize the problem that arose when the Nevada Supreme Court issued new rules on how to calculate days. They changed it from 10 to 11 days. That really shortens the time period. One issue we need to consider is whether we want this time period as short as possible, and leave it at the 10 days that it currently is. That may allow people more opportunity to appeal various rulings. Sometimes simply to seek counsel or legal advice could take more than the 10 days. Shortening the time period would be a hardship on individuals in particular. I recommend that it be left at the 10-day time period. It's an issue of whether to include weekends or holidays. It's not going to make a substantial difference, but any amount of time allowed to somebody to appeal a decision I think should give them the maximum benefit of the doubt.

[Keith Lyons, continued.] I share Ms. Buckley's concerns over the covered employee. I've represented individuals at employment hearings and I've run into the exact same problem she's talking about. On behalf of the Nevada Trial Lawyers Association, we believe this bill should not be passed.

Jon Sasser, Statewide Advocacy Coordinator, Washoe Legal Services, Nevada Legal Services, and the Washoe County Senior Law Project:
I don't take any position on any part of the bill other than Sections 5 and 6 where the issue of covered employment and self employment are added to the statute. I too have practiced in this area often over the years, and I've had the pleasure of working with Mr. Susich to summarize this law for the Division. I couldn't tell you what covered employment is and what uncovered employment is off the top of my head, so I worry there may be innocent people who work in uncovered employment and don't know one way or another who may be hurt by these provisions. This would not hurt us in terms of the federal law if those two provisions were not in the bill.

Vice Chairman Oceguera:
[Exhibit D was submitted by Ray Bacon.] I'll close the hearing on A.B. 502. We'll open the hearing on A.B. 249.

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Assembly Bill 249: Makes various changes relating to vehicles. (BDR 43-136)

Assemblywoman Barbara Buckley, Assembly District No. 8, Clark County:
I'm pleased to present to you A.B. 249, which primarily deals with the issue of yo-yo sales. The packet (Exhibit E) overviews newspaper articles and some typical yo-yo sales complaints. A yo-yo sale is when someone goes to a car dealership and buys a car. It's usually a very long experience and at the end of it they get a hand shake and they say "Congratulations, you are now the proud owner of a brand new car." You walk out, you're happy, you show all of your friends, and life is good. Then you get a phone call about a week later saying, "Oops, sorry, if you looked at the back of your contract, it says that this contract was subject to the financing being approved, and your financing was not approved. So instead of the 12 percent in your contract, the only financing we can get you is 25 percent, and instead of the $500 down, we now need $2,000 down." Up until I worked with the car dealers a couple of years ago, it was also, "your trade-in has been sold, so when are you going to give us your money?" We've been working on this issue for several years.

Most good car dealers work in good faith to let people know what the true interest rate and the true terms would be. It's very extraordinary if something

happens to change it. For those dealers who are less scrupulous, it's part of the business model. They will make more money keeping the person on a string and stringing them back up to be able to make more profit per transaction. In situations like this, it's easy to see why dealers and used-car dealers end up most distrusted.

[Assemblywoman Buckley, continued.] The bill with the amendments (Exhibit F) is the result of a collaboration over the past year with representatives from the Nevada Franchise Auto Dealers Association, the Nevada Department of Motor Vehicles (DMV), the Attorney General's Office, The Department of Consumer Affairs, consumer advocates, and myself. We have worked on this bill for over a year. We've been to annual meetings of all the franchise auto dealers and their presidents to discuss the bill. It's a compromise in many ways, but a compromise that enacts important consumer protections while maintaining a balanced recognition of honest and legitimate business interests.

The bill deals with six discrete areas. This bill became a little bit of a vehicle for some things the franchise auto dealers and DMV wanted.

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Section 1 authorizes DMV to expend money we appropriate to acquire evidence. Troy Dillard with DMV Compliance Enforcement will testify to this area.

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Section 2 gives the DMV Compliance Enforcement the authority to fine, suspend, or revoke a license for deceptive trade practices as related to the purchase and sale of the vehicle, the yo-yo issue.

Section 3 will clarify current law with regard to the dealer's bond.

Section 4 will close a loophole with regard to inspection of rebuilt vehicles before they're put back on the road. Either Mr. Felices or Mr. Dillard will speak to this.

Section 5 gives DMV the authority to make regulations concerning liens on vehicles. Originally, DMV had put a number of provisions with regard to towing and the lien law. All of those have been removed and instead it allows only the DMV to enact regulation. We received a couple of e-mails from some tow companies and sent e-mails to them last night letting them know that. I'm not sure if everybody got the word, but we are eliminating those provisions.

Lastly, it provides for a new car lemon branding. John Sande with the Nevada Franchise Auto Dealers will speak to that area. The bill as amended also makes some technical but important changes to A.B. 325 of the 72nd Legislative

Session that I sponsored last session with regard to rebuilt wrecks and the exception for older vehicles.

[Assemblywoman Buckley, continued.] With regard to the yo-yo issue, giving DMV additional enforcement authority for deceptive trade practices is a very necessary tool in combating fraud associated with the yo-yo car sales because of how bad our system is right now. Right now, if a consumer feels they have been defrauded and victimized, that consumer might be told to go to the Attorney General's Office. The Attorney General will then advise them to go to DMV. DMV would take a complaint investigation, but their hands are largely tied because existing law only gives them authority to discipline a car dealer for violations of NRS 482, not 598. NRS 482 is basically the DMV licensee chapter, and NRS 598 is deceptive trade practices. After investigating a complaint, DMV would typically and ultimately write the consumer a letter saying it was a civil problem. The consumer, because it was a civil problem, would go to Consumer Affairs, which does have authority to regulate deceptive trade practices, but as a practical matter didn't have the recourses, the familiarity with car dealers, or the ability to take a license away for deceptive trade practices. On the books, theoretically, there might be some relief for someone victimized in this situation, but as a practical matter, people were just getting the runaround.

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A.B. 249 places authority where it might best be used: by those who license car dealers, the DMV. The DMV is best suited to investigate and determine these trade practices. They can do investigations, they can fine, and they can suspend or even revoke a license. A.B. 249 also specifies certain practices as deceptive, specifically dealing with the yo-yo sales. With regard to the portions of the bill dealing with the dealer's bond, the bill clarifies that an aggrieved consumer has the option of going to court or bringing an administrative action held by DMV. If a consumer goes to court and the court enters a judgment on the merits against a dealer, it's binding on the surety on the bond. If the judgment against a dealer is other than on the merits, for example, by default, then surety is not bound unless it was given at least 20 days' notice and an opportunity to defend. The bill provides that if there's a settlement between the consumer and the dealer which is not paid, then the consumer can apply to DMV to have surety on the bond and pay the settlement when it was reached on good faith.

As for the inspection of rebuilt vehicles, A.B. 249 closes a loophole. Last session we created a category of vehicles known as salvage vehicles and provided an inspection before they were put on the road. We did not put it on the category separately defined as rebuilt vehicles, and A.B. 249 corrects that oversight.

[Assemblywoman Buckley, continued.] As for car lemon branding, which Mr. Sande is going to discuss, A.B. 249 uses the language of the California lemon branding law. I believe this law protects consumers and new car dealers, who can be caught in the dispute between the consumer and the manufacturer when a new car cannot be made to conform to a new car warranty where it's a lemon. Having no lemon law makes Nevada a dumping ground for brand-new car lemons, and A.B. 249 will prevent that from happening.

John Sande, Legislative Advocate, representing the Nevada Franchise Auto Association:
We have been working with Assemblywoman Buckley for the last two years and we certainly support going after anybody who would do some of the transactions she mentioned. If something like this occurs, we have agreed (Exhibit F) the responsible party would be subject to a fine up to $10,000 as determined by the DMV, which is four times what any other deceptive trade practice is subject to under Nevada law at this time. Section 35 is the lemon law provisions. We believe they're very important to protect consumers.

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If you have a car that is claimed to be a lemon under Nevada law, certain provisions are set forth as to what constitutes a lemon. There may be ultimately a decision by the manufacturer to take back that car. This requires that if a manufacturer does take back that car and puts it back in the stream of commerce by selling it, a notice must be given to the consumer or the purchaser. Also, before the title is sold, it must be re-titled to say "lemon law buyback" so any future consumer would know that at one time there was a problem with the automobile.

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There are provisions in here (Exhibit F) to give notice to the buyer stating the nature of the non-conformity reported by the original buyer or lessee of the motor vehicle, and what steps have been taken by the manufacturer to repair those. At least the buyer would know 100 percent that it was a lemon and they could make a reasonable determination as to whether or not they should go forward with the purchase and what they should pay for the automobile. We have amendments we are proposing (Exhibit F), and we're very close to having a very good bill. We're supportive of it as an association.

Assemblyman Arberry:
If we pass the law and it goes into effect, what mechanism are you going to use to inform the public?

Assemblywoman Buckley:
We formed a coalition where we have Consumer Affairs, the Better Business Bureau, Senior Law Project, and DMV, so if anyone has a complaint, usually

what happens is a consumer will find one of them. Before, they got the runaround as to who had jurisdiction; now we know. The consumer can make a complaint now with DMV, and they'll investigate, fine, or do a hearing.

John Sande:
The DMV is instructed to draft a disclosure form that will basically tell the consumer, "You are entitled, if this is a termination of a contract or cancellation, to a return of all consideration, including your trade-in, and you do not have to enter into any other contract and you may walk away." Having that type of disclosure statement, which the DMV can check if there ever is a complaint, will resolve a lot of the problems and nip it in the bud. There's a similar law in California that works well.

Assemblywoman Giunchigliani:
There would be nothing wrong with having a paper provided in other languages, minimally Spanish. The Chambers of Commerce could do Tagalog. We can make it available if that's the case, if that's not a problem.

Assemblyman Conklin:
If somebody goes into a dealership and falsifies information and therefore a dealer is forced to call them back, I would assume that's not considered a yo-yo and there's ample protection for something like that, correct?

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Assemblywoman Buckley:
There is, and we also have protection on the flip side. One of the other bills that Mr. Sande and I worked on in this area was because we had a lot of complaints where the dealer falsified the income. It was really the salesman trying to get the commission and sometimes the manager didn't know. We also have protections against falsification from the salesman as well.

Troy Dillard, Administrator, Compliance Enforcement Division, Nevada Department of Motor Vehicles:
The DMV is in support of this legislation, qualifying that the staffing request submitted in the fiscal note is approved. The legislation, as explained, effectively makes the DMV the single point of contact for consumer complaints relating to the purchase or sale of motor vehicles within the state of Nevada. Presently, these responsibilities are shared amongst many state entities and consumers are bounced from agency to agency, depending on specific circumstances of their complaint. This legislation assists consumers and the industry by eliminating the confusion and redundancy factors in the present system. Ms. Buckley, the affected state agencies, the auto industry, and consumers all participated in the discussions, creation, and proposed amendments of this bill. The DMV feels this legislation is beneficial to all parties

involved and would like to extend our appreciation to those entities and individuals that worked together to put this bill before the Committee today.

[Troy Dillard, continued.] Section 1 is simply some cleanup language back from the split between the Department of Public Safety and DMV in 1999. This language went over to Public Safety and did not get included in DMV statutes. As we were conducting some internal control audits, we discovered we no longer had the authority to handle the budget authority that we'd been given, and has been in our budgets for many years, to purchase evidence. This is putting that language back into the statute so we maintain that authority. The amendatory language (Exhibit F) submitted is in addition to the existing language for Public Safety. It simply allows the electronic transfer of those funds instead of a hard-check warrant to the Department and instead of the Director.

Ralph Felices, Northern Region Chief Investigator, Compliance Enforcement Division, Nevada Department of Motor Vehicles:
I'll speak on Sections 3 through 12, which involve the definitions for the rebuilt vehicle and the components that make up the rebuilt vehicle. This is also part of A.B. 325 of the 72nd Legislative Session. This part further clarifies part of that bill and takes away some of the confusion of the inspections of those vehicles that have only those types of repairs done to them. It benefits the consumer because they are able to get these vehicles inspected without undue problems with the people responsible for doing those inspections.

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The other portion of the bill I'm involved in is the section that was eliminated, Sections 26 through 33, involving Chapter 108 of NRS. This was removed because of some potential impact in the industry and some problems with the administration of the bill. A portion of the amendment to the bill allows the Department to adopt regulations and allows the industry to participate in those to make this a better working solution to the problem.

Jack Jeffrey, Legislative Advocate, representing B&E Auto Auction Incorporated, Henderson, Nevada:
My client, Bob Ellis, has worked with Barbara Buckley, the DMV, and the insurance companies. I would like to commend Assemblywoman Buckley on the work she's done on this. Assemblywoman Buckley has the ability to bring people together to straighten out an industry, and we're in full support of the bill.

Bob Compan, Government Affairs Representative, Farmers Insurance Group:
A.B. 249 in its design establishes parameters for determining whether or not a vehicle is deemed repairable. The bill establishes uniform guidelines when either

a light quality frame or a new frame is replaced on repairable vehicles. This is a spin-off of A.B. 325 of the 72nd Legislative Session. Our objective when we settle claims is to determine when a vehicle is to be restored to pre-accident condition, or the vehicle is deemed to be a total loss. Our philosophy is we want to pay what we owe, the actual cash value of the vehicle, and put it back to where it was prior to the loss. We think the bill is a very good bill. Farmers Insurance is in support of the bill. It's taken a lot of work to outline the right statutes and where things go. Were the pay thresholds amended?

Assemblywoman Buckley:
The provisions that were amended with regard to A.B. 325 of the 72nd Legislative Session were in Sections 3 through 11. We put the specific definitions that were previously in the NAC and the NRS so it could be located quicker. In Section 24, for the convenience of the insurance and collision repair industry, we specifically stated and duplicated the content of NRS 487.890(2), stating, "the cost of repair may not include any cost associated with painting any portion of the vehicle." We also included in the amendment (Exhibit F) the ten years or older vehicle with that clarification as well. We were able to address those three issues.

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Michael Geeser, Media/Government Relations, American Automobile Association (AAA), Nevada:
AAA supports the bill. I've written a letter (Exhibit G).

Fred Haas, representing Las Vegas Metropolitan Police Department and Nevada Sheriffs and Chiefs Association:
We've worked actively with Assemblywoman Buckley on these issues in the past and we are specifically in support of Sections 20 and 25, which deal with the inspection a rebuilt vehicle must undergo before registering at the DMV.

Patricia Morse Jarman, Commissioner, Consumer Affairs Division, Nevada Department of Business and Industry:
We'd like to offer our wholehearted support of this bill from the consumer's aspect. This has been a problem for many years. Nevada has progressed in the way we deal with complaints in the automotive industry in sales, leases, and repairs, but we still have a long way to go. We urge you to support this bill.

Mike Harris, Officer, Nevada Collision Industry Association (NCIA):
I would like to thank Ms. Buckley for her help over the last few years with NAC changes, as well as changes here. She's worked diligently with NCIA to make the collision repair industry better. We are in support of all the changes (Exhibit F), in particular those dealing with collision repair. We do have one final suggestion for Section 24, lines 21 through 26, which talks about ten-year-old

or older model car. This legislation was created to help a consumer who has an older car that doesn't have a lot of economic value. This issue is to relieve the 65 percent so the insurer and the insured could repair the car at a higher level if they so desired, and it would not be a salvaged title if that was the case.

[Mike Harris, continue.] When this legislation was created, it added in a few more requirements starting on page 10 line 21 after it says "ten model years old and older," it specifies "which required only the replacement of the hood, trunk lid, grill assembly"—it said "quarter panels," which has been struck—"doors, bumper assemblies" and so on, all the way down to the end of line 26, "or otherwise damaged." Our industry would like to request that those words be removed which specify only three pieces can be replaced on that car. If the car is ten years old or older and it does need more than three pieces, it's going to require a salvaged title. Our experience in southern Nevada is when a salvaged title is to be given to a consumer on their vehicle, the insurer simply totals the vehicle and it doesn't get repaired for a salvaged title. We feel the original intent was a great tool and was something that would help those who truly needed the help, but by limiting the parts that can be put on that car, it does as much damage as the good did.

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Assemblywoman Buckley:
On the last page of the amendments (Exhibit F), I'm proposing that on ten-year or older cars and which only require the replacement of the hood, trunk lid, and two or fewer of the assemblies which may be bold or not. We limit it to "doors, grill assemblies, bumper assemblies, headlight assemblies, taillight assemblies, any combination thereof." We're trying to do exactly what the witness talked about and those things not related to safety, to the engine, especially on the older cars, making sure that doesn't require a salvaged title. We've worked with the auto auction, the insurance industry, DMV, and the collision industry because each one is balancing. We want to make sure we don't have unsafe cars on the road, but we want to make sure we're not salvaging cars and putting a title on unnecessarily. That's been our balance and we're going to achieve it here.

Mike Harris:
The repairing of a vehicle less than ten years old has some actual provisions you put in regarding major components, and we wholeheartedly support that. It would be simpler to repair these cars if we could have the same latitude with a ten-year-old car, with the exception of the economic issue you attempted before. If a ten-year-old car needed a hood, bumper, and a headlight, that would be the maximum number of pieces that could be put on that car. It's limited to just three parts, or if that particular vehicle needs an outer repair panel on a quarter-panel, that vehicle will have to go to salvage title or, in reality, to total

loss because it's not allowed. The criteria outline for the new model cars from one to ten years is excellent, and we felt that same criteria could be brought forward to cars no matter what their year is.

Assemblywoman Buckley:
We can run that by the 15 people who have negotiated this bill for 5 years. I'll report back to the Committee.

Tom Wright, representing Ewing Brothers Towing, Incorporated, Las Vegas, Nevada:
We do support the bill with the exception of the lines that have been stricken. Mr. Rex Ewing did receive an e-mail from Madam Chair and we're happy with the items that have been stricken.

Clark Whitney, representing Quality Towing, Las Vegas, Nevada:
I'd like to thank you for your coordination and communication with us regarding this matter; especially Ralph Felices with the DMV, who is a very reasonable man and wants to do the best for the state and for us also. I'm neutral on the bill.

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Vice Chairman Oceguera:
I'll close the hearing on A.B. 249.

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Chairwoman Buckley:
I'll open the public hearing on A.B. 363. Both A.B. 363 and A.B. 364 are bills coming out of the Interim Committee on industrial insurance. Mr. Oceguera was the Vice Chair of that Committee; this is not his bill, but he's carrying on the work of the Interim Committee, and we appreciate that.

Assembly Bill 363: Makes various changes relating to consolidated insurance programs. (BDR 53-252)

Assemblyman John Oceguera, Assembly District No. 16, Clark County:
A.B. 363 came out of the Interim Committee to Study Nevada's Industrial Insurance Program. A.B. 363 relates to the consolidated insurance programs. These programs are also known as owner-controlled insurance programs, or OCIPs. Depending on their set up, they can also be called contractor-controlled insurance programs. This bill stems from a fatality that occurred in June 2004 at the World Market Center in Las Vegas, which was operating under an OCIP. The Committee to Study Nevada's Industrial Insurance Program heard testimony indicating that there was no safety person on site at the time of the accident,

even though state law requires that a safety coordinator or an alternate safety coordinator be physically present while work is being performed on an OCIP project.

[Assemblyman Oceguera, continued.] A $1,000 fine was imposed by the Division of Industrial Relations (DIR) for violation of the provision that required the owner to ensure that the primary or alternate safety coordinator is physically present. A second fine in the amount of $10,000 was imposed for failure to hire and secure approval of an alternative safety coordinator for the project as required by law. Although DIR imposed these fines, the statute did not contain a mechanism to shut down the job site.

This bill provides such a mechanism. It requires an owner or principal contractor who establishes and administers a consolidated insurance program to submit a monthly affidavit to the Commissioner of Insurance indicating that the safety coordinator was on site during the preceding month as required by statute, and that an administrator of claims is also on site as required by statute. An owner may submit an affidavit indicating that there were no safety or claims personnel on a site if there was no work being done during that month. The bill further provides that if a person violates the provisions that require a safety coordinator or a claims administrator be on site while work is being performed, the Occupational Safety and Health Review Board has the authority to order the owner or principal contractor to cease all activity relating to construction at the construction site until the Board determines that the owner or principal contractor has complied with the law.

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The bill imposes an administrative fine of $5,000 per day for each day that the Board determines that the owner or principal contractor failed to comply with the law. A.B. 363 provides that if the owner or principal contractor falsified the affidavit, violates the provisions that require a safety coordinator, or claims an administrator is on site while work is being performed, he is prohibited from establishing or administering a consolidated insurance program for five years after the completion of the construction project.

Steve Holloway, Executive Vice President, Associated General Contractors of Southern Nevada:

We are here in support of this bill. I did the initial draft on this bill. It was one of our contractors and one of their employees who was killed at the World Market Center, and it was us who complained that there was no safety person on that job. I want to give you some background on this statute and law that we're attempting to amend. This OCIP statute was a compromise arrived at in the 1990s, in which most of the construction community objected to OCIPs in the first place. OCIP is an insurance program obtained by an owner or, in some

cases, the prime contractor on a project. It covers all of the liability insurance in the workers' compensation. OCIPs usually don't pay for themselves unless the workers' compensation is included. There's a history of them throughout the United States and many of them have ended up in court.

[Steve Holloway, continued.] In an OCIP, because the owner is paying for the insurance, when the contractors bid the project they are asked to back out all of their workers' compensation costs and at times even their safety costs. Most contractors have their own safety work force and safety directors on a job site. As a compromise, we want the owner who purchases the owner-controlled insurance program or the insurance company to put a certified safety person on the job, and that person needs to be on the job at all times construction is underway. At the World Market Center, there was not a certified safety person on the job. The safety person that was supposedly assigned to that job was on another job in California. As an industry, we want to be assured that if there are OCIPs, a safety person is on that project at all times when work is underway. We have nothing vested in this language other than ensuring that this is done.

John Wiles, Division Counsel, Division of Industrial Relations, Nevada Department of Business and Industry:

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We are neutral on this bill, but I've agreed to come to the table with Mr. Holloway because we did work with AGC [Associated General Contractors] and many others on this bill. I did bring a letter (Exhibit H) from Fred Scarpello, counsel for the Occupational Safety and Health Review Board. Mr. Scarpello has indicated to us that he does not believe it's appropriate for the Occupational Safety and Health Review Board to be involved in this bill in this fashion, and I agree with him. It seems like we can provide another mechanism for the enforcement of these important provisions. There certainly are important questions and issues for the Committee to address, primarily the issue of whether or not we should be granted authority to shut down the business because of the absence of one individual on a job site, be it a safety coordinator or a workers' compensation claims administrator. It may be a matter of a policy that you want us to do that, or the Insurance Commissioner, which could be spelled out in the bill. We would work with the proponents, the opponents, and the Committee to see that this bill is appropriately drafted and hits the target, and that we don't have a repeat performance that leads to a fatality.

Barbara Wall, Deputy Attorney for Injured Workers, Attorney for Injured Workers Division, Nevada Department of Business and Industry:

On behalf of Nevada Attorney for Injured Workers, we support this bill.

Chairwoman Buckley:
We'll close the public hearing on A.B. 363. Mr. Wiles, if you and Mr. Scarpello would try to work with Mr. Holloway and Assemblyman Oceguera and prepare any proposed suggestions for the correct oversight folks by tomorrow, I'd like it by Friday's work session. I'll open the public hearing A.B. 364.

Assembly Bill 364: Makes various changes relating to industrial insurance. (BDR 53-249)

Assemblyman John Oceguera, Assembly District No. 16, Clark County:
A.B. 364 was brought by the Interim Committee on Nevada's Industrial Insurance Program. The Committee heard testimony indicating that check stubs provided to workers' compensation pensioners do not provide information concerning why certain deductions from the gross amount of the check are taken. These deductions include such things as repayment of a prior lump-sum permanent partial disability (PPD). Many pensioners are confused because they don't understand why the deductions are taken out and when they might stop.

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Section 4 of this bill requires a check issued for the payment of compensation for a permanent total disability to set forth certain information as delineated on page 2 of the bill beginning at line 27, which is designed to assist the claimant in understanding any deductions that are made. Second, the testimony indicated that in some cases, claims have been closed without the claimants having been evaluated for a permanent impairment when they clearly had injuries that should have been rated. This situation can occur if a claimant is unsophisticated concerning his rights under the law or takes bad advice not to appeal the closure of his claim, even though he has not been rated for a PPD award.

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Section 5 of A.B. 364 requires an insurer to reopen a claim to consider the payment of the compensation for a PPD if certain conditions are met, including that the claim was closed without the claimant having received the PPD evaluation and that the claimant can demonstrate he was eligible to receive a PPD award at the time the claim was originally closed.

The Interim Committee received testimony that an existing provision of statute requires that if benefits for a temporary disability will be paid to an insured employee for more than 90 days, a vocational assessment must be made of the employee's ability to return to gainful employment. The testimony indicated that there are many cases where the injured employee is expected to return to work even though he will be on PPD for more than 90 days. To require a vocational assessment in most cases doesn't seem to make much sense. Section 9 of this

bill revises the provisions governing vocational assessments by making them voluntary instead of mandatory.

[Assembly Oceguera, continued.] Finally, it was pointed out in testimony that some vocational counselors may be put into difficult positions of recommending vocational counseling for an injured worker whose claim is being handled by an insurer that also is the counsel's employer. The insurer may give instructions to the counselor to make recommendations regarding vocational counseling that may differ from a counselor's professional judgment. To avoid such potential conflict of interest, Section 6 of A.B. 363 prohibits a vocational rehabilitation counselor from being assigned to a case administered by his employer.

Dean Hardy, Nevada Trial Lawyers Association:
We did participate in the Interim Committee. The bill was well thought out and we stand in support of all aspects of this bill.

Assemblywoman Giunchigliani:
I want to clarify the vocational part in Section 6. Do we not currently have them as licensed vocational counselors?

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Dean Hardy:
They are supposed to be supervised by a certified counselor, but they're not required to be certified.

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Assemblywoman Giunchigliani:
So this would tighten that up and make sure that a written assessment is done?

Dean Hardy:
Yes, that's my understanding.

Danny Thompson, Executive Secretary-Treasurer, Nevada State AFL-CIO:
We participated in the Interim Committee and we would concur with Mr. Hardy and support his bill.

Barbara Wall, Deputy Attorney for Injured Workers, Attorney for Injured Workers Division, Nevada Department of Business and Industry:
We are in support of this bill as well. We think it's an important thing to address. With regard to the permanent total disability (PTD), the claimants will get a PTD award, but that can be required only up to the amount of the actual lump-sum award they have, so if it's on the check, there can be no error in what they're paying them. We're seeing so many changes in the claims adjusters. There's so much turnover here with the claimants as well, in that

they have to move a lot. This would really clear up that confusion so when the PTD award is recovered, there is no more recovery out of their check. With regard to Section 5, that's a really important feature for the insurers, TPAs [third-party administrators], and others to be in compliance with 661C.490, subsection 1, so we want to support that as well. We are also in support of the other section about vocational counseling.

Bob Ostrovsky, Legislative Advocate, representing Employer's Insurance Company of Nevada:

We did participate in the Interim Committee. With regard to Section 4, this is part of the bill that would require the insurer to provide certain information on every check stub. This section has been proposed in law because we had a single injured employee who testified that they were unable to determine where they stood relative to the amount that they owed the insurer to even-up a prior partial that later became a permanent.

I have an amendment (Exhibit I) that the insurer shall issue an annual statement to each claimant subject to the deduction for a prior PPD award. The annual statement shall include the total amount of any deduction paid, the claim number for each of the prior awards subject to a deduction, and the future balance due for each of the awards noted in paragraph (c), the prior claims. I'm suggesting not requiring every insurer to retool their payment system to satisfy a single claimant who has a problem. This claimant doesn't understand that when these awards are given, they are given documentation as to why the deduction is there and the amount of the deduction. We think an annual statement and accounting is satisfactory. If the Committee feels that something more than annual is required, we'd consider that. We think every paycheck on every paystub will be an undue burden to solve an individual claimant's problem. We just didn't hear enough testimony to support a draconian measure when something simpler and easier to do on the part of the insurance company would be adequate.

In Section 5, the problem here is it's believed that there may have been claimants who were wrongfully denied their right to a permanent partial disability evaluation and therefore may have been denied the right to a PPD award, and that's wrong. Our only concern is relative to the standard that will have to be met. In Section 5, subsection 2, the claimant "demonstrates that the time the case was closed," the word "demonstrates" is not very clear. We're afraid that we will get hundreds of claims reopened. Any claim that was subject to a violation of NRS 616D.120 would become suspect, and I don't know if that's really what the intent of the process was.

[Bob Ostrovsky, continued.] With regard to rehabilitation, we support the idea about certified counselors. We support the idea that vocational rehabilitation counselors under the direct employment of the insurance companies shouldn't be used. Our only concern is the public policy issue in Section 9, regarding whether or not they should get an evaluation within 90 days. We think this is reasonable. The rehabilitation people have other concerns and I'd be happy to work with the parties relative to that. Our concerns lie in Sections 4 and 5. I have handed out some proposed amendments (Exhibit I).

Don Jayne, Legislative Advocate, representing Nevada Self-Insured Association:
As Mr. Ostrovsky was talking about in Section 4, we also had some concerns about having to retool the check processing systems to attach this information to a check stub. Bob and I have talked about his amendment (Exhibit I), and we certainly don't have a problem with that. In the absence of that amendment satisfying the Committee's needs, perhaps an insert that goes with those checks as opposed to something that's physically attached to what prints. There should be a way to accomplish the information provision that we're looking for in here, and we're supportive of providing that information. It's a vehicle and we don't think a detachable stub is necessarily the appropriate way to do that.

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In Section 5 we have similar concerns as far as the language. As Mr. Ostrovsky pointed out on line 1, the claimant "demonstrates" that. Perhaps we can tie that to some sort of information in the file at the time of closure that supports it, and in that file we can find the information that a PPD was never offered. We need some strengthening of that so we don't have broad moves against the re-opening statutes. We understand the issue as presented during the Interim Committee. We felt there were more of the obvious omissions and the extraordinary rather than every case being reviewed. Perhaps some enhancement to that language tying it back to the information in the file at the time of its closure might help that situation.

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In the rehabilitation portions of the bill, we're supportive of removing the mandatory assessment that is in the current statute today. This makes it more permissive.

James Wilcher, C.R.C/C.D.M.S./C.C.M., Certified Rehabilitation Counselor, representing the International Association of Rehabilitation Professionals, Nevada Chapter:
[Read from Exhibit J.] We're in full support of the outlined bill draft. Our problem is in Section 9. Early intervention is really what we're talking about in a written assessment. When a person is injured, within 90 days a contact is made to that injured person to provide

information, to help reduce the adversarial nature of the process, to contact the physician and the employer, and to generate this return-to-work attitude. In 1996, Dr. Victor strongly recommended the 90-day assessment, making it a mandatory part of any workers' compensation program, and that was reported back to the Interim Study Committee that came about from the 1995 Legislative Session.

[James Wilcher, continued.] It comes down to economics on one point. Early intervention means that when you contact the person after 90 days of the injury, you are beginning to get that injured person to a mindset to return to work, whether that be with a pre-injury employer or another employer. Statistically, if a contact is made within 180 days, the cost can be reduced and temporary disability payments made up to $5,000 per case. Economically, it makes sense for the injured employee to be contacted and return to work in the shortest amount of time possible. If we make this optional, we are really throwing away all of the studies and statistical support for a written assessment, which was testified to in 1996 by a non-partisan group. They strongly suggested that you need to have a written assessment and there needs to be contact. My fear is that if we make it optional, in the majority of cases, it will not happen. When it doesn't happen, there is a potential for additional claim costs for these cases.

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There are fewer adversarial issues when an early intervention is made, which means there are fewer litigious issues involved in this process and a smoother return to work. We want to have the best counselors helping our injured employees in Nevada to provide services that are economical, and considering contact with an employer to get that worker back with the employer of injury. The best rehabilitation that can be done is one where the injured worker goes back to the employer of injury. Sometimes a counselor is needed to develop a modified job with that employer that returns that person to work. I strongly suggest there is a much more efficient and effective way to address the concerns of the Committee.

There is a certification body in NRS 616A, the Commission on Rehabilitation Counselor Certification (CRCC). That says that a certified rehabilitation counselor must supervise any non-certified counselors and sign off on any written plans. The CRCC has a formal complaint process, and if a rehabilitation counselor violates

an ethical standard, there is a formal process to deal with it. I do think we have this in place already and it just needs to be utilized using the CRCC, because CRCC must sign on a plan or sign an unsupervised counselor. There is a process we can use to flush these people out if the real issue is these counselors are providing opinions all the time in favor of the insurer, then there's a process and we can deal with that without eliminating a benefit that saves the state money. I ask you to work together so we can continue to make this benefit mandatory and understand the benefits of a mandatory assessment.

[James Wilcher, continued.] It doesn't matter that the person is not ready for rehabilitation after 90 days of injury; you need a contact with that person. That doesn't mean you're going to go forward with vocational rehabilitation at that time, it means you're giving information to an injured employee, you're starting the process, you're contacting the employer, and you're giving an avenue to be successful.

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Chairwoman Buckley:
I have a question on the rehabilitation counselors as to why the existing procedure doesn't work. Or does it work? I'm a little concerned that we have people without certification.

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Dean Hardy:
There are certainly a number of vocational rehabilitation counselors in this state who provide a tremendous service to injured workers. There are an extensive number of vocational rehabilitation counselors that do not provide the type of service that Mr. Wilcher and other vocational rehabilitation counselors provide. The reason it's not working is that there are independent counselors who have marketed themselves to insurers, employers, and administrators by suggesting to those employer groups that they can limit the insurer or employer exposure to vocational rehabilitation, and the way they limit their exposure to vocational rehabilitation costs is by writing this initial assessment suggesting that someone is not eligible for vocational rehabilitation. The process is simple. If someone is injured on the job and they're injured so significantly that they cannot go back to their pre-accident employment, then a vocational rehabilitation counselor meets with the injured worker and assesses their "marketable skills." These less-than-scrupulous rehabilitation counselors just suggested in their assessments that if someone had a previous job, they said that qualified as a marketable skill and therefore they were not eligible for vocational rehabilitation services. I litigated that issue dozens of times, and we were successful in almost every instance.

[Dean Hardy, continued.] During that pendency in litigation, oftentimes our clients were not receiving vocational rehabilitation benefits. The cost savings that Mr. Wilcher speaks of are eaten up in litigation expenses and in retroactive compensation, so what was suggested through the Interim Committee was that there need not be this vocational rehabilitation assessment after 90 days because the State Industrial Insurance System couldn't keep up with their own claims. There were individuals sitting for weeks, months, and even years without having contact with either a physician, a vocational rehabilitation counselor, or a case manager, so now we have private insurance, claims examiners, and nurse case managers. These claims do not sit. To make this a permissive opportunity on behalf of employers or insurers is the option that suits everyone's benefit. To have a statute that mandates contact is almost redundant because the contact takes place through a nurse case manager or a claims adjuster if they're handling their claims appropriately, and they now have manageable numbers of claims, so mandatory vocational rehabilitation assessment is no longer necessary.

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Once someone becomes medically stable and it is apparent that they're not going back to pre-accident employment, they're going to have to do a vocational assessment at that point anyway to see whether they're eligible for rehabilitation services or whether they indeed have some marketable skill that renders an injured worker ineligible for vocational rehabilitation.

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Chairwoman Buckley:
Your explanation rings true with what Mr. Ostrovsky told me when I was learning workers' compensation, and that is, the best thing to do is to talk to that worker right away, because the sooner you talk to them and make sure their needs are taken care of, the sooner you'll get them back to work and the lower your costs will be.

Barbara Gruenewald, representing Nevada Trial Lawyers Association:
Further on in Section 9, the injured employee is still protected because they can request. Instead of a "shall" or "have to," it's a "may, if you want it." In paragraph 3 it says, then "if the injured worker does request it," it's our understanding "the counselor 'shall' prepare it." So, the injured worker is still protected.

Chairwoman Buckley:
I'll close the public hearing on A.B. 364. [Adjourned for five minutes. Meeting called back to order.] I'll open the hearing on A.B. 257.

Assembly Bill 257: Provides certain protections to person who receives payments pursuant to federal Social Security Act. (BDR 55-69)

Assemblywoman Peggy Pierce, Assembly District No. 3, Clark County:
For the average American over 65, Social Security is nearly 40 percent of income; for about 20 percent of Americans, it is their only income. It gets harder and harder every day for many seniors to make that precious Social Security stretch to cover all their needs. What happens when a piece of your Social Security check disappears from your checking account?

A.B. 257 is designed to ensure that a senior citizen cannot inadvertently agree to let their Social Security monies be deducted from their bank account to pay for debts unconnected to the account.

Jon Sasser, Statewide Advocacy Coordinator, Washoe Legal Services, Nevada Legal Services, and the Washoe County Senior Law Project:
Page one (Exhibit K) is a copy of 42 USC 407(a), which basically says that your Social Security check is exempt from attachment, garnishment, or other legal process. We're here today to talk about other legal process, which in this case is a bank set-off. A bank set-off is the ability of a bank to take money out of your account for monies the bank says you owe them. How does the bank have this right? They have the right based upon the contract that you create with the bank when you set up your account. That's typically done in a bankbook.

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On page 19 (Exhibit K), there is some description of legal process. This is for someone who sets up an electronic transfer account, in this case a senior having their Social Security check automatically deposited into their bank account. The bank reassures the senior in this paragraph that this Social Security benefit is exempt from attachment. It conveniently doesn't say anything about setoff, which is the other process. The right of the bank to setoff against your account may be described this way: "We may set off against any account you own for any obligation you owe us, whether due or not, any time and for any reason as legally allowed."

Can the banks set off against your account that contains your Social Security that is exempt under federal law? That's what this bill deals with. That question has led to a great deal of litigation in the last few years and has sparked interest in this bill. I've given you two brief descriptions of cases that have come out around this issue (Exhibit K). The first is a description of the *Lopez v Washington Mutual Bank* case. The Ninth Circuit Court reversed itself. It first said that if you have a checking account and you overdraft against that checking account and a bank takes money out of your account to cover those

overdrafts, and the account contains your Social Security check, then that would violate federal law. After that decision came down, there was a petition for a rehearing of the case. It was reheard; a number of institutions including banks filed friend-of-the court briefs, and the court reversed itself completely in 2002. It said that this practice does not violate the Social Security Act [of 1935; Title 42 USC] because the consumer is deemed, by setting up the account, to have agreed to this process and the terms and conditions of their account, which include that if they overdraw the account, the bank can automatically take money out.

[Jon Sasser, continued.] In 2004, there was a statewide class action in California filed under state law, saying that Bank of America had unlawfully taken money out of people's accounts to cover overdrafts. The San Francisco jury entered a $1 billion verdict against the Bank of America that was for $275 million in compensatory damages and an extra $1,000 for each Social Security recipient for economic or emotional harm as a result of the bank's conduct. That case is on appeal. The state of that law is in flux now.

I represent the Washoe Senior Law Project, and this happens in Nevada, too. In a case handled by our Project, a man had a car loan. Because he lost his job and defaulted on the loan, the car was repossessed and the bank took a default judgment. Later, the man opened a money market account in the same financial institution that had the judgment against him. Within a month or two, the bank, without notice, took all $4,000 out of his account. These funds were comprised solely of Social Security funds. The bank pointed to these clauses in the booklets as their justification for having done so. After the attorney for the Senior Law Project cited the Washington decision and a couple of other things, they worked out an arrangement with him and the client and got the money back. That led to the need to look at this for others who don't get to legal services or to lawyers.

We first thought we could outlaw the practice of these accounts with all this small print where seniors who don't read this typically—and I certainly didn't when I set up my account—have waived their rights to exempt Social Security benefits. The Legislative Counsel Bureau (LCB) Legal Division came back to us and said we can't do that because we can't have state law regulate bank accounts. That is a subject of federal law. Federal law preempts state's regulation of accounts, so we couldn't go that direction. We asked what we could do and they said under state law, we can regulate loans.

The language that LCB suggested is in Section 1 of the bill: "A financial institution shall not include in any loan agreement a provision that allows the institution to recover, take, appropriate, or otherwise apply a setoff against any

debt or liability owing to the financial institution under the loan agreement." This does not go to the overdraft. It talks about when you have one account that's unrelated to the other account. If you overdraw your checking account, you can't then go and empty out your savings account if it has Social Security in it. It says that under our loan law, you would not be able to waive your federal right to protect your Social Security benefit. The Lopez case dealt with this overdraft protection. There's no kind of waiting to see what the courts are going to say about that issue. This just deals with the unrelated accounts.

[Jon Sasser, continued.] Right now under state law, when you get a notice of garnishment, it lists your exemptions, including your federal exemption. This, for the first time, would add the Social Security exemption into our state law so that it would be a violation of state law if you ask for a waiver of that new state law right when you set up your account.

I've had some interesting discussions with Mr. Uffelman and Mr. Sande. Section 1, subsection 3, gives them heartburn. We asked LCB to put everything here that we can do under state law that doesn't violate state or federal law or isn't in an area preempted by federal law, which states that an account, according to what they defined it, "includes, without limitation, an account pledged as security under the loan agreement." The bank says if you pledge your savings account and security for a loan, they should be able to setoff against it.

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I would make two responses in an offer to work with Mr. Uffelman around that. One, if you had a loan at another bank, any other creditor would have to go through the normal process of suing you, getting a judgment, and attaching your account. When they try to attach your account, you could try to assert that this is Social Security money and they can't take that. There's a process there to deal with it. If it's within the same bank, they go straight into your account. Since it's an unrelated account, why should they be in any different shoes than any other creditor? That's a policy decision for you to make. If you decide there is some sympathy for this pledge as security, how can we fix it? I went to Mr. Uffelman and asked, "How do I know you won't put some new language in the small print of all the accounts saying any time you get a loan from us, you have just pledged as security all other accounts you have at these banks?" Then the problem remains exactly as it today. He agreed to work with me to see if there's some way that we can say in the loan agreement that, under state law, banks would be required to have a large disclosure so people understand that they are pledging a specific account, which may include funds otherwise exempt under federal law. That would be one area that we could possibly work on together and bring back an amendment to the Committee.

Chairwoman Buckley:
The two areas you're working on is where accounts were pledged and the ability to garnish just like any other creditor?

Jon Sasser:
Just pledge as security. That's the only area we have under discussion.

Barry Gold, Associate State Director for Advocacy, American Association of Retired Persons (AARP), Nevada:
Social Security is the foundation for most older adults' retirement. For well over one half of our senior citizens, it accounts for 80 percent of their total income. For approximately one third, it is their only income source. We must protect and safeguard this safety net that was a promise from the U.S. government as a means to provide for people's benefits needs and retirement. AARP Nevada supports A.B. 257 and we hope you'll pass it.

Bill Uffelman, President and CEO, Nevada Bankers Association:
Our issue concerns lines 15 to 17, in subsection 1, that if it's unrelated to the loan agreement, you can't take funds from it, but then we turn around and define in lines 15 to 17 monies that you in fact pledged towards the loan agreement are defined away. I've talked to a lot of bank attorneys about how we can work around this, whether it's a notion of you just take out 15 to 17, which takes care of the pledged issue, or you come up with a separate agreement that goes in the loan agreement. We can work with those things.

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Chairwoman Buckley:
If we were able to fix it, would you support the bill?

Bill Uffelman:
Yes.

Chairwoman Buckley:
We'll close the public hearing on A.B. 257, and we'll open the hearing on A.B. 340.

Assembly Bill 340: Revises provisions relating to certain short-term, high interest loans. (BDR 52-126)

Assemblywoman Chris Giunchigliani, Assembly District No. 9, Clark County:
With me is my intern, who will be introducing himself and giving details of the bill. Christopher Dornan has chosen this wonderful, timely, consumer protection legislation to work on. [Submitted Exhibit L.]

Part of the genesis of this bill was a request for a constituent, and that's why it does say that. I had a senior citizen, Mr. Montandon, who had come to me two years ago and asked me to bring a bill dealing with usury law. That's one component within the bill. In addition to that, it contains language dealing with payday loans and some of the restrictions we believe are out there to try to protect some of the consumers with regard to that. I had A.B. 1 of the 70th Legislative Session, a payday loan bill that was one of the first ones we could not resolve. I have to commend Madam Chairwoman; you have made great deal of progress in this area, and we hope through your bill and this bill, we'll make additional progress this session.

Christopher Dornan, Intern for Assemblywoman Chris Giunchigliani:
I'm here to talk about the payday loan industry. In its current state, the industry is almost completely unregulated, and the abuses it is inflicting are numerous and abhorrent. This is not to say the entire business is corrupt, as there are those within the industry that act with honor and tact, but the abuses of the less ethical are so extreme that legislative action is necessary. In its current form, the industry is so harmful to individuals and to society, that society would be better off were the industry banned outright. But it is not our intent to destroy the payday loan industry; rather, to clean it up.

Before I get to the details of A.B. 340, let me explain what the industry does and how it works. Payday loans specialize in giving short-term loans to consumers at incredibly high interest rates. What makes them so attractive to consumers is how easy they are to get. They require no credit check and no background check. Generally, all you need is proof of income and a checking account. You write the lender a postdated check for the amount of the loan plus a financing charge, and he gives you the money. It's fast and easy. You can receive a loan in less than fifteen minutes. If you can't afford to pay back the loan at the end of the period, you can pay the finance charge again to extend the loan another two weeks. It sounds simple.

Now to the problems. We all have credit cards, and I'm sure you're familiar with how easily someone can fall into an endless cycle of debt on interest rates of 36 percent, 20 percent, or 17 percent. In Nevada, the median rate of interest for payday loans is 443.2 percent.

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[Christopher Dornan, continued.] As unbelievable as that is, the interest rates charged for the loans are not the most abusive part of the industry. The late fees some businesses charge for missing a payment can be even more expensive. A late fee of 2 percent per day, and there are worse, quickly adds up to over 700 percent APR [Annual Percentage Rate]. Then there are other clauses hidden in these contracts that unfairly hit consumers hard. For example, if the lender and consumer end up in court for any reason, a miscellaneous fee of $1,000 or more is applied to the customer's account. This could be on a $100 loan. Lastly, it has been common practice for some lenders to sue for treble damages, up to $500, when collecting on defaulted loans. If you default, they'll sue for triple the original debt, plus interest and late fees. People end up declaring bankruptcy over what originally was only a few hundred dollars, but has since blossomed into thousands of dollars of interest, late fees, court costs, and damages.

While the costs imposed on individuals who enter into these loans are substantial, the costs imposed on the State are also large. These loans hit the lower classes particularly hard, and often lead to an increased dependence on state services. I'm sure you can imagine what a loan like this can do to an already pressed household. The costs to our court system are also substantial. Josephine Gallegos will be able to tell you more about that than I.

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This bill, in conjunction with A.B. 384, attempts to fix some of these problems. First, A.B. 384 addresses the maximum rate of interest one should be able to charge for payday loans. We realize that a rate of prime plus 2 percent, which currently would be 7.75 percent, is completely unrealistic and would destroy the industry. This is not going to be in the final bill; it is a position to work back from, to find a compromise, and we invite input form the industry. The highest APRs we have seen are over 1,300 percent, and this is what we are seeking to prevent. The idea here is that if the interest rates are a little more reasonable, fewer people will be late on their payments or default on their debt. We realize that Nevada's old usury cap of 18 percent will never be reinstated, and that even 36 percent or 50 percent is unlikely; but over 1,000 percent? This cannot be justified.

Second, we feel that, given the terms of these loans and the tendency of these businesses to proliferate in lower-income areas, lenders should be required to have materials and contracts on hand in both English and Spanish. If someone is about to sign for a loan with an APR this high, they ought to be able to at least read the contract in their native language. They're hard enough to read in English. Furthermore, materials shall be provided with contact information indicating who to call with complaints about the business.

[Christopher Dornan, continued.] Third, the bill would prohibit any consumer from taking out any combination of payday loans greater than 25 percent of his income, as well as requiring a cool-down period of 30 days between paying off a payday loan and taking out a new one. We feel this is necessary because one of the habitual abuses of the system that makes payday loans so damaging is how certain consumers abuse the system. Short-term loans are just that: short-term. No one should rely on these loans for anything but emergency situations, and the more honorable businessmen in the industry will tell you that up-front before you even sign the loan. To get around the old cap of 33 percent of your monthly income, consumers take out loans from multiple businesses around town. Sometimes they borrow from one to pay off another. Sometimes they just need more money than a single business will give them. Whatever the reason, habitual borrowing from multiple lenders is one of the key signs that a loan will go bad. By cutting off this option, the customer is required to be more honest in his ability to pay off these debts, mitigating the eventual harm done.

The bill intends to accomplish this by establishing a statewide database for payday loans. It would list who has loans out and for how much. It would require businesses to enter clients into the database and to check the database before issuing a loan to a client to ensure the client would not exceed the limit of 25 percent of his monthly income in loans. It would be paid by service fees that loan companies would be able to pass on to the consumer. Florida and Oklahoma both have effective payday loan database systems in place, and our State system would be modeled after those. This measure is as much for the consumer's protection as the lender's protection.

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Fourth, A.B. 340 would attempt to eliminate the option to rollover debt under payday loans. Like the measure regarding usury caps, this is an extreme position, and we know this. The idea is to reduce the maximum duration of these loans, as they are truly intended to be short-term loans. However, we also realize that this position is untenable to the industry, and we are willing to compromise. Perhaps we might amend it to only allow a specific number of rollovers. We invite industry to comment upon this to try to reach a compromise.

Lastly, this bill also touches upon the issue of RALs, or refund anticipation loans. These are commonly issued by tax preparation services, with H&R Block being the largest provider nationwide. How they work is, while processing your tax return, the lender offers to make an advance on the tax return based on what he estimates the probable refund to be. So in exchange for a few days extra haste in receiving your tax refund, the company keeps a sizeable portion of the return. When calculated as a loan, the APR on these transactions can surpass 1,000 percent. In addition, if for some reason the refund is less than

expected, it is a loan, and the consumer has to make up the difference. However, because of how deceptively these loans are marketed, most consumers never actually realize that these are loans. H&R Block is currently involved in several class-action lawsuits over this style of deception, and there is no reason to assume the rest of the industry is any different. This portion of the bill would attempt to increase consumer awareness that these are indeed loans. This is a small step for now, but an important one.

[Christopher Dornan, continued.] The industry says that it is just fulfilling a need of society, and that these proposals constitute an undue burden on their business. I acknowledge that there is a need for short-term financing. But if my friend has a hangnail, I don't advocate amputation. The cure is worse than the disease, and that is the state of things in the payday loan industry in the state of Nevada. Too many businesses aren't helping people out of a bad situation; they're dragging them further down. The idea is to fix this industry, not destroy it. Hopefully, the industry is willing to help, as even small cuts can get gangrene if left to fester. A balance must be struck.

Josephine Gallegos, Senior Administrative Clerk, Justice/Municipal Court, Carson City, Nevada:

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[Referred to Exhibit M.] I'm here to provide some statistical information from the Justice Court jurisdiction. Out of the small claims total caseload, 40 percent are these types of cases, which means approximately one case is filed every day. About 85 to 90 percent of these small claims cases result in default judgments, which means the borrower fails to appear at all. A large percentage of those results in wage attachments, which is 25 percent of a person's net income.

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Assemblyman Anderson:

Forty percent of the filings in small claims court are directly in this area?

Josephine Gallegos:

Yes, it's actually 39.7 percent.

Berlyn Miller, Legislative and Regulatory Issues, Nevada Consumer Financial Association:

We support A.B. 340 and also A.B. 384. We understand as major lenders that there is a problem in this area, and you need a better control over these types of lenders and these abuses. We do have a problem with one paragraph in the bill, and that's Section 2, subsection 1, that states that "the interest rate charged may not exceed the prime rate of the largest bank plus 2 percent." I realize that as the bill is written it does not affect my clients, but we have a concern about getting usury rate into the law again. Until 1984, Nevada had a usury law that was removed in the 1984 Special Legislative Session called by Governor Bryan

to introduce legislation to bring and invite Citicorp into the state to set up their credit card facility in Las Vegas. They had never looked at Nevada because we had a usury law. They weren't looking at any state with a usury law.

[Berlyn Miller, continued.] They moved the credit card operation out of New York City in the late 1970s because with interest rates at the time, they were losing $200,000 a day on their credit card portfolio. They passed the law in the 1984 Special Legislative Session in one day with a unanimous vote and removed the usury. We're concerned about that, because we now have 2,200 employees in that facility in Las Vegas. We have another five or six facilities employing just fewer than 5,000 people in this industry. In addition, there are some in northern Nevada. You may have attended the Harley-Davidson opening the other night. None of these companies would have moved to Nevada if we still had a usury rate in the law. Governor Guinn indicated he had a delegation in from one of the largest automobile manufacturers in the world, and they were exploring setting up a facility in southern Nevada to finance their cars in the U.S. From an economic development standpoint, it's a major consideration. We would request if you decide to move this bill that you delete Section 2, subsection 1.

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Assemblywoman Giunchigliani:
That was a section that I put in for a constituent and he wants me to make a point of it. I think that's a very flexible recommendation for deletion as we negotiate the other areas with the group.

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Patricia Morse Jarman, Commissioner, Consumer Affairs Division, Nevada Department of Business and Industry:
We're very much in favor of A.B. 340 and A.B. 384. The industry refers to these types of payday loans as predatory lending because it preys upon the lowest rung of the economic ladder. We urge your support in passage of A.B. 340 because it's a necessary bill.

Jan Gilbert, Northern Nevada Coordinator, Progressive Leadership Alliance of Nevada:
In the last two years, the growth of this industry has been apparent in all of our communities. It is frightening that you know they're multiplying rapidly because they're making huge amounts of money off of low-income people. I felt I would be remiss if I didn't come up and support both this bill and A.B. 384 because I work on low-income people's issues. We as a state are continuing to cut these services to low-income people, and yet they are forced to go to these kinds of predators and use their loans to pay off other loans. Sometimes there are five loans that are paying off each other. It's abhorrent that we are not one of the states that do not allow these at all. It's impossible to think of low-income

people going into these offices and not really understanding what they're getting into. Mr. Dornan really laid it out quite well. I would urge you to pass both of these bills to put some kind of controls in this industry because they're destroying our community. I drove up Carson Street and counted the number of payday loan offices. There are over 20 in Carson City, so I urge you to support these bills.

Jon Sasser, Statewide Advocacy Coordinator, Washoe Legal Services, Nevada Legal Services, and the Washoe County Senior Law Project:
I support both of these bills. Washoe Legal Services has a case that's in litigation now involving a $300-a-month loan, with $125 a month in interest and $125 a month for late fees and pledging security to a car in the same loan. It has 598 percent APR, and I would agree that this must be stopped now.

Assemblywoman Giunchigliani:
In Section 9 as well, there is something that will at least assist the local governments. There are many of these businesses on a single corner. Some of the local governments have begun to adopt ordinances, but Section 9 says that "they shall adopt ordinances" in order to get a handle on how many are appearing within a certain jurisdiction of each other because you have some false competition that's going on, so that's another component of the legislation as well.

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Chairwoman Buckley:
I'll go to the opposition in Carson City.

Alfredo Alonso, Legislative Advocate, representing Money Tree Incorporated:
We clearly have a difference of opinion with Assemblywoman Giunchigliani and we'd like to discuss that at length. What we're trying to get here is the same thing. There are a lot of bad actors in this industry, and the next bill you'll hear is an attempt to get to that. I believe that this bill doesn't do that and unfortunately ends the practice altogether. You do have a need in the marketplace—you can't walk into a bank and get a $300 loan anymore. There is a market for this and there is a need. As long as it's regulated and you have the good guys in charge, you can regulate this industry. It'll serve its role in the marketplace.

Jim Marchesi, President/CEO, Check City, Las Vegas, Nevada; and Nevada Financial Services Association:
I want to give you a statistical view of the industry so you understand who the customer is and what our customer does. The Nevada Financial Services Association is made up of about 10 lenders here in the state. Many of the members of Nevada Financial Services Association are also members of the

Community Financial Services Association of America (CFSA), which is a national organization.

[Jim Marchesi, continued.] From a Georgetown study in 1981 (Exhibit N), there have been over 10 studies done in this area and they all show about the same thing. Sixty-eight percent of the customers are less than 45 years old. Ninety-four percent of them have high school educations, and 56 percent of them have college educations. Fifty-two percent earn between $25,000 and $50,000 a year. Forty-two percent own their own home and have children and a household. One hundred percent of them have to have a steady income and a bank account. The customers are middle income, middle educated, responsible, hardworking families who use the product. The target market is not by any means low-income individuals.

Why would people choose this product? The next chart (Exhibit N) shows it's because of the convenience and the speed. You can look down that list (Exhibit N) at fast approval, less expensive than other things, short-term, less hard to credit, better service than other things. It's primarily because of the speed and convenience.

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The next chart (Exhibit N) is from Cypress Research Institute. They just did a study at the end of 2004 that looked at the customer satisfaction for the product. When they did the research, they talked to 2,000 individuals out of a database of 1.5 million from companies that were CFSA members. They asked people how satisfied they were with the product. They had them rank other services that were provided to them, and the payday loan industry ranked only behind grocery stores from a satisfaction standpoint. If you look at whether the customer knows what they're getting, some people say they don't understand, but in these surveys they found the customers fully understand the terms of the loan, they understand when they have to make a payment, and they understand what the costs are associated with the loans.

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If you look at what satisfies them, there is 88 percent satisfaction that they have the ability to renew it; they like the ability to borrow an amount, and they also like the repayment schedule. The point of that chart is that the customer knows what they're doing and they're very satisfied with the product. We asked, "How did this product help you?" It was used primarily for expensive expenses, avoiding late charges, avoiding bounced checks, for bridge income reduction, and also for them to get something special.

These next two charts (Exhibit N) will show you the alternatives that our customers have. On average, customers have five alternatives to be able to get money for short-income issues. It comes down to, "Why do people choose

this?" It's a simple economic decision. It's a lower-cost alternative than the other options they would consider at the time. It's so simple. We listed a table there that took a $100 loan and set a 14-day run to see how much that would cost for either a payday loan or some other products.

[Jim Marchesi, continued.] Just to correct something that was said earlier, there is very significant legislation—NRS 604—that currently exists to regulate the business. The payday loan has a $15 fee, but if someone bounces a check, the average fee is $35, and you can see what that would translate into. The credit card balance and the late fee, you can see (Exhibit N) what the $27 fee goes into and, likewise, under the NSF [Non-Sufficient Funds] fees and utility late fees.

One other option that a lot of people don't look at is the ATM fee. We've chosen a very low ATM fee because in Las Vegas $1.49 doesn't get it anymore. You can get anything from $2 to $10 depending on where you do the transaction. Again, it's an even higher cost than the payday loan product.

The Cypress Research Group asked the customers, "Do you want government intervention in this product?" And the answer was overwhelmingly no. I'll let you look at those four statistics there (Exhibit N). Do you want us to look at how many loans you take per year? Do you want us to monitor your use? Of course the customer says no. What you find with all credit and financial products is the customer is making a choice on their own and they're making the choice without any undue stress. There has been extreme growth because there's been huge demand for the product. There are some exceptional people in this business. There are also some people who don't operate on an exceptional basis. We really believe that A.B. 384 will be the vehicle, and we've been working very closely on that bill to get something that's acceptable to everyone and will address most of the issues that were described earlier.

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Over 5 million transactions happen annually. There are between 125,000 and 150,000 Nevada residents who are using this product. For the large number of transactions and the large number of customers we have, there are very few complaints relative to the size of the market.

Mark Thompson, representing Money Tree; and Community of Financial Services Association of America (CFSA):

We represent the payday advance industry and also Money Tree Incorporated, which operates in Nevada and is headquartered in Seattle, Washington. Prior to working for Money Tree, I was the State Regulator in the state of Washington. My job was to administer the five statutes that governed non-depository financial service providers, including mortgage brokers, finance companies,

escrow companies, check cashers, check sellers, payday lenders, money transmitters, and a variety of folks. I have seen this industry from both the regulatory side and the corporate side. It's very clear to me that this isn't a perfect product, nor is overdraft protection, as you heard in the previous bill. CFSA is eager to engage with legislators, community groups, consumer advocates, and anybody who is interested in the public policy issues that surround payday advance. We appreciate and understand the concerns that are behind A.B. 340. There's much in A.B. 340 that we agree with and certain things we have serious concerns about. We feel we are making good progress on A.B. 384 and we'll be able to reach a bill there that will address many of the concerns behind both of these bills.

[Mark Thompson, continued.] As a regulator, I used to watch this industry, and I've noted the growth. I realized that this demand had always been there. In the 1960s and 1970s it was met by finance companies, and they made $300, $500, $700, and they secured it with furniture. In most states, those loans were regulated under a usury cap, which in Washington, was a 25 percent interest rate and a 4 percent loan origination fee. That fixed the $1 return on those loans, and most of the caps were set either in the Depression era or the early 1940s.

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Over time, the $1 costs of these companies grew: their rent, wages, insurance bill, water, light, and electricity all grew in $1 terms. That's one of the problems we've run into when we start talking about APRs. We play the game in dollars, not percentage. By 1980, finance companies were moving their minimum loan amounts higher and higher, and they were selling alternative products to try to make enough money out of the transaction to make it work. Two things happened in the early 1980s. Interest rates went very high and increased the cost of obtaining funds, and the loan industry died, so mortgage lending opened up. Many of the finance companies are now real estate lenders. They make first and second mortgages and home equity lines of credit. There was a niche for $500 loans that wasn't being filled, and this industry evolved to fill it.

I presented some cost data (Exhibit N) from the Federal Reserve about what a bank's cost is for making a loan. The data shows if you make a $380 instrument loan, an average payday loan, for 12 monthly payments with a 25 percent note rate and a 4 percent loan origination fee, based on the high and low costs of originating and servicing the loan from the Federal Reserve, you lost between $178 and $352. Everything about the economics of the payday advance industry comes out of the economics of these numbers: the pricing, the loan term, the APR, the delivery system, and the collection practices. People can only afford to make a loan of this size if the return is high enough and costs are low enough to make it profitable to make the loan. Our average costs are

around $35, and that comes from the public SEC [United States Securities and Exchange Commission] filings of the some of the companies that are modeling companies.

[Mark Thompson, continued.] In Section 1, the cap that's suggested, as has been noted, wouldn't allow us to make a profit. It may not be a concern that we won't make money, but the effect of that is the demand would still be there, consumers will turn to those types of products, and the Legislature will completely lose control over the consumer protection elements of those transactions. If you really want to help consumers in this state, you will maintain an economically viable, regulated industry. We're a long way from getting there without negotiations on A.B. 384.

Assemblyman Anderson:
We heard earlier that 40 percent of the local courts are clogged with failed default payments. Is that statistic representative of Washington or your experience here in Nevada?

Mark Thompson:
That statistic is indicative of a problem that needs to be solved, and we are well along the way of coming up with language that will do that in A.B. 384. One of the changes to the statute that was made in Washington while I was the regulator made it illegal to sue for trebled damages and judgments. We operate in six Western states; Nevada is the only state where that would be possible. Our contract says we won't sue you in civil court, and we won't threaten or make criminal charges against you if you default on a loan.

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Jim Marchesi:
The statistic I can't confirm. I guess we have to go with the person who reported it and said that is a true and honest number. Let me address the issue of lawsuits. There have been many abuses in that area, and that's the place we need to fix as an industry. The people in the associations don't pursue that way. My company does use the courts if a person defaults, but we do it according to the statute, which tells us after they default we can only sue them for prime plus 10 percent, hard cost, and legal cost. That leaves an amount of a judgment that, if the loan was $300, we're left with a lawsuit of $400. There are filings that are found where someone will have a $300 loan and the lawsuit value will be $4,000. We have to fix that.

Vice Chairman Oceguera:
I'll close the hearing on A.B. 340 and open the hearing on A.B. 384.

Assembly Bill 384: Makes various changes relating to certain short-term, high-interest loans. (BDR 52-806)

Assemblywoman Barbara Buckley, Assembly District No. 8, Clark County:
I'm proud to be the sponsor of A.B. 384. In the interim, I work at Clark County Legal Services, a nonprofit legal aid firm. Sometimes I get inspiration for legislation from the people who walk in the door; that's certainly the case with payday lending. In Nevada, I see an industry out of control, with people walking in the door every day who borrow a small amount of money and have a judgment that is out of control. Because of what I do, I get referrals from other legislators asking what we can do to help these people. I get concerns from judges across that state expressing disbelief at the types of related cases they see in their courtrooms. A.B. 384 is an outgrowth of that. This bill represents many months of hard work and compromise between consumer advocates and industry leaders. We formed a task force awhile back with Consumer Affairs, Nevada Fair Housing, Consumer Credit Counseling, Financial Institutions, Better Business Bureau and began meeting with industry leaders about what we could do about some of these practices. This bill represents some long overdue protections to equalize the differing payday loan models that are in our community and to curb the practices of the unscrupulous and egregious lenders who have made Nevada their home.

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I have handouts (Exhibit O), and I'm also passing out Gail Burks's study of the Nevada Fair Housing Center (Exhibit P). She did a study of payday loans and their impacts. Attachment 1 (Exhibit O) has information on how someone gets buried in debt. The most egregious portion of payday lending is the debt treadmill. It's not particularly egregious if a reasonably well-off person goes to a payday lender and spends 900 percent in interest to borrow money for two weeks, gets the money, pays them back, and life goes on. Life's not going to end if that practice goes on in our state, but that's not what's happening right now. Attachment 1 (Exhibit O) shows what happens after some consumers take out their first payday loan. They'll have a loan where the interest rate ranges anywhere from 200 to 1,100 percent annually. In this case, they receive a cash loan of $300 and agree to pay back $390 in two weeks with an annualized percentage of 780 percent. When they expire, they have two options to keep the loan current: they can pay it all off or roll it over for two more weeks for another $90 interest payment. After ten weeks, the consumer has already paid $300 in interest, but nothing towards the principal. After a year, they'd end up paying $2,300 in interest on a $300 loan. Oftentimes unable to make the interest payment or the full payment, consumers take out a second loan or third loan as we heard from Assemblywoman Giunchigliani.

[Assemblywoman Buckley, continued.] Right now in NRS 604, we regulate deferred deposit, which is where someone takes a check. NRS 675 regulates someone who just issues a high-cost, short-term loan, so this bill tries to level the playing field and outlaw the worst practices in both. There are a couple examples of that in Section 39, which would require lenders to follow the Fair Debt Collection Practices Act [15 USC 1601]. It would prohibit things such as using obscenities, advertising someone's debt, harassing the employer, or suggesting the person committed a crime. Unfortunately, I see these things happen every day. One employer was so frustrated with the collection efforts that she even called our offices. The lender harassed the employer hourly about why she had not garnished an employee's wages. The employer explained that she did not garnish the wages because he hadn't worked the previous week, so there were no wages left to garnish, but it didn't seem to stop the phone calls.

One of our other suggestions in the language is to have a remedy for an aggrieved consumer besides filing a complaint with financial institutions. When consumers have private remedies, they are often able to have more options. In Sections 54 and 55, we create statutory damages of $1,000 for each violation. This is similar to what we have in NRS 118A for violations of the Landlord-Tenant Act. An example of how someone might be helped with this is a woman who took out a loan with an especially egregious, unlicensed lender. Before defaulting, she was able to repay all but $212. The lender required her to sign a confession of judgment for $600 and then filed it. You can see from attachment 2, on page 7 (Exhibit O), the example of this one as well as the confession of judgment. So even though she had repaid almost the entire loan, they still started garnishing her paycheck with this confession of judgment. It's my hope that this section will benefit consumers, but also help the more reputable lenders who are not using confessions of judgments.

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Section 54 states that "a contract whose provisions violate the state law makes the loan void and that the lender is not entitled to collect the principal, interest and other charges."

Sections 56 to 69 try to equalize the playing field. It changes rollovers and limits them from ten weeks to eight weeks. That's in the CFSA best practices anyway. That's the amount that's put in there. It makes it very clear that you can't collect any fees. The biggest thing this bill does is say you can't collect anything but the principal of the loan, the interest in the contract up until the date of default; after default, prime plus 10; and if you took a check, you can get $25 with a limit of twice if the bank returns the check. Additionally, it continues to allow the two-week rollovers for both short-term cash loans and payday loans; that's all they can get. As Assemblyman Anderson pointed out,

that's the reason why there are so many lawsuits. The Las Vegas number will be worse than the Carson City number. The constable told me that they serve 1,500 more garnishments every month because of the payday loan industry. The numbers are phenomenal as to how many there are. When someone goes to justice court now, if they have the unfortunate distinction of getting behind the lawyer for the payday loan industry, you have to wait hours just as they rubberstamp default after default.

[Assemblywoman Buckley, continued.] Why are so many in the backend of the court process? Because our laws are so lax, so what these companies do is sue people because we've allowed it to be a profit center for them. They're not going after just their $200 loan, as Mr. Dornan pointed out. They'll add $1,000 for their collection time and $500 for inconvenience; they just make up sums, which I call imaginary damages. The justice courts are so swamped and they don't have time to read these things, so they just rubberstamp them. I'd like to go over examples of these cases.

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Let's review attachment 4, page 14 (Exhibit O). This is a contract that was signed by a young father who worked at a neighborhood casino one week before Christmas. The loan, which was due one day after Christmas, discloses an annual percentage rate of 1,095 percent, and they did the APR wrong; it's really 1,217 percent. Within ten weeks, this young man would end up paying $345 interest on a $150 loan. The same contract calls for a late fee of $5 per day, a post-default interest rate of 17.75 percent, and, if you look at page 15 at the bottom, the person was then sued on line 5 for $500 on top of that. His wages ended up being garnished, if you'll go to page 16, for $942 for a $150 loan. The use of treble damages continues to be frustrating, and this bill attempts to clarify it even more, although it's the law now. We try to make it even clearer that it's the law. We have a statement on pages 17 and 18 from the former Financial Institutions Division's Commissioner. It takes the position of one that's illegal and is still being collected.

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If you look at attachment 6, on page 19 (Exhibit O), you'll see that despite this being the law, people are routinely still using that in their threatening letters. That's why we're including language to make it even clearer that it is not allowed and to put in some financial penalties which will make these folks stop.

Attachment 7 on page 20 (Exhibit O) is a default judgment entered against a casino employee. He had paid his debt in full on September 2; a lawsuit, for which he was never served, was filed on September 16; and a default judgment was entered against him for $1,598.

Attachment 8, page 23 (Exhibit O), is a contract that discloses that the consumer is liable for treble damages. It also has attached to it the largest amount of treble damages that I've ever seen, which is over $3,900. Page 24 is on a $165 loan; the interest rate was disclosed at 521 percent and was actually over 900 percent; they did the math wrong. On page 2, in addition to that are late fees of 2 percent a day; if the lender has to garnish wages, there's a flat fee of $1,250. If two consecutive payments are late, they have a right to charge a higher interest rate than 900 percent. If their phone gets disconnected for any reason, then their interest rate goes up; this is on page 1 in the second full paragraph (Exhibit O). The lender has the right to place the loan under default if their phone is either disconnected or their numbers change.

[Assemblywoman Buckley, continued.] If you wonder why we're detailing this law so much, this is why. Regulating this industry right now is like whack-a-mole. Once you feel like you make some progress, another deceptive practice comes up again. It is a plague among the working poor in Nevada. They're not going after people who don't have any money. Most of them want to garnish people because they're making so much profit on the garnishment side because our laws are so lax. I really appreciate the industry leaders. Some of the folks who were up at the table before are not engaging in these practices. They want to see these practices stop because they know, if they don't stop, the Legislature is going to ban payday lending. It's inevitable and I think they're welcoming of regulation to stop these horrible practices. We're working on a series of amendments that we think are about 98 percent done, which we'd be able to present in a future work session. I'd like to turn it over to Gail Burks in Las Vegas.

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Assemblyman Anderson:
In the example that you gave us of the employee that had paid the loan and then was garnished and it was brought to court, did the court dismiss the case?

Assemblywoman Buckley:
The court grants the judgment primarily because the person who's sued doesn't know what's going on and then the court doesn't hear the other side.

Gail Burks, President and CEO, Nevada Fair Housing Center, Las Vegas, Nevada:
The Nevada Fair Housing Center is a nonprofit, and our mission is to provide education, legal representation, policy research, technical assistance, and financial services related to housing and consumer issues. We've worked with banks in this community for approximately ten years on products under community reinvestment to make sure consumers have fair and equal access to credit. [Exhibit R]

[Gail Burks, continued.] I'd like to discuss the report (Exhibit P) and talk about our findings and the methodology that we used. We looked at three main areas. We first looked at the concentrations of the payday lending facilities. We looked at the product or customer base as much as possible, given the data available. Then we looked at collection practices. From 1998 to 2004, payday lending companies increased from 16 to 381. When we went to look at where these places were located statewide, 60 percent are in low-income neighborhoods, and in Clark County, 5.3 percent are in areas where people earn less than $25,000 per year. That's 5.3 companies per 10,000 people. Fifty-five percent of these companies are located in census tracts that have a high minority population. We have about 9.1 branches for every 10,000 people. That's on pages 5 through 8 (Exhibit P).

Unlike banks, payday lenders are not required to report who they make loans to. They're not required to break it down by census tract, so it was a little more difficult to look at the customer base. We did a direct survey of the companies to try to get a feel for the products offered. We contacted 105 branches; 39 percent responded to our questions and 34 percent absolutely refused to talk about their products. In general, in the report, we've listed the average product as a loan around $200. The charges for that product will vary. The average APR is about 443 percent. When we get to the collection practices, we pulled the justice court files in Las Vegas. We looked at a total of 9 different companies, looking at 78 justice court civil files. Five of those companies were payday lenders, and the other 4 companies were short-term lenders. That's highlighted on pages 15 through 18 of the report (Exhibit P). The most abusive company we looked at was Cool Cash, which charges five times the amount of the original debt. The least abusive was Check City, which charged about two times the original debt.

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I want to address the statement, "There's a need for the product." While there is a need for small loans, there are credit unions and some lenders that offer small loans, and there is not a need for loans with the high rate and the high cost. In addition, we could not find that the businesses were targeting in their marketing plans high-income or middle-income people. We could not find any data to support that argument, made earlier. We believe that A.B. 384 is needed in terms of the clients that get trapped in the debt when they're trying to purchase homes. The clients we see have had anywhere from 5 to 7 payday loans, and it takes about a year to clean that up before they can become eligible for home ownership. We encourage you to pass A.B. 384, and for the record we also support A.B. 340.

Azucena Valladolid, Director of Counseling, Consumer Credit Counseling Service, Las Vegas, Nevada:
[Read from Exhibit Q]. Consumer Credit Counseling Service (CCCS) is a not-for-profit United Way organization serving residents of the state of Nevada for over 30 years. CCCS provides basic financial and asset building services, including down-payment assistance, IDA [Individual Development Accounts], establishment of checking and savings accounts, income tax preparation, financial literacy, financial counseling, mortgage default/delinquency counseling, and debt management and repayment. We provide financial counseling to over 650 individuals and families each month. It is these clients and the disturbing trends being experienced that I would like to briefly speak about today.

As you are aware, the payday and small loan industry has grown incredibly the last few years, and we see the effects on a daily basis with consumers seeking solutions other than bankruptcy for their indebtedness. Obligations to payday or small loan companies added to an already overburdened consumer are resulting in a downward financial spiral. It also seems evident that marketing by the industry is directed to minorities, low to moderate-income individuals, and seniors. Spanish-speaking consumers sign documents in English, knowing only what they are told, which may very well not be the same thing.

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In March 2005, our agency counseled 660 unduplicated individuals and families statewide. Of those, 17.4 percent owed one or more payday loans. These consumers were obligated from 1 to 17 different payday/small loans and, in over 95 percent of the clients, this debt was in addition to other consumer debt, credit card, retail, et cetera.

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I spoke earlier of seniors and will provide an example which is, unfortunately, not rare. A 71-year-old gentleman came in for assistance. His total net monthly income is $1,000.25 from Social Security. He owed 15 payday and 4 small loan companies—19 creditors—with monthly payments totaling $3,627. This started out with one loan of $100. His Social Security check arrived on the third of each month. On the sixteenth, he borrowed $100 to be repaid on the thirtieth. Unfortunately, he had no income until the third, so when the loan became due, he borrowed from another payday company to pay the interest on the first, and on and on, resulting in almost $4,000 in debt. Moreover, this amount did not reflect costs associated with the legal action that was being processed.

Another example involves a Spanish-speaking client who enlisted our assistance to repay his six payday loans. On January 25, 2005, one of the companies responded in writing to our agency, accepting the proposed payment of $67 on the $400 balance. On February 26, 2005, a lawsuit was filed for treble damages, resulting in a demand for $1,978.08 plus 15 percent interest every

two weeks. All this for a $400 debt the company agreed to accept payments on.

[Azucena Valladolid, continued.] The examples could continue, as we see them daily. Consumers are being exploited, indebted to 19 creditors, as a 71-year-old was, with no possible way to repay, is exploitation. Owing $400 and liquidating the debt, as agreed upon by the payday loan company, only to be sued for almost $2,000, is exploitation. I am asking you to consider the proposed legislation to provide protection for the residents of Nevada. We are in support of A.B. 340 and A.B. 384.

Alfredo Alonso, Legislative Advocate, representing Money Tree Incorporated:
We, too, support the Chairwoman's efforts in attacking this issue. Clearly, the issue here is more that this is a new industry in a new niche that was filled by these individuals, and like any new industry, you're going to have growing pains and that's what we're seeing here before you. These are the good guys. They've been working with the Chairwoman for some time. What's going to come out of this is a good bill that's going to regulate this industry and finally get at the bad actors. This is going to be sweeping and there will be some outcry for a time, but what you'll end up with is a solid industry just like banking and other financial industries as this evolves.

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Jim Marchesi, President/CEO, Check City, Las Vegas, Nevada; and Nevada Financial Services Association:
We have gone through exhaustive negotiations on this issue. I feel the product we're about to get will be an exceptional thing. We are in support in general, but there are a few things we will have to see when the bill is redrafted. In general, we're very much in support of the items that we've discussed and are going forward with. [Submitted Exhibit N.]

Mark Thompson, representing Community Financial Services Association and Money Tree, Incorporated:
I would like to thank Ms. Buckley personally and on behalf of CFSA for her leadership in bringing us together over the interim. We also are in support of most of the provisions of the bill as drafted. I think we've reached accommodation on the issues that remain and we look forward to supporting the bill going forward.

Barry Gold, Associate State Director for Advocacy, American Association of Retired Persons (AARP), Nevada:
The nature of the subject and the testimony has compelled me to come forward. AARP Nevada strongly supports legislation to stop predatory lending practices. We all agree that there does need to be a place for people who

cannot go into a Bank of America to find a loan; however, predatory lending practices must be stopped. I've always been told that the average payday loan is rolled over multiple times. The current state of predatory lending needs to be controlled. The way it's designed right now is not to help out the consumer, but is purposely designed to get people so deeply in debt that they cannot get out.

Vice Chairman Oceguera:
I'll close the public hearing on A.B. 384. We will now go into work session.

Chairwoman Buckley:
A.B. 249 I should have ready by Friday, but I want to double-check with Mr. Sande on that last amendment. We could process A.B. 257 now since we have Ms. Erdoes here. The only concern on that bill was the pledge language. Ms. Erdoes, are you comfortable with how you would approach taking that out? [Ms. Erdoes answered affirmatively.] I'll open up the discussion on A.B. 257.

Assembly Bill 257: Provides certain protections to person who receives payments pursuant to federal Social Security Act. (BDR 55-69)

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Chairwoman Buckley:
Do members feel like they have enough information to look at that bill, or would they like more time?

Assemblywoman Gansert:
I do have concerns with that bill. I'm concerned about someone writing a check for shopping and then bouncing that check and if the only resource they have is their Social Security check in their account, what do you do then? What do you do if someone just isn't using good judgment when they spend their money? I don't know if the amendment would cover that or not.

Chairwoman Buckley:
As I understand the bill, the bank certainly could go after the bank account on that, and I'll ask Brenda Erdoes for some help with that. We're talking about going after the money for another loan. A bank certainly could run it though again and charge whatever their fees are for bad checks; I don't think the bill prohibits that. Brenda, do you want to comment on this for us?

Brenda J. Erdoes, Legislative Counsel:
Yes, Madam Chairwoman, I believe you're correct. You could do that. I think the prohibition would apply in that case other than running it back through. I don't think there's a lot else you could do.

Assemblywoman Gansert:
So, you could continually run the check back through, but you can't just take the money? You have to go through the process of a bad check with the $25 fee and so forth? [Ms. Erdoes answers affirmatively.]

Chairwoman Buckley:
As I understood the bill, if a consumer writes a check, can the bank still try to recover that money that the bank has already paid to a merchant?

Jon Sasser, Statewide Advocacy Coordinator, Washoe Legal Services, Nevada Legal Services, and the Washoe County Senior Law Project:
That would be a related account. The bill is not aimed at overdrafts or bad checks within the same account, but deals with loans in a separate, unrelated account. In Assemblywoman Gansert's example, this bill wouldn't cover it at all, as I understand it.

Bill Uffelman, President and CEO, Nevada Bankers Association:
His assessment, to the best of my knowledge, is correct.

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Assemblyman Hettrick:
Somewhere along the way I've heard of accounts where you could have your money in a savings account, and then when you wrote the check the money was automatically transferred to cover it. If it was Social Security deposited in the savings account, and then they wrote the bad check, are we still okay where we are here?

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Bill Uffelman:
That is an overdraft protection feature, and in effect they've connected the two accounts. You have a checking account and a savings account and you say, "If I ever overdraft here, pull the money from my savings account over to here, and there will be some service charge related to it." But it would be just as if you had your credit card tied to your checking account to provide overdraft protection. There are a number of overdraft protection vehicles available, and those would be related. It was part of the agreement and I don't believe that is what the bill is trying to reach. If an accountholder does have some obligation to the bank, like a car loan secured by the car and a checking account, and fails to make the car loan payment, because he has the blanket agreement related to the checking account, that car loan payment of $300 plus some $25 fee for doing it is taken from the checking account. I believe that is what they were trying to attack.

Assemblyman Hettrick:
I understand where they're going. I'm looking to see if there is a way it can be misinterpreted. I also wonder about somebody who authorizes automatic withdrawals from their checking account for their loan. Now we don't have a loan and could have Social Security money in the automatic, then they don't want to make the payment this month. I disagree. I'm making sure we aren't getting into something that's going to get misinterpreted. I'm not disagreeing with the intent of the bill. I think they're trying to go the right way.

Bill Uffelman:
We had that same discussion this afternoon and I asked about the automatic withdrawals. We agreed between us that was not what he was trying to attack, but it doesn't say that in here. You may need to add language that says that's agreed, but then do you run into the language that says, you can't waive your rights?

Chairwoman Buckley:
We can go two ways. We could process the bill conceptually and get the legal language back, then ask that Brenda in drafting the amendment takes out the pledging to see if it could be made clearer that we're not talking about a situation with regard to overdrafts, where there is a specific agreement allowing something to be taken out of an account and those types of variations. What we're talking about is a blank form setoff: you miss an unrelated bill and we take all your Social Security. We could try it conceptually and then we'll bring the language back; if folks have concerns, we could look at it then. Is that acceptable?

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Assemblywoman Gansert:
I also need to disclose that we have an interest in a bank and this bill would not affect us any more or less than any other person.

Chairwoman Buckley:
Assemblyman Seale has the same disclosure. The amendments are clarification of the pledging issue and specific agreements to link an account.

ASSEMBLYMAN ANDERSON MOVED TO AMEND AND DO PASS ASSEMBLY BILL 257.

ASSEMBLYMAN HETTRICK SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Chairwoman Buckley:
We'll look at A.B. 364.

Assembly Bill 364: Makes various changes relating to industrial insurance. (BDR 53-249)

Chairwoman Buckley:
We had two concerns. One was from Bob Ostrovsky with regard to the accountings. Some parties are suggesting that on the monthly PPD check issue, they would agree to a quarterly accounting to the claimant in the form of a letter, and I have signatures by both parties. The only issue left in controversy with that bill is the vocational counselor issue. I was persuaded that it's relic of a system whose time has come, and I also was impressed that I didn't see any concern on the part of any insurers with regard to that as well. If the Committee wants time to think about this, we can hold off.

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ASSEMBLYMAN SEALE MOVED TO AMEND AND DO PASS ASSEMBLY BILL 364.

ASSEMBLYWOMAN GIUNCHIGLIANI SECONDED THE MOTION.

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Chairwoman Buckley:
The amendment being the quarterly accounting to the claimant in the form of a letter, as was discussed by Mr. Ostrovsky, in Section 4.

Assemblyman Hettrick:
I heard concern about the reopening provisions on the claims and some need to have something beyond the word "demonstrate." I'm concerned with that. I thought we heard there would be a significant number of reopenings that were large.

Chairwoman Buckley:
There was suggestion to make it more clear in some way.

Bob Ostrovsky, Legislative Advocate, representing Employer's Insurance Company of Nevada:
I've talked to some of the parties about it. Some people have drafted some language and it was a possibility. If you process this bill in its current form, it's

not the cleanest way to do things, but we'd be happy to try to compromise an agreement on the other side. I think we're all agreeable to try to resolve the issue that Mr. Hardy brought to the table. Crafting the language might take us some time. If you prefer, we could take it to the Senate and try to amend it there to fix that piece, if we can reach agreement. Otherwise, we could delay it and try to reach agreement before the fifteenth. I have not talked to Ms. Gruenewald about it.

Barbara Gruenewald, representing Nevada Trial Lawyers Association:
In all workers' comp, the burden of proof is 51 percent and it's on the claimant. That would attach to this also, so if you wanted to make it a different burden of proof, then it would be different than all other workers' comp laws. In other words, we think this word "demonstrates" fits within that burden of proof. The claimant has the burden to show by 51 percent of the evidence that at the time the case was closed the claimant was eligible to receive that permanent partial disability.

Bob Ostrovsky:
If we could tie that back and make sure that it was clear that was the intent, then it would be acceptable. I don't know that we have to tie it back to a specific statute or if there's any other language that would help comfort my people. If that standard could be made reference to by referring to another section of the statute that they could find, I'd be quite satisfied.

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Chairwoman Buckley:
We have Brenda here to hear this intent, and maybe she'll think of a better word and we could move forward with it.

Assemblyman Anderson:
I want to make sure I understand what Ms. Gruenewald was saying. Is it 51 percent or a majority? In other words, 50 percent plus 1—there is a difference in those two numbers.

Barbara Gruenewald:
The burden of proof is on the claimant to prove the case. When somebody asks "What is that burden of proof?", you can picture the lady with the scales of justice and the balance that she's doing. As long as you prove 51 percent or more, then the claimant has met their burden of proof. That's the standard burden of proof that applies to all workers' comp cases. That's what would apply here.

Assemblyman Hettrick:
I would like to clarity that Mr. Ostrovsky referenced that it indeed is something beyond just "demonstrates," because to me that doesn't meet the level of saying it's 51 percent. I think it's open to interpretation. What "demonstrates" to one person is not the same for another, so I think it needs to be clearer than it is.

Chairwoman Buckley:
How about if the Committee's intent is that it's similar as represented in terms of the burden of the claimant and we'll allow Brenda to see if she can find a better standard so that it can be clear.

We have a motion to amend and do pass with the amendments being the clarity of language with regard to "has the burden of proof or a reasonable facsimile thereof" as it goes through drafting.

THE MOTION CARRIED. (Mr. Parks was not present for the vote.)

Chairwoman Buckley:
We'll next discuss A.B. 446.

Assembly Bill 446: Provides for use of voice writing by court reporters. (BDR 54-1095)

Chairwoman Buckley:
We had some proposed amendments (Exhibit B) from James Jackson, and some sense that the court reporters felt that it wasn't equal, it wasn't time, and it's a brand-new industry.

Assemblyman Anderson:
I saw the amendments, and I didn't have a lot of discomfort other than when I read the amendment; I was a little surprised that it reached into a different area. It left out any relationship to the State Board and appeared to go around them. It appears the bill is well intended. I think it's just a new piece of equipment and a new methodology that we have to adjust to, so with the amendments, I believe that it's a good piece of legislation.

ASSEMBLYMAN ANDERSON MOVED TO AMEND AND DO PASS ASSEMBLY BILL 446.

ASSEMBLYMAN HETTRICK SECONDED THE MOTION.

THE MOTION CARRIED. (Mr. Perkins was not present for the vote.)

Chairwoman Buckley:
A.B. 502 was the last bill we heard today that we potentially could consider moving.

Assembly Bill 502: Makes various changes to provisions governing unemployment compensation. (BDR 53-323)

Chairwoman Buckley:
This bill is from the Division of Employment Security and primarily addressed getting us in compliance with the latest acronym passed down by the federal government.

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Assemblyman Conklin:
I'm okay with this bill. There was some discussion about possibly striking Sections 5 and 6. Having been to quite a few unemployment trials myself, I think that's probably a wise decision. Our system works very fairly from a business standpoint currently, and I don't see a reason to tighten that up.

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Chairwoman Buckley:
The lesson is that if you work for the Employment Security Division, you might learn more tricks that most of us don't know about. That's what I got from their testimony. I don't know if we want to change the system just because of that.

Assemblyman Anderson:
I was a little concerned about Section 7. If the intention of the 11 days is to shorten the time period, it seemed to me, if anything, there needs to be more work in that area on page 5, lines 31 and 36, if the intent is to count every day rather than actually days of court, which I thought the old law did.

Chairwoman Buckley:
The general rule of thumb is that if it's under 7 judicial days, then you count the weekends, but over 7 you don't count, so I don't think the change from 10 to 11 is going to do that unless there's some other intervening federal law. I believe the testimony was they wanted to conform it to the new NRCP guidelines.

Assemblyman Anderson:
Are we cutting down on the opportunity even if it's by one day?

Chairwoman Buckley:
No, I don't think so. Paragraph 3 has to do with the employer. Now they have 11 days instead of 10 to submit to the Department their facts about what's happening with the case. In number 4, if they receive a notice of filing the protest, it goes from 10 to 11. I think it's okay. It's changed to 11 all the way throughout Section 3 on line 44 and it continues on Section 8 throughout to conform it. We could amend and do pass with the motion being to delete Sections 5 and 6.

ASSEMBLYMAN CONKLIN MOVED TO AMEND AND DO PASS ASSEMBLY BILL 502.

ASSEMBLYWOMAN GIUNCHIGLIANI SECONDED THE MOTION.

THE MOTION CARRIED. (Mr. Perkins was not present for the vote.)

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Chairwoman Buckley:
We'll go now to our Work Session Document (Exhibit S). Let's look first at A.B. 66.

Assembly Bill 66: Requires reporting of certain gifts or other economic benefits provided by wholesalers or manufacturers regulated by the State Board of Pharmacy. (BDR 54-562)

Diane Thornton, Committee Policy Analyst:
The bill was sponsored by Assemblyman Conklin and heard on March 7, 2005. Under Tab A (Exhibit S), you'll find the proposed conceptual amendments proposed by Assemblyman Conklin and Barry Gold of AARP. The suggested amendments include:

- Changing the reference in the bill to fall under the Attorney General's jurisdiction.
- To adopt language giving the authority for the Attorney General to regulate the type of form for the reporting information.

- To add language for authority for the Attorney General's Office to prosecute for information not reported.
- Delete criminal penalties.
- Amend the bill for civil penalties to include ability for the Attorney General's Office to collect attorney fees and costs in addition to civil penalties.

Assemblyman Conklin:
There was testimony in Committee that it was the intention to move this from the Pharmacy Board to the Attorney General's Office for purposes of having the ability to enforce in an effort to make some of the language a little bit more palatable to some members and more in line with model legislation that's coming out of other states already. We've deleted the criminal penalties for the actions, and the other pieces, if I'm not mistaken, are really just cleanup to the bill, making it more palatable.

Chairwoman Buckley:
Are there any comments or questions? Seeing none, the Chair will entertain a motion.

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ASSEMBLYMAN ANDERSON MOVED TO AMEND AND DO PASS ASSEMBLY BILL 66.

ASSEMBLYMAN ARBERRY SECONDED THE MOTION.

THE MOTION CARRIED WITH MS. ALLEN, MRS. GANSERT, MR. HETTRICK, MR. SEALE, AND MR. SHERER VOTING NO.
(Mr. Perkins was not present for the vote.)

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Assemblyman Oceguera:
I'd like to reserve my right to vote no on the Floor.

Chairwoman Buckley:
We'll discuss A.B. 216.

Assembly Bill 216: Requires landlord to reduce rent for certain older persons who are tenants of manufactured home parks. (BDR 10-201)

Diane Thornton, Committee Policy Analyst:
This bill is sponsored by Assemblywoman Ohrenschall and was first heard on April 1, 2005. The bill requires a landlord of a for-profit manufactured home to reduce the rent of tenants who meet certain eligibility requirements and who request the rent reduction. There were no amendments proposed to the bill. There was a fiscal note submitted by Renee Diamond, Administrator to the Division of Housing.

Chairwoman Buckley:
I know some members of the Committee have philosophical concerns opposing the bill, and I certainly understand those. For me, this is the most important bill to my district, to one of the largest segments in my district, and I hear this every time I campaign. It's very important for Assembly District 8 and for Assemblywoman McClain's district, and I don't know that there's anything to fix it. You either like it or you don't. Are we okay with processing it? Are people ready?

> ASSEMBLYWOMAN GIUNCHIGLIANI MOVED TO DO PASS ASSEMBLY BILL 216.
>
> ASSEMBLYWOMAN McCLAIN SECONDED THE MOTION.
>
> THE MOTION CARRIED WITH MS. ALLEN, MRS. GANSERT, MR. HETTRICK, AND MR. SEALE VOTING NO. (Mr. Perkins was not present for the vote.)

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Assemblyman Conklin:
I would like to reserve my right to change my vote on the Floor.

Assemblyman Sherer:
I would also like to reserve my right to change my vote on the Floor.

Chairwoman Buckley:
We'll now discuss A.B. 250.

Assembly Bill 250: Provides for licensing and regulation of massage therapists. (BDR 54-733)

Diane Thornton, Committee Policy Analyst:
This bill is sponsored by Assemblyman Arberry and heard on March 30. The bill provides for the State licensing and regulation of massage therapists by creating a new board of massage therapists and establishes the structure and powers of that new board. The proposed amendments are under Tab B of your Work Session Document (Exhibit S). Mr. Adler worked on these proposed amendments with the Las Vegas Metropolitan Police Department (Metro).

Ernie Adler, Legislative Advocate, representing American Massage Therapist Association, Nevada Chapter:
I'll go through and characterize what each paragraph is. Most of these are Metro amendments.

Section 8, subsection 2, clarifies that the Board preempts local licensure for massage therapy.

Section 9, subsection 1, is an amendment that allows the Governor to appoint more than five members if he/she deems that in the best interest of the Board.

Section 13, subsection 3, requires a full staff of investigators. This amendment is necessary; Metro pointed out to the current board, not the State Board, that there are many investigations occurring now in Clark County, and they really do need full-time investigators and staff to accomplish these investigations.

Section 19, subsection 2, item 6 is a background investigation point that Metro brought up and is currently in the Clark County Ordinances.

Fred Haas, Legislative Advocate, representing Las Vegas Metropolitan Police Department; and the Nevada Sheriffs and Chiefs Association:
That is correct. All of these ordinances that we brought for the amendments are currently contained in Clark County Ordinance or Las Vegas City Ordinance.

Ernie Adler:
I think this is a good idea that they have some credible references.

Section 19, subsection 2, item 7, states the Board really digs into the information and application and makes sure it's correct.

Section 19, subsection 2, item 8, is from a county or city ordinance. It has to do with fingerprinting, arrest records, and pending litigation records.

[Fred Hass, continued.] Section 19, subsection 2, item 9, allows the board, if they can't get a handle on the person's background, as a last resort, to look into financial records to see what's going on with this individual applicant.

Section 19, subsection 2, item 10, requires that the investigation be terminated within 30 days if at all possible so that the person can get a clear response on their application and become licensed.

Section 19, item 11, is a confidentiality provision making certain these records are confidential and that only necessary people have access to them.

Section 20, subsection 2, paragraph b, requires at least four examinations offered a year to applicants, although I think they intend to have monthly examinations so it's easy for people to take the examination and become licensed.

Section 24, subsection 4, deals with the question of grandfathering this whole section. The intent is to grandfather in everyone who has a current license by a county, city, or township, but we've got a gap in the law. There are a few people who have never had a criminal background check, and it says if you don't have a criminal background check that can be verified through law enforcement, then law enforcement is going to require you to get a background check prior to being grandfathered into the system. I think that's a reasonable requirement.

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Section 25, subsection 1, allows the Board to go up to $500 for a background check. Most of these are not going to approach that level of cost, but occasionally there are going to be out-of-state applicants who have a very complicated history that will require considerable money to investigate.

Section 26 requires the display of the license whenever a massage therapist is working so that law enforcement knows they're a licensed therapist and so the Board's investigators can verify that.

Section 29, subsection 3(b), looks back to prior criminal convictions over a 15-year period instead of a 5-year period.

Section 29, subsection 13, disallows deceptive advertising practices, but also requires a penalty for somebody using someone else's name, license, or is falsifying their ID.

Assemblyman Anderson:
Fifteen years? We only do seven years for DUI cases.

Ernie Adler:
This is for a background check, essentially. This is the current Clark County ordinance.

Assemblywoman Giunchigliani:
I appreciate that's in the county ordinances, but that's a bit extreme. You can seal records at 12 years, and 15 is kind of insane to go back, especially for a misdemeanor. What was the rationale on that?

Ernie Adler:
I think it was because it's in the county ordinances.

Assemblywoman Giunchigliani:
You just lifted the language that they had? Do you know what the background is, especially for a misdemeanor?

Fred Haas:
The rationale is that the misdemeanor claims, including prostitution and sexual activity, are all covered as misdemeanor crimes, and sometimes there a gap in that activity and they fall back into that same lifestyle. We want to make sure that if we're going into that business of massage therapy, that's what they're going in there for, not for other motives of other businesses.

Chairwoman Buckley:
Is the Clark County ordinance limited to felony or misdemeanor convictions concerning prostitution or other crimes emanating from prostitution, as opposed to someone who wrote a felony bad check 10 years ago? Could you find some distinction between those two such that your concerns would be alleviated?

Fred Haas:
I think that's a reasonable request if it's not related to the business in such a way that it's not necessarily considered as part of a background investigation.

Chairwoman Buckley:
Why don't we have that be the intent? I think in the original version you were trying to get at that in Section 29, page 12, lines 22 to 30, so perhaps we could just incorporate in the amendments that they would be involving prostitution or other sexual offenses.

Ernie Adler:
Or crimes of violence. What the Board would be concerned about would be crimes of violence, prostitution, or other sexual offenses. If that were tacked onto the 15, I think that's what people are concerned about.

Chairwoman Buckley:
Would that be amenable to members of the Committee, less concern about that approach? It would have to be a conviction.

Fred Haas:
We also have a problem with a trick roll, which is while you're getting a massage, or the act of prostitution, they're cleaning your pockets and your wallet out at the same time. I'd like to make sure that's also included in that background if they are convicted of a crime of burglary or robbery at that time.

Chairwoman Buckley:
Maybe we can look at the underlying offense and we know what we're talking about. We'll see what we can draft through Legal. The Committee's intent would be to try to have it pertain to prostitution, trick-rolling, or anything related, involving violence or prostitution, to make sure the industry stays clean.

Assemblyman Anderson:
I read (Exhibit S), "The Board shall also verify the accuracy and the completeness of information submitted on each application." I'm thinking about what happens if somebody comes in who was arrested when they were 18 or 21 years of age for a misdemeanor offense and it might be in this area and now they are in their thirties and there has been no subsequent event. Because it's a 7-year question, if they are 25 or 26 now, are they going to be precluded from being a massage therapist? They're not engaging in the act of prostitution, they're engaging in massage therapy.

Ernie Adler:
This just says they need to verify the application, and if they show things that are incorrect in the application, that doesn't necessarily mean that they don't get a license if it's a minor discrepancy. That's the Board's discretion, but I would imagine if it's a minor item currently under county ordinances, they still would have a shot at getting a license unless it's a major violation.

Assemblyman Conklin:
Fifteen years is too long. Somewhere between seven and ten is more palatable, and it's the standard that most employers have to abide by.

Ernie Adler:
I signaled to the Metro people in the audience and they gave me 10 as an acceptable answer.

Assemblyman Arberry:
I accept 10.

Chairwoman Buckley:
We have two more subsections you did not get to, but I'm sure the Committee has already read them by now. Are there any other concerns?

Assemblyman Sherer:
One of the things in testimony was to make sure that not one of the Board members is affiliated with a massage school. Is that in here?

Ernie Adler:
Yes, it's still in here. That was not deleted.

Chairwoman Buckley:
Subsection 3 of Section 32, which wasn't read, is an important one merging the two, and needed more because of the concern and the industry.

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Ernie Adler:
Currently, this is not in the county ordinance, but to law enforcement this is a very important provision because under current ordinances and not in state law, if you catch someone violently beating a client or engaging in prostitution or some very severe act, you can't take their license immediately. If there's hardcore criminal conduct occurring, this allows us to take the license and they can go to the Board and say why it needs to be reinstated because we don't want people who are really truly bad actors practicing after they committed a serious offense.

Assemblywoman Gansert:
Looking at Section 25, the background check not less than $48 but not more than $500, the $500 just seems really excessive.

Chairwoman Buckley:
Can you discuss where the standard is?

Assemblywoman Giunchigliani:
FBI fingerprint is currently $45. There are a couple cases where they go beyond that for a specific background check, and it shouldn't exceed $300. We just

had some discussion in another Committee on that. We thought $500 is a bit extreme.

Ernie Adler:
We can go with the $300.

Assemblywoman Giunchigliani:
You need to make it $45, which is the current cost of fingerprinting.

Ernie Adler:
Most of these are not going to be $45, and very few will be $300, but some will.

Chairwoman Buckley:
On page 10 and 11, where fees are described, the original fee structure is still in as well, correct?

Ernie Adler:
That's correct.

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Chairwoman Buckley:
Is there discussion on the background fee maximum being lowered?

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Assemblywoman Giunchigliani:
From $45 to $300. Is that acceptable, Mr. Adler?

Ernie Adler:
That's acceptable to me.

Fred Haas:
What they charge for their background is not really a law enforcement issue. As long as they can recover their own cost and make sure the backgrounds are done in a complete manner, we're okay with that.

Chairwoman Buckley:
Any other concerns? Is the Committee inclined to move the bill? The Chair would be willing to entertain a motion to amend and do pass with the amendments being those contained in our book (Exhibit S), changing the $500 fee to $300 and changing the criminal record issue from 15 years to 10 years.

ASSEMBLYMAN SEALE MOVED TO AMEND AND DO PASS ASSEMBLY BILL 250.

ASSEMBLYMAN PARKS SECONDED THE MOTION.

Assemblyman Conklin:
Was there discussion to change the language on which crimes would be considered, or was that thrown out in lieu of the 10-year and anything applies?

Chairwoman Buckley:
Assemblyman Arberry, what was your intent there? We were looking at page 12, Section 29. Line 22, "...has been convicted of a crime involving violence, prostitution, or any other sexual offense, felony, or misdemeanor... within the immediately preceding five years," and then the amendment had it going to 15.

Assemblyman Arberry:
I defer to Ernie Adler.

Ernie Adler:
I think it would be adequate if we put "crimes of violence, prostitution, and other sexual offenses, burglary, robbery, or larceny from a person." Because that's what everybody is concerned about.

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Chairwoman Buckley:
It sounds like the suggestion is to go right in the middle to also allow some crimes that might be used in a trick roll, such as larceny or other related offenses, but to take the broader one out to delineate those ones. Is that acceptable by the maker and the secondary? Mr. Arberry says yes; Mr. Seale is okay.

Assemblywoman Giunchigliani:
Look at lines 37 through 39 on page 12, touching the breasts; I have to have a written consent form to allow someone to massage?

Chairwoman Buckley:
Mr. Hettrick is indicating that we had written testimony on that issue.

Assemblyman Hettrick:
We had a lady testify who said breast massage was used in cancer treatment and that she didn't think it should require a one-time note from a doctor. I think we have to be careful we don't do something unintended here and prevent something that is helpful.

Chairwoman Buckley:
I have a constituent who is a registered physical therapist, and that's her entire practice, lymphadema, where she does immediate therapy right after breast surgery to ensure that your arms are able to move and you don't lose range of motion. Massage therapy is essential after breast surgery. The problem here is you're trying to regulate folks who use it as a front for prostitution and a lot of very legitimate folks who we wish we could utilize more in terms of legitimate massages and therapeutic uses.

Assemblywoman Giunchigliani:
The way it's written, at least it allows the Board to make some determinations through regulatory process, but I hope you would not restrict those types of situations because that's the whole purpose in some cases of massage.

Ernie Adler:
I think as long as it's for medical purposes, it would be permitted.

Assemblywoman Giunchigliani:
After you get your regulations written, we'll have to take a look at them.

Assemblyman Hettrick:
Reading the language, it says "Unless the person has a signed written consent form provided by the Board," and they're talking about the massage therapist. That means the massage therapist would have to have had this form in advance and available so if someone came in and asked "What's going on here?", they would be able to pull out the form and say "I've got permission from the Board and this is appropriate." I think that's probably all right the way it is written.

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Chairwoman Buckley:
They would be using a written consent form provided by the Board, but not have approval by the Board, so that the patient would sign it.

Assemblyman Hettrick:
I have a problem with that because if you had someone soliciting prostitution, they'd sign the form. It has to be provided by the Board in advance.

Chairwoman Buckley:
Permissioned?

Assemblyman Hettrick:
No, it says "consent form." If you're going to go to a massage therapist and solicit prostitution, you're going to sign the consent form. I think it has to be in advance. The Board has to be available to the therapist who wants to do this, in

advance, so your friend could go to the Board and say, "I do this kind of therapy for people who have had this treatment."

Chairwoman Buckley:
This bill is really hard. For those who are engaging in it legitimately, are they really going to call the Board to say—in the case of my constituent or someone helping victims of breast cancer, do you really want them to call a State Board to say, I'm not going to massage this breast cancer?

Assemblyman Hettrick:
I meant they would have a form that would be good for a year in advance. They'd say, "I do this kind of therapy and I want the Board's consent," not per massage, but for the therapist to do that kind of massage. I think that works better than the other way around; otherwise, everyone who went in there soliciting prostitution would sign the consent.

Chairwoman Buckley:
We could add perhaps another section that would allow someone to get approval by the Board.

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Fred Haas:
A massage therapist who specializes in this type of treatment would probably have this form available for clients to fill out.

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Chairwoman Buckley:
The point was, who wouldn't sign that form if they were actually soliciting prostitution.

Ernie Adler:
I would think if you're going to someone for prostitution, you wouldn't want to fill out a form with your name and address on it. I also think this can be taken care of by regulation.

THE MOTION CARRIED. (Mr. Perkins was not present for the vote.)

Chairwoman Buckley:
Let's go to A.B. 370.

Assembly Bill 370: Revises definition of "contractor" to include certain construction managers, general contractors and employment agencies. (BDR 54-726)

Diane Thornton, Committee Policy Analyst:
This bill is sponsored by the Committee on Government Affairs and first heard on April 4, 2005. The bill defines a "contractor" as a "general contractor;" as "a person who obtains a contract with a specialty contractor, subcontractor, or supplier to complete a project;" or as "an employment agency that provides skilled workmen to a contractor." Russell Rowe from the Focus Property Group proposed the amendment behind Tab C (Exhibit S).

Chairwoman Buckley:
I'll hold off processing this bill today to allow an opportunity for further testimony.

Assemblyman Parks:
Did the Carpenters Union have a proposed amendment for consideration too? I don't see it here.

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Bob Ostrovsky, Legislative Advocate, representing the City of Las Vegas, Nevada:
I believe, during the original hearing, it was discussed that the Carpenters Union would meet with city representatives and try to work out an amendment with Mr. Parks. We proposed an amendment to the Carpenters Union and they haven't responded to us.

Chairwoman Buckley:
Let's pull this bill from the work session and let the gentleman who had the privilege of waiting five hours to have an opportunity to communicate with Committee members, see the work that's done on the amendment, and go from there. Let's review A.B. 254.

Assembly Bill 254: Revises provisions governing industrial insurance. (BDR 53-1080)

Chairwoman Buckley:
This was a bill we assigned to Assemblyman Conklin to see if he could coordinate between the parties and alleviate some of the concerns. Assemblyman Conklin, would you report back to us?

Assemblyman Conklin:
The subcommittee of one met; it was a lonely meeting. However, I did hear back from the parties in support and in opposition to the bill, Mr. Ostrovsky and Mr. Jayne, representing both sides. It was my impression that they came to an agreement palatable for both sides; the agreement was acceptance of the proposed amendments brought forth by Mr. Ostrovsky, which are at the top of this page (Exhibit T), and, in addition to that, deleting Section 2 from the bill. I believe that makes this more palatable. I don't think anybody is entirely happy with the bill, but everyone can live with it the way it was explained.

Chairwoman Buckley:
Section 2 was trying to limit the ability to appeal as a way of leveling the playing field for employees not being able to sue for bad faith, but that ran into some opposition and so the proposal is to delete that?

Assemblyman Conklin:
That was the proposal and, I might add, I was one of the parties who had issue with Section 2. It's not my intention to allow employers to continually appeal the hearing so that a person never gets benefits. That is a very bad practice, but Mr. Ostrovsky might be able to answer this. I think that there's a clause already available stating that, once it has been determined that they should get it at some level, it can't be denied. They might be able to continue to appeal, but they can't stop the benefits from happening.

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Chairwoman Buckley:
What it does is raise the fines a bit, not to the level in the original bill, and that's basically it.

Bob Ostrovsky:
The bill, as it's constituted now, would raise the fines 50 percent from where they are now, from $1,000 to $1,500 and from $25,000 to $37,000. It would also add to the list of major violations and intentional acts and, I've now been told, there is actually a regulation being proposed that will define an intentional act that's already in process for another matter; I've seen it. I have talked to the Nevada Trial Lawyers Association who proposed Section 2 through Ray Badger; I've talked to the State's Risk Management; I've talked to the self-insured folks from Clark County and the rural areas; and they're all in agreement to support the bill if we delete Section 2. The Trial Lawyers, who requested it originally, have now said they've agreed to drop it in exchange for the support of the changes in NRS 616D.120 in the back of the bill.

ASSEMBLYMAN HETTRICK MOVED TO AMEND AND DO PASS ASSEMBLY BILL 254.

ASSEMBLYWOMAN ALLEN SECONDED THE MOTION.

THE MOTION CARRIED. (Mr. Perkins was absent for the vote.)

Chairwoman Buckley:
We're adjourned [at 5:49 p.m.]

RESPECTFULLY SUBMITTED:

James S. Cassimus
Transcribing Attaché

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APPROVED BY:

Assemblywoman Barbara Buckley, Chairman

DATE:

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EXHIBITS

Committee Name: Committee on Commerce and Labor

Date: April 6, 2005 **Time of Meeting: 1:07 p.m.**

Bill	Exhibit	Witness / Agency	Description
446	**B**	James Jackson, Voice Writers of America (VWA)	Proposed amendments
502	**C**	Cindy Jones, Employment Security Division	Employment, Training and Rehabilitation Testimony
502	**D**	Ray Bacon, Nevada Manufacturers Association	E-mail in opposition to A.B. 502.
249	**E**	Assemblywoman Barbara Buckley	Presentation written by Assemblywoman Buckley
249	**F**	Assemblywoman Barbara Buckley	Proposed Amendments to A.B. 249
249	**G**	Michael Geeser, California State Automobile Association	Letter in support of A.B. 249.
363	**H**	John Wiles, Esq.	Letter in opposition of A.B. 363.
364	**I**	Bob Ostrovsky, Employer's Insurance Company of Nevada	Proposed Amendment to A.B. 364.
364	**J**	James Wilcher, The International Association of Rehabilitation Professionals, Nevada Chapter	Position paper on Bill Draft A.B. 364
257	**K**	John Sasser, Washoe and Nevada Legal Services, and the Washoe County Senior Law Project	Exhibit in support of A.B. 257.
340	**L**	Assemblywoman Giunchigliani	Payday Loan Fact Sheet
340	**M**	Josephine Gallegos, Carson City Municipal Court	Acknowledgements and Representations.
340	**N**	Nevada Fair Housing Incorporated	Short-Term, High Interest Cash Lending In Nevada
384	**O**	Assemblywoman Barbara Buckley	Short-Term, High Interest Loans
384	**P**	Gail Burks, Nevada Fair Housing Center, Las Vegas, Nevada	Testimony
384	**Q**	Azucena Valladolid, Consumer Credit Counseling Service	Testimony on A.B. 384

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340	**R**	Jim Marchesi, President, Nevada Financial Services Association	Testimony on A.B. 340
	S	Diane Thornton, Committee Policy Analyst	Work Session Document
254	**T**	Bob Ostrovsky, representing the City of Las Vegas, Nevada	Proposed Amendment to A.B. 254

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DISCLAIMER

Electronic versions of the exhibits in these minutes may not be complete.

This information is supplied as an informational service only and should not be relied upon as an official record.

Original exhibits are on file at the Legislative Counsel Bureau Research Library in Carson City.

Contact the Library at (775) 684-6827 or library@lcb.state.nv.us.

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Testimony on AB 340
Nevada Legislature

Jim Marchesi
President
Nevada Financial Services Association
Mark Thomson
Community Financial Services Association of America
And Moneytree, Inc.

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Payday Advance
Customer Profile

- 68% under 45 years old
  - 3.5% retired
- 94% high school education or better
  - 56% some college or degree
- 52% earn $25,000 - $50,000
- 42% own home
- Children in household
- 100% steady income & bank account

Source: The Credit Research Center, McDonough School of Business, Georgetown University, April 2001.

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ASSEMBLY COMMERCE & LABOR
DATE: 4/6/05 EXHIBIT N PAGE 1 OF 9
SUBMITTED BY: Jim Marchesi

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Middle-income, middle-educated, responsible, hardworking families

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Reason for Choosing a Cash Advance

- Cypress Research Group (N=2000)

	% True
– Quick and easy	38%
– Convenient location	15%
– Fast approval	10%
– No other source of funding	9%
– Less expensive than alternatives	8%
– Short term and not revolving	5%
– Less harm to credit	4%
– Better service	2%
– Other	10%

- Convenience/Speed 63% of major reason for using product

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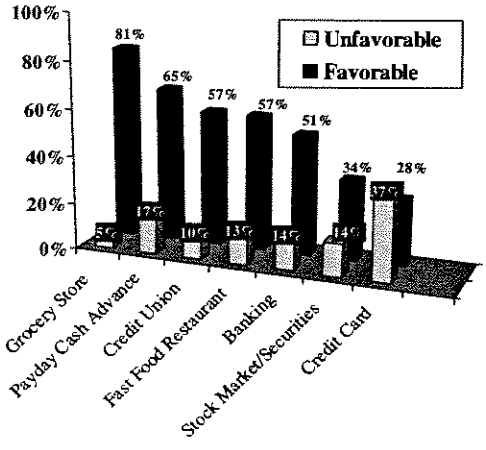
Consumer Opinions

Industry Favorability

In terms of how fairly they treat customers and are good community citizens, do you have a favorable, unfavorable, or neutral opinion about the ... industry?



- Of the 7 industries evaluated, the **Payday Cash Advance industry was the 2nd most-highly-rated** in terms of 'treating customers fairly' and being a 'good community citizen.'
- The Grocery Store industry received the highest marks from this consumer group (81% favorable/5% unfavorable).

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Customer Satisfaction

- Satisfaction With the Cash Advance (N=2000) by Cypress Research Group

	% in agreement
Consumers understand the loan terms:	
– When applied for loan understood when to make pmt	94%
– Understood terms and cost when applied	90%

Satisfaction with:	% in agreement
– Ability to refinance or renew the cash advance	88%
– Maximum cash advance amount allowed	83%
– Cash Advance repayment schedule	77%

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Purchase Decision Process

- Cypress Research Group (N=2000)
- In the last year a cash advance has helped me:

	% true
– Unexpected expense	84%
– Avoid late charges	73%
– Avoid bounced check	66%
– Helped bridge income reduction	62%
– Allowed to get something special	45%

Multiple benefits expressed

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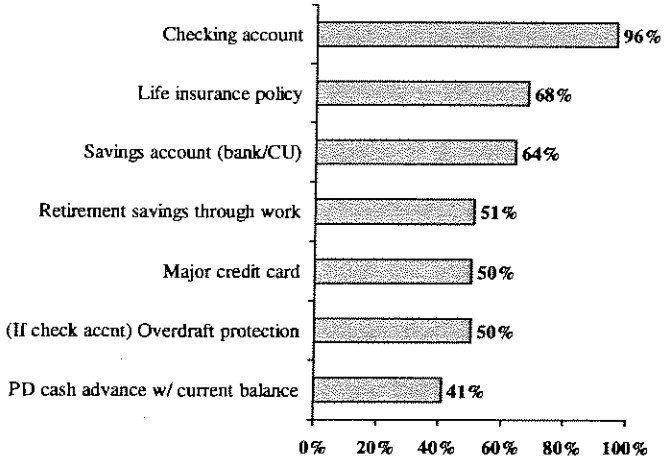
Demographic Characteristics

Our Customers have many alternatives.

Do you currently have a…..?



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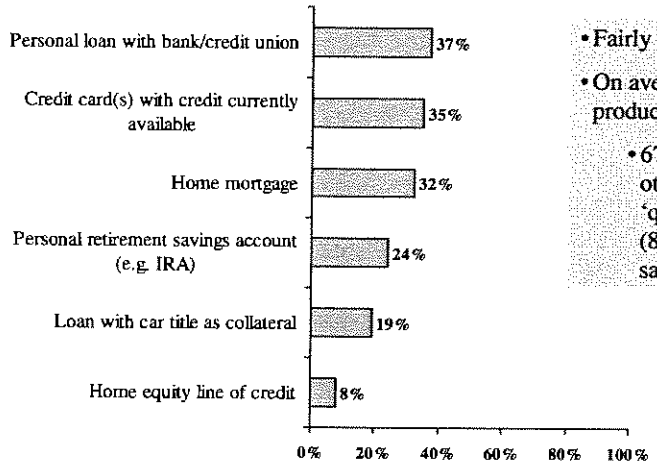
Demographic Characteristics

Our Customers have many alternatives.

Do you currently have a…..?



- Fairly mainstream products
- On average (median) have 5 products
  - 67% have at least one other option which offers 'quick' access to money (85% if you include savings accounts).

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Cost Effective Alternative

• **14-Day Term**	**Fee**	**APR**
$100 payday advance[1]	$15	391%
$100 check with overdraft privilege fee[2]	$35	913%
$100 credit card balance with late fee[3]	$27	704%
$100 check with NSF &merchant fee[4]	$51	1329%
$100 utility bill with late/reconnect fees[4]	$50	1303%
• **1-Day Term**		
$100 ATM withdrawal fee[5]	$1.49	544%

1 *Typical payday advance fee*
2 *Alex Berenson, New York Times, "Banks Encourage Overdrafts, Reaping Profit," January 22, 2003.*
3 *Credit Card fees are national, Consumer Action News, "Annual Credit Card Survey 2003" www.consumer-action.org*
4 *Average fees according to an industry survey conducted in 2003 of 2,243 banks in 858 cities*
5 *Bankrate.com, "Checking Study, Spring 2003", posted March 27, 2003, www.bankrate.com*

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Satisfaction with the Cash Advance

- Cypress Research Group (N=2000)

	% Disagree
– Government should limit number of loans/yr	86
– Government records to monitor my use	86
– Government records to monitor people's use	80
– Government should limit number of times renewed	77

- In Nevada over 5,000,000 transactions annually
- 125,000 – 150,000 Nevada residents use service at any one time
- Only six complaints filed with FID in 2004 on NRS 604

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The Cost of Making a Loan

Federal Reserve Board reports commercial banks' installment loan costs:

- Average loan origination ranges from $84.56 to $202.42
- Average monthly cost to service the loan ranges from $16.96 to $21.74

Result: Banks are exiting the micro-loan business

The average total cost to originate and service a payday loan is approximately **$33.00**

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$380 loan, 12 monthly payments, at 25% with 4% origination fee

	Low	High
Origination cost	$84.56	$202.42
Servicing cost	$203.52	$260.88
Total cost	$288.08	$463.30
Origination fee	$15.52	$15.52
Interest	$95.00	$95.00
Total revenue	$110.52	$110.52
Profit	-$178.56	-$352.78

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AB 340 – Section 1

- Return on a 14 loan at an 8% APR is not profitable – represents an attempt to prohibit the industry

Loan Amount	Allowable Fee
$100	$0.30
$340	$1.04
$700	$2.14

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Impact of 8% APR

- Regulated industry no longer viable.
- Demand for small, short-term loans will remain.
- Customers will turn to Internet and scams.
- State of Nevada loses all control.
- To truly protect consumers, must have a economically viable regulated industry.

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Concerns about a database

- Customer privacy issues – what can be disclosed, security, evolving area of law.
- Cost issues – greater time commitment.
- Philosophical issues:
  - What is the role of government in a free society?
  - If real-time government monitoring is good for this product, why not others? Overdraft protection, credit cards, gambling?

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Local zoning requirement

- Communities that see this as a problem are dealing with it, those that don't, aren't.
- Is this an unfunded mandate?
- Leave to local government.

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We oppose AB 340 because:

- It makes the regulated business untenable.
- It damages consumers, our employees and citizens of the state.
- Expands the power of the state into private decisions.

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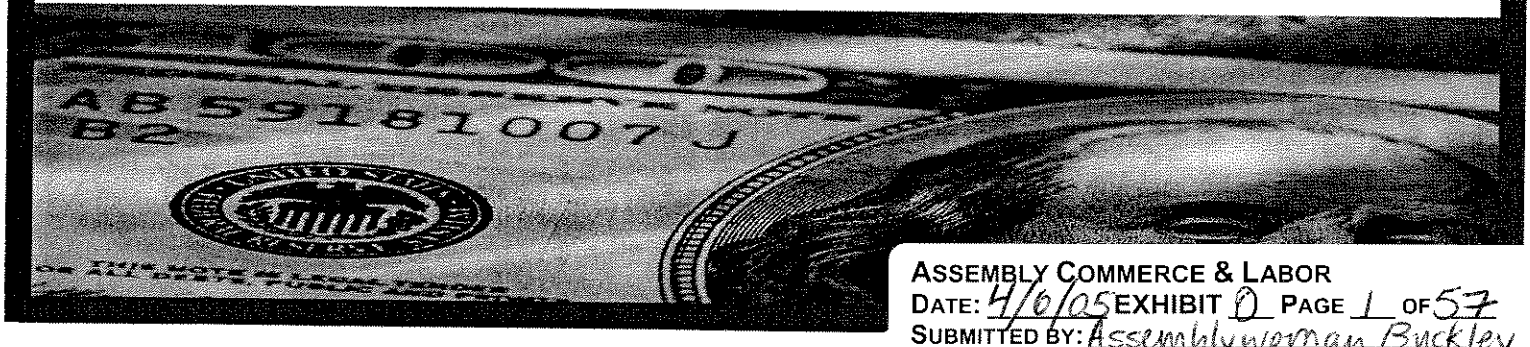
Assembly Bill 384

73rd Legislature

Short Term, High Interest Loans

Presentation by
Assemblywoman Barbara E. Buckley

April 6, 2005



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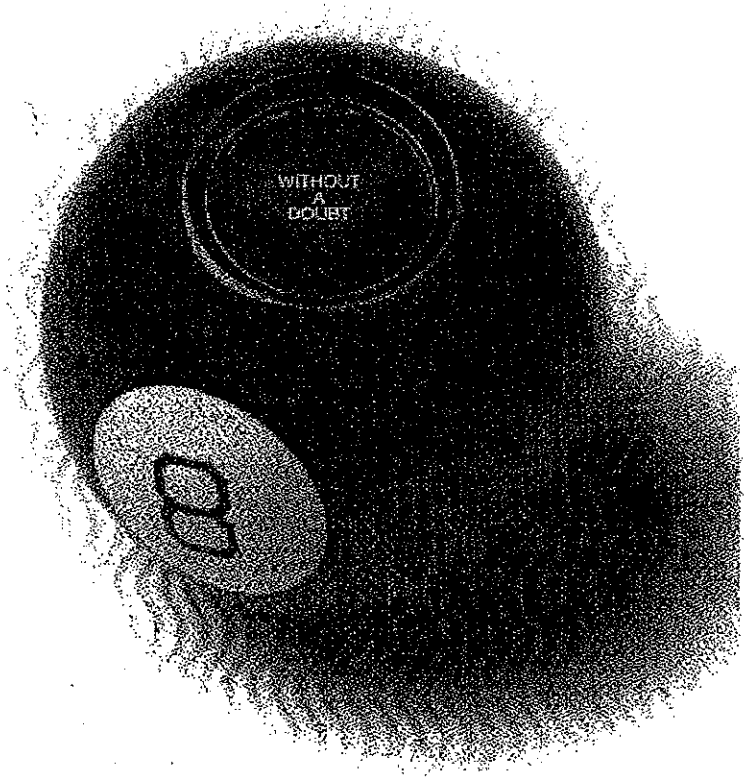
Will you need money before payday?



NATIONAL CASH ADVANCE®

Get the money you need. Fast, easy and hassle free.

Advances are loans by Peoples National Bank, Paris, TX

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NDOJ
OFFICE OF THE ATTORNEY GENERAL
Nevada Department of Justice

Brian Sandoval, *Attorney General*
Ann Wilkinson, *Assistant Attorney General*

100 N. Carson Street
Carson City, Nevada 89701-4717
Telephone - (775) 684-1100
Fax - (775) 684-1108
Web - http://ag.state.nv.us

CONTACT: Tom Sargent (775) 684-1114
cell (775) 720-1870
sargent@ag.state.nv.us

FOR IMMEDIATE RELEASE
October 27, 2004

"PAYDAY LOANS"—More Dollars Than Sense?

Carson City—Attorney General Brian Sandoval today issued the following consumer advisory as a part of an ongoing effort by the Nevada Department of Justice, Bureau of Consumer Protection, to educate consumers:

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Consumers short on cash have no trouble finding one of the "payday loan" or check-loan businesses that have exploded in Nevada. But consumers should be careful! These enticing promises of "*Cash 'til payday! Instant cash!*" come with a hefty price tag. Because there is no statutory limit on loan interest rates in Nevada, consumers may pay astronomical interest rates and likely will only worsen their debt problems—even with loans from legitimate operators.

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It is not uncommon for consumers to pay for the "convenience" of getting cash to tide them over until payday at an Annual Percentage Rate of interest (APR) of 300%-400%. But paying triple-digit interest rates for short-term loans just siphons more money out of budgets that may already be running on empty. A significant number of Nevada payday loan consumers are repeat customers making it that ever more difficult to get off the debt treadmill.

How payday loans work: If a consumer wants $100.00 in cash, for example, the consumer would write a check for $116.50, with the difference being the fee. The business gives the consumer $100 cash on the spot and holds the check until the consumer's next payday when the check is either deposited or redeemed. That two-week loan of $100.00 at a cost of $16.50 works out to an annual interest rate (APR) of over 434%. Compare that interest rate to, say, the 24% APR interest rate common for very high interest rate credit cards. A $100.00 loan for two weeks at a 24% APR would cost the consumer approximately $.92, which is obviously significantly cheaper than $16.50.

What consumers can do: Consumers can pay themselves the fee instead of going to a payday lender. This will help build a savings reserve for emergencies. In the case of

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emergency cash needed for important bills, look for alternatives. Many utility companies and other service providers have emergency assistance programs on the same short-term basis. If the trouble paying bills persists, debt counseling by a reputable, non-profit organization is the best long-term solution. Again, paying debts with triple-digit APR loans is only likely to sweep the consumer downward in a spiral of worsening debt.

Where consumers can complain: Any consumer who suspects they may have been the victim of an **illegal payday lending operation** should contact the **Financial Institutions Division** at (775) 684-1830 in northern Nevada or (702) 486-4120 in southern Nevada. Additional information is also available on their website at www.fid.state.nv.us.

Any consumer that wishes to seek **debt counseling** should contact **Consumer Credit Counseling Service** at (702) 364-0344 or toll-free at (800) 451-4505. Additional information is also available on their website at www.cccnevada.org.

Any consumer that has a question about his or her **personal legal rights** may contact **Clark County Legal Services** at (702) 386-1070 or toll-free at (800) 522-1070. Additional information is also available on their website at www.clarkcountylegal.com.

General questions regarding these or other consumer issues may be directed to either the Consumer Affairs Division of the Nevada Department of Business and Industry ("NCAD") or the Office of the Attorney General's Bureau of Consumer Protection ("BCP"). NCAD may be reached by calling (702) 486-7355 in southern Nevada or (775) 688-1800 in northern Nevada, or you may visit NCAD's website at www.fyiconsumer.org. The BCP may be reached by calling (702) 486-3194 in southern Nevada or (775) 687-6300 in northern Nevada, or you may visit the Attorney General's website at http://ag.state.nv.us.

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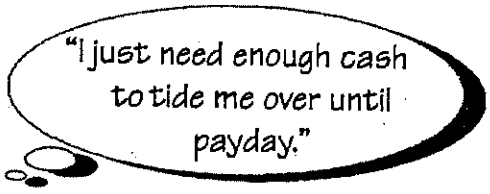
FTC Consumer Alert

Federal Trade Commission ■ Bureau of Consumer Protection ■ Office of Consumer and Business Education

Payday Loans = Costly Cash



"GET CASH UNTIL PAYDAY! . . . $100 OR MORE . . . FAST."

The ads are on the radio, television, the Internet, even in the mail. They refer to payday loans — which come at a very high price.

Check cashers, finance companies and others are making small, short-term, high-rate loans that go by a variety of names: payday loans, cash advance loans, check advance loans, post-dated check loans or deferred deposit check loans.

Usually, a borrower writes a personal check payable to the lender for the amount he or she wishes to borrow plus a fee. The company gives the borrower the amount of the check minus the fee. Fees charged for payday loans are usually a percentage of the face value of the check or a fee charged per amount borrowed — say, for every $50 or $100 loaned. And, if you extend or "roll-over" the loan — say for another two weeks — you will pay the fees for each extension.

Under the Truth in Lending Act, the cost of payday loans — like other types of credit — must be disclosed. Among other information, you must receive, in writing, the finance charge (a dollar amount) and the annual percentage rate or APR (the cost of credit on a yearly basis).

A cash advance loan secured by a personal check — such as a payday loan — is very expensive credit. Let's say you write a personal check for $115 to borrow $100 for up to 14 days. The check casher or payday lender agrees to hold the check until your next payday. At that time, depending on the particular plan, the lender deposits the check, you redeem the check by paying the $115 in cash, or you roll-over the check by paying a fee to extend the loan for another two weeks. In this example, the cost of the initial loan is a $15 finance charge and 391 percent APR. If you roll-over the loan three times, the finance charge would climb to $60 to borrow $100.

Alternatives to Payday Loans

There are other options. Consider the possibilities before choosing a payday loan:

- When you need credit, shop carefully. Compare offers. Look for the credit offer with the lowest APR — consider a small loan from your credit union or small loan company, an advance on pay from your employer, or a loan from family or friends. A cash advance on a credit card also may be a possibility, but it may have a higher interest rate than your other sources of funds: find out the terms before you decide. Also, a local community-based organization may make small business loans to individuals.

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- Compare the APR and the finance charge (which includes loan fees, interest and other types of credit costs) of credit offers to get the lowest cost.
- Ask your creditors for more time to pay your bills. Find out what they will charge for that service — as a late charge, an additional finance charge or a higher interest rate.
- Make a realistic budget, and figure your monthly and daily expenditures. Avoid unnecessary purchases — even small daily items. Their costs add up. Also, build some savings — even small deposits can help — to avoid borrowing for emergencies, unexpected expenses or other items. For example, by putting the amount of the fee that would be paid on a typical $300 payday loan in a savings account for six months, you would have extra dollars available. This can give you a buffer against financial emergencies.
- Find out if you have, or can get, overdraft protection on your checking account. If you are regularly using most or all of the funds in your account and if you make a mistake in your checking (or savings) account ledger or records, overdraft protection can help protect you from further credit problems. Find out the terms of overdraft protection.
- If you need help working out a debt repayment plan with creditors or developing a budget, contact your local consumer credit counseling service. There are non-profit groups in every state that offer credit guidance to consumers. These services are available at little or no cost. Also, check with your employer, credit union or housing authority for no- or low-cost credit counseling programs.
- If you decide you must use a payday loan, borrow only as much as you can afford to pay with your next paycheck and still have enough to make it to the next payday.

To Complain/For More Information

If you believe a lender has violated the Truth in Lending Act, you can file a complaint with the FTC. The FTC works for the consumer to prevent fraudulent, deceptive, and unfair business practices in the marketplace and to provide information to help consumers spot, stop, and avoid them. To file a complaint or to get free information on consumer issues, visit www.ftc.gov or call toll-free, 1-877-FTC-HELP (1-877-382-4357). The FTC enters Internet, telemarketing, identity theft, and other fraud-related complaints into Consumer Sentinel, a secure, online database available to hundreds of civil and criminal law enforcement agencies in the U.S. and abroad.

FEDERAL TRADE COMMISSION | FOR THE CONSUMER
1-877-FTC-HELP | www.ftc.gov

February 2000

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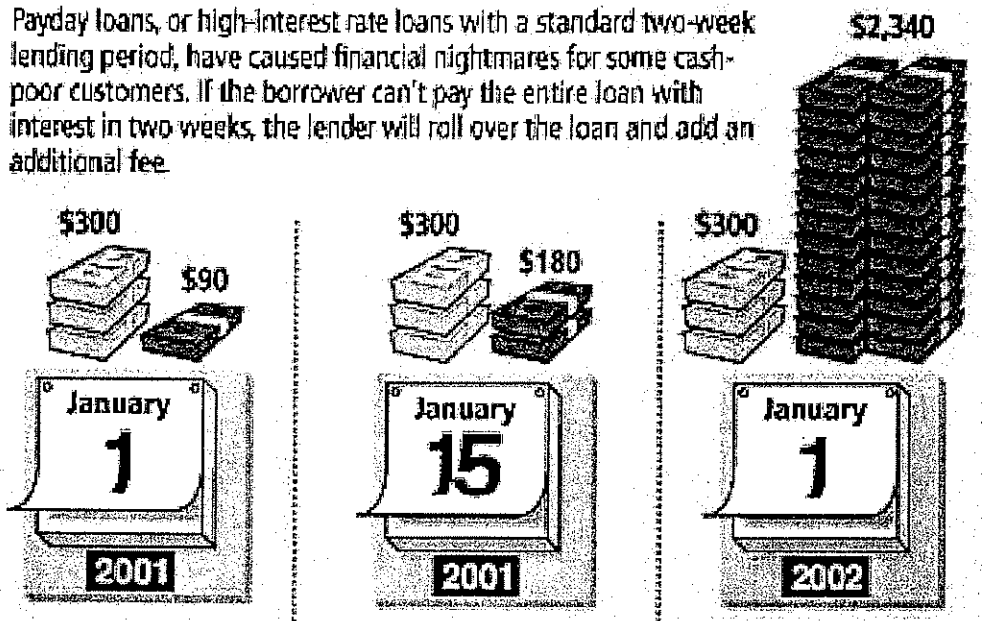
Attachment 1

Getting buried in debt

Payday loans, or high-interest rate loans with a standard two-week lending period, have caused financial nightmares for some cash-poor customers. If the borrower can't pay the entire loan with interest in two weeks, the lender will roll over the loan and add an additional fee.



A borrower goes to a payday firm to get a loan for $300 and agrees to pay it back in two weeks plus $90 for interest.

At the end the lending period, the borrower pays the interest, but can't afford to pay back the entire $300 borrowed. The lender rolls over the $300 and charges an additional $90 in interest.

If the borrower pays only the $90 in interest every two weeks, a total of $2,340 will be paid in a year – or nearly 800 percent in interest. The original $300 principal is still owed.

Note: The typical interest charged ranges from $15 to $30 per $100 borrowed.

SOURCE: Compiled from AP wire reports

THE ASSOCIATED PRESS

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Attachment 2

FROM : PHONE NO. [redacted]

TRUTH IN LENDING DISCLOSURE STATEMENT

CREDITOR:	APPLICANT(S):
PROFESSIONAL PROCESS SOLUTIONS 3850 E. FLAMINGO RD. #194 LAS VEGAS, NEVADA 89121	[redacted] PREPARATION DATE: 12/9/04

ANNUAL PERCENTAGE RATE (THE COST OF YOUR CREDIT AS A YEARLY NOTE)	FINANCE CHARGE (THE DOLLAR AMOUNT THE CREDIT WILL COST YOU)	AMOUNT FINANCED (THE AMOUNT OF CREDIT PROVIDED TO YOU OR ON YOUR BEHALF)	TOTAL OF PAYMENTS (THE AMOUNT YOU WILL HAVE PAID AFTER YOU HAVE MADE ALL PAYMENTS AS SCHEDULED)
E* 416 %	E* $ 242.00	E* $ 500.00	E* $ 742.00

PAYMENT SCHEDULE

NUMBER OF PAYMENTS	AMOUNT OF PAYMENT	(TERMS) PAYMENTS ARE DUE BEGINNING
1	$ 68.00	12/20/04
1	$ 60.00	1/3/05
1	$ 594.00	1/17/05
	$	
	$	

THIS NOTE DOES NOT HAVE A DEMAND CLAUSE, EXCEPT UPON DEFAULT.

THIS NOTE DOES NOT HAVE A PREPAYMENT PENALTY.

THIS NOTE IS NOT TRANSFERRABLE OR ASSUMABLE.

LATE CHARGE: THIS NOTE HAS A TWO (2) DAY GRACE PERIOD, AFTER THAT THERE WILL BE A LATE FEE CHARGED EQUAL TO TWENTY-FIVE (25%) PERCENT OF THE PAYMENT DUE.

SEE YOUR CONTRACT DOCUMENTS FOR ANY ADDITIONAL INFORMATION REGARDING NON-PAYMENT, DEFAULT, AND PENALTIES.

***"E" MEANS ESTIMATE**

By signing the agreement you acknowledge that it was filled in before you signed and that you have received a completed copy. You further acknowledge that you have read it, understand it, and that you agree to all its terms.

[redacted] 12-9-04
BORROWER'S SIGNATURE DATE

X _____
CO-BORROWER'S SIGNATURE

X David Lakse
PREPARER'S SIGNATURE

660000 660000

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FROM : PHONE NO. : [redacted]

PAGE 1 OF 2

PROFESSIONAL PROCESS SOLUTIONS

PROMISSORY NOTE

NOTICE!!!

MAKER UNDERSTANDS AND AGREES THAT THIS IS AN INTEREST ONLY NOTE, ALL PAYMENTS ARE CALCULATED ON A WEEKLY BASIS. UNLESS STIPULATED IN WRITING ANY PRINCIPAL REDUCTION OF THIS NOTE WILL BE THE RESPONSIBILITY OF THE MAKER. [redacted] X

$ 500.00 Setup Fee $ 20.00 Total amount borrowed $ 500.00

Dated: This 9 Day of December 2004 In the City Of Las Vegas, Nevada

For Value received, I/We [redacted] jointly and severally promise to pay to Professional Process Solutions the principal sum of Five Hundred —00/100 Dollars ($ 500.00), payable at 4020 S PECOS MCLEOD # 15 LAS VEGAS, NV. 89121, together with interest thereon at the rate of Eight (8%) percent per WEEK until MATURITY, both principal and interest being payable in lawful money of the United States as follows:

1: The maturity date of this note shall be Jan 17, 2005. LDJ X

2: Interest due on this note $ 242.00 LDJ X

3: Cost of note at maturity is $ 742.00, with an APR of 416 % LDJ X

4: The interest only payments will be made Every Two (2) Weeks LDJ X

5: Payment adjustments will be made after each $100.00 principal reduction LDJ X

PAYMENT START DATE December 20, 2004

INTEREST ONLY PAYMENT IS $ 80.00 LDJ X

1 TIME PAYMENT ADJUSTMENT (IF NEEDED) $ 68.00 DUE 12/20/04

PAYMENT SCHEDULE

1	PAYMENT(S) OF $ 68.00	12/20/04
1	PAYMENT(S) OF $ 80.00	1/3/05
1	PAYMENT(S) OF $ 594.00	1/17/05

ANY Payment HEREUNDER NOT PAID WITHIN 48 HOURS OF DUE DATE A LATE FEE OF 25% OF THE AMOUNT DUE WILL BE ASSESSED, UNLESS OTHERWISE AGREED UPON, IF THIS PAYMENT IS NOT MADE THE ENTIRE NOTE BALANCE WILL BE CONSIDERED IN DEFAULT AND FULL PAYMENT DUE. THE LENDER AT HIS OPTION CAN INITIATE

1

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FROM :

PHONE NO. : [redacted]

LEGAL ACTION. SHOULD LEGAL ACTION BE INITIATED, THE UNDER-

SIGNED UNDERSTANDS THAT LEGAL AND COLLECTION COSTS OF $400.00 WILL BE ADDED TO THE OUTSTANDING BALANCE OF THE NOTE.

ADDITIONAL PRINCIPAL PAYMENTS, CAN BE MADE WITH ANY INSTALLMENT, THIS NOTE CAN BE PAID OFF AT ANY TIME WITH NO PENALTY.

ADDITIONAL COMMENTS AND CONDITIONS

Upon default of any of the obligations set forth herein, each maker and endorser authorizes and empowers any attorney, Justice of the Peace, or Clerk of Court of Record in any of the jurisdictions in which the makers or endorsers reside, work or own property, in the State of NEVADA, or in any other jurisdiction, to enter judgment by confession against such makers and endorsers, jointly and severally, in favor of Professional Process Solutions or its assigns, for the full amount due plus all costs of collection, including without limitation court costs and reasonable attorney's fees maker and endorser expressly waives any summons or other process, consents to immediate execution of said judgment, and expressly waives benefit of all exemption laws and presentment, demand, protest, and notice of maturity, non and/or protest, and also waives benefit of any other requirements necessary to hold each of them liable as makers and endorsers.

If any one or more of the words or terms of this Note shall be held to be indefinite, invalid, illegal or otherwise unenforceable, in whole or in part, for any reason, by any court of competent jurisdiction, the remainder of this Note shall continue in full force and effect and shall be construed as if such indefinite, invalid, illegal or unenforceable words or terms had not been contained herein.

The laws of the State of NEVADA shall govern the terms of this Note.

[redacted] 12-9-04

BORROWER DATE BORROWER

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ORIGINAL

FILED

MAR 4 12 37 PM '05

LAS

BY PG

Professional Process Solutions
3850 E. Flamingo Road #194
Las Vegas, NV 89121
TEL (702) 435-8612
FAX (702) 436-5611

IN PRO PER

JUSTICE COURT

CLARK COUNTY, NEVADA

Professional Process Solutions)
)
Plaintiff,)
)
v.)
[redacted],)
)
Defendant.)

[redacted]

Case No.
Dept No. 3

CONFESSION OF JUDGMENT

Defendant(s) [redacted] do(es) hereby confess judgment in favor of the Plaintiff for the principal sum of $ 500 00 plus $ 125 00 in ACCRUED INTEREST AND LATE FEES at the rate per the signed contract, from the date of last payment or the date said debt became due, plus fees in the sum of $ 400.00 and court costs in the amount of $19.00 and hereby authorize judgment to be entered against Defendant(s) for said amount.

This confession of judgment is for a debt justly owed to Professional Process Solutions.

[redacted]
Defendant SS Number

Defendant SS Number

000102

000102

000102

STATE OF NEVADA)
) ss
COUNTY OF CLARK)

[redacted] Being first duly sworn, on oath depose(s) and say(s):

That affiant(s) is/are the Defendant(s) in the within action; that affiant(s) has/have read the foregoing CONFESSION OF JUDGMENT and know(s) the contents thereof; that (1) affiant understands the CONFESSION OF JUDGMENT and authorizes Plaintiff, in the event of default in making any of the payments due, to enter this judgment against affiant(s) without the institution of further legal proceedings, this having the same effect as if judgment had been rendered by the court; (2) and further that by signing this CONFESSION OF JUDGMENT, all defenses (i.e. reasons why affiant is not liable for this debt) may not be asserted; and (3) by so doing affiant(s) acknowledge(s) that the debt is legitimately owed, that affiant signed the within instrument of his/her own free will; that the said instrument will not be filed unless affiant(s) default(s) in making any of said installment payments; and that no action to threaten or humiliate said Defendant(s) shall be taken.

[redacted]
Signature of Defendant

Signature of Defendant

Witness : David Labae Date 12/9/04

000103

000103

000104

000104

Attachment 3

CFSA ONLINE

COMMUNITY FINANCIAL SERVICES ASSOCIATION OF AMERICA

GENERAL INFORMATION
CONSUMER INFORMATION
MEDIA RESOURCES
MEMBERS
INDUSTRY FOCUS
US PATRIOT ACT/OFAC LIST
LINKS

Search CFSA

Best Practices for the Industry

To be a member in good standing of CFSA, a payday advance provider must abide by the following best practices:

1. **Full disclosure.** A member will comply with the disclosure requirements of the State in which the payday advance office is located and with Federal disclosure requirements including the Feder Truth in Lending Act. A contract between a member and the custome must fully outline the terms of the payday advance transaction. Members agree to disclose the cost of the service fee both as a dolla amount and as an annual percentage rate ("APR").

2. **Compliance.** A member will comply with all applicable laws. A member will not charge a fee or rate for a payday advance that is not authorized by State or Federal law.

3. **Truthful advertising.** A member will not advertise the payday advance service in any false, misleading, or deceptive manner.

4. **Encourage consumer responsibility.** A member will implement procedures to inform consumers of the intended use of the payday advance service. These procedures will include notifying consumers that a payday advance is a short-term cash flow tool not designed as solution for longer term financial problems and informing customers o the availability of credit counseling services.

5. **Rollovers.** A member will comply with State laws on rollovers (the extension of an outstanding advance by payment of only a fee). In States where rollovers are not specifically allowed a member will not under any circumstances allow a customer to do a rollover. In the few States where rollovers are permitted, a member will limit rollovers to four (4) or the State limit, whichever is less.

6. **Right to rescind.** A member will give its customers the right to rescind, at no cost, a payday advance transaction on or before the close of the following business day.

7. **Appropriate collection practices.** A member must collect past due accounts in a professional, fair and lawful manner. A member will not use unlawful threats, intimidation, or harassment to collect accounts. CFSA believes that the collection limitations contained in the Fair Det Collection Practices Act (FDCPA) should guide a member's practice i this area.

8. **No criminal action.** A member will not threaten or pursue criminal action against a customer as a result of the customer's check being returned unpaid or the customer's account not being paid.

9. **Enforcement.** A member will participate in selfpolicing of the industry A member will be expected to report violations of these Best Practice to CFSA, which will investigate the matter and take appropriate actior Each member company agrees to maintain and post its own toll-free consumer hotline number in each of its outlets.

10. **Support balanced legislation.** A member will work with State legislators and regulators to support responsible legislation of the payday advance industry that incorporates these Best Practices.

11. **Relationships with financial institutions.** A member may market and service payday advances made by a federally insured financial institution, provided the financial institution does the following: (1) set its own credit criteria; (2) approves and funds each advance; (3) complies with applicable State disclosure requirements, where not inconsistent with Federal law; (4) complies with applicable State law a to the number of rollovers; (5) permits the member to purchase no more than a de minimis amount of the advances, or any such other amount which may be consistent with safety and soundness determinations by Federal or State banking regulators; (6) complies with the guidelines and regulations on payday lending issued by the financial institution's Federal or State regulator; and (7) complies with these Best Practices unless the Best Practices conflict with this Paragraph, in which case the terms of this Paragraph shall apply.

12. **Military.** A member will comply with a separate code of Military Best Practices that addresses the unique circumstances of active duty military customers. These special consumer protections include, among others: a prohibition on the garnishment of military wages or salaries and on contacting the military chain of command to collect payment; and the establishment of financial literacy initiatives that wil benefit service men and women.

2005

If you wish to report a violation of the Best Practices, please click here.

[redacted]

CONTACT U

000106

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000107

000107

Attachment 4

REMINDER/RECEIPT

NAME: [redacted]		PHONE: [redacted]	
ADDRESS [redacted]		SSN: [redacted]	
City, State [redacted]		LOAN DATE:	12/17/2003
YOUR CHECK NUMBER: [redacted]		PREVIOUS BALANCE:	
AMOUNT:	$195.00	AMOUNT PAID TODAY:	
WILL BE DEPOSITED AFTER THE CLOSE OF BUSINESS ON:	12/26/2003	NEW BALANCE:	$0.00
		NEW CASH ADVANCE:	$150.00
PLEASE NOTE: If your check does not clear your bank when we deposit it, you will be charged and NSF CHECK HANDLING FEE of $25.00 plus a LATE CHARGE of $5.00 per day until paid in full. You will not be charged more than two (2) NSF CHECK HANDLING FEES per check.		AMOUNT FINANCED:	$150.00
		SERVICE CHARGE:	$45.00
		TOTAL DUE:	$195.00

IF YOU DO NOT WANT YOUR CHECK DEPOSITED

You may "buy back" your check with cash or a money order. If you redeem your check within seven days, we will gladly refund a full week's service charge.

You may be permitted to extend the deposit date for an additional 1, 2 or 3 weeks by paying at least the amount of your service charge in cash or with a money order. If we allow you to extend the deposit date, a new service charge will be added to the remaining balance. This option is only available for 8 weeks from the initial defered due date or: **2/21/2004**

IMPORTANT: If you want to buy back your check or extend the deposit date, you must make the necessary payment prior to the close of business on the scheduled deposit date. If you fail to do so, your check will be deposited.

If you cannot come to our location to buy back or extend your check before the close of business on the deposit date, we will hold your check a maximum of three days beyond the scheduled deposit date, provided that you telephone or fax us prior to the close of business on the scheduled deposit date. You will be required to pay a late charge of $5.00 per day.

In event of a default, Nevada State law also permits us to charge you 17.75% interest on the unpaid balance.

TRUTH-IN-LENDING DISCLOSURE

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	AMOUNT FINANCED	TOTAL OF PAYMENTS
The cost of your credit as a yearly rate	The dollar amount the credit will cost to you (service charge)	Amount of credut provided to you (cash advance)	Write check payable to CASH OUT in the amount of
1095.00%	$45.00	$150.00	$195.00

Payment Schedule: Your payment schedule will be one payment of $195.00 Due on 12/26/2003
Minimum Finance Charge: The minimum finance charge is: $45.00
Security: This is an unsecured loan.

I have read and received a copy of this disclosure statement. This deferred deposit does not exceed 1/3 of my expected monthly income.

Customer Signature:_____ Date:_____

Cash Out Employee:[redacted] Date: 12/17/03

Customer Service Representative

Thank you

CASH OUT - 4921 Alta Drive, Las Vegas, NV 89107 (702)822-1616

000108
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WHEREFORE, plaintiff, ACT Investments, Inc. dba Cash Out, prays as follows:

1. For the first cause of action.

a. For a judgment against defendant in the amount of $220.00, plus interest at 14.00% per annum plus any other late fees accrued to date.

b. For maximum damages of $500.00 as provided for by NRS 41.620.

c. For reasonable attorney's fees and cost of suit incurred herein.

d. For any other judgment this court may deem proper in the premises.

2. For the second cause of action.

a. For a judgment against defendant in the amount of $220.00 plus interest at 14.00% per annum plus any other late fees accrued to date.

b. For reasonable attorney's fees and costs of suit herein; and

c. For any other judgment this court may deem proper in the premises.

Dated this 19 day of January, 2004

Respectfully Submitted

By: _____

Sean P. Hillin Esq.
Nevada Bar No. 5368
1800 East Sahara Avenue, Suite 102
Las Vegas, NV 89104
(702) 737-3939

Attorney for ACT Investments, Inc. dba Cash Out

000109

Justice Court, Las Vegas Township

CLARK COUNTY, NEVADA

FILED

FILED

Name: ACT Investment Inc, dba Cash Out
Address: 4921 Alta Drive
Las Vegas, NV 89107

2004 APR 16 P 12:19

CASE NO 2004 [redacted]

Plaintiff, JUSTICE COURT LAS VEGAS TOWNSHIP, NEVADA

JUSTICE COURT

WRIT OF EXECUTION

Vs.

Name: [redacted]
Address: [redacted]

☒ EARNINGS ☐ OTHER PROPERTY
☐ EARNINGS, ORDER OF SUPPORT

Defendant

THE STATE OF NEVADA, TO THE CONSTABLE/SHERIFF, LAS VEGAS TOWNSHIP, GREETINGS:

On April 9, 2004 a Judgment, upon which there is due in United States Currency the following amounts, was entered in this action in favor ACT Investments Inc. dba Cash Out as Judgment Creditor and Against [redacted] Judgment Debtor. Interest and costs have accrued in the amounts shown. Any satisfaction has been credited first against total accrued interest and costs leaving the following net balance which sum bears interest at ____ % per annum, $ ____ per day from issuance of this Writ to date of levy and to which sum must be added all commission and costs of executing this Writ.

JUDGMENT BALANCE		AMOUNTS TO BE COLLECTED BY LEVY	
Principal	$ 720.00	NET BALANCE	$ 875.00
Pre-Judgment	$	Fee this Writ	$ 6.00
Attorney's Fee	$ 55.00	Garnishment Fee	$ 5.00
Costs	$ 100.00	Mileage	20
JUDGMENT TOTAL	$ 875.00	Levy Fee	18
Accrued Costs		Advertising	
Accrued Interest		Storage	
Less Satisfaction		Interest from Date of Issuance	
NET BALANCE	$ 875.00	SUB-TOTAL	924
		Commission	18.48
		TOTAL LEVY	942.48

NOW, THEREFORE, you are commanded to satisfy the Judgment for the amount due out of the following described personal property and if sufficient personal property cannot be found, then out of the following described real property:

[redacted]

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Attachment 5

KENNY C. GUINN
Governor

SYDNEY H. WICKLIFFE, C.P.A.
Director

STATE OF NEVADA
FINANCIAL INSTITUTIONS DIVISION
DEPARTMENT OF BUSINESS AND INDUSTRY
406 E. Second Street. Suite 3
Carson City, Nevada 89701-4758
(775) 684-1830 Fax (775) 684-1845

L. SCOTT WALSHAW
Commissioner

fid.state.nv.us

MEMORANDUM

Date: July 16, 2002

From: L. Scott Walshaw, Commissioner

To: All Registered Check Cashing/Deferred Deposit Firms

Subject: Prohibited Acts By NRS 604 Registrants

000112

This memo is being provided as clarification on the application of the provisions of NRS 41.620 and NRS 205.132 to "deferred deposit" transactions of NRS 604 registrants. NRS 41.620 provides for the circumstances under which a creditor can obtain damages equal to three times the amount of a check that is drawn on a closed account or on an account with insufficient funds ($100 minimum, $300 maximum), and NRS 205.132 provides for the basis of criminal action in the instance where a check is issued against a non-existent account or one with insufficient funds with the intent to defraud.

000112

NRS 604.180 (1) prohibits a registrant from threatening and/or using criminal or civil actions "not available to creditors generally" in attempting to collect an unpaid deferred deposit transaction. Based on review of the legislative intent, and review by the Attorney General's office, it is the position of my office that section .180 ***precludes*** the use of NRS 205.132 in the collection of unpaid/defaulted deferred deposit transactions, *except* in those circumstances where the appropriate District Attorney's office has determined that evidence provided by the registrant shows the issuer of the check knowingly intended to defraud, by issuing a check on an account that the issuer knew was closed or did not exist.

It should also be noted that the legislature has otherwise limited the fees a registrant can obtain on a check drawn on insufficient funds to not more than two $25 charges for a returned check, regardless how many times such a check has been presented for payment (see NRS 604.162), thus precluding the use of NRS 41.620 in the collection of unpaid/defaulted deferred deposit transactions.

The structure of a deferred deposit transaction would require a prospective customer to write a *post dated* check that would likely be in an amount exceeding the balance in the account, therefore the

Legislature clearly intended to prohibit the registrant from being able to use the provisions of the aforementioned statutes in attempts to collect unpaid/defaulted deferred deposit transactions. As noted above, the only exception would appear to be in the case where the District Attorney had determined that the registrant had information/evidence that would show that the issuer of the check had knowledge that the account the check was drawn upon was closed or was a fictitious account. ***The registrant cannot threaten such action as a means of coercing payment on an unpaid/defaulted deferred deposit transaction.***

Cc: Collection Agencies Licensed Pursuant to NRS 649.

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Attachment 6

05/27/2004

[redacted]

Return Check No. [redacted]
Drawn On [redacted]
Customer: [redacted]

Amount of Check:$300.00
Fees Due:$25.00
Payments Applied:$.00
Current Amount Due:$325.00

REQUEST FOR PAYMENT
NSF or Account Closed

000115

This letter is being sent to inform you that we have made several attempts to reach you and/or make reasonable payment arrangements pertaining to the item listed above.

Payment arrangements may still be possible if you contact us within (10) ten days of the date of this notice. Failure to contact us to make payments will result in legal action being taken against you. Furthermore, if a judgment is recorded againt you, you will be required to pay the full amount of the check plus triple damages (3 times the amount of the check minimum amount of $100.00 with a maximum amount of $500.00 per item under NRS 41.620) plus check return fees, court costs and attorney's fees. A judgment will result in garnishment of your wages and or bank account in addition to this account being reported to credit bureau as a non payment debt owed.

000115

Once again, payment arrangements are possible, Please don't delay contact us today.

Sincerely;

Alysia

Collection Division
702-940-3900

This communication, from a debt collector, is an attempt to collect a debt. Any information obtained will be used solely for that purpose.

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Attachment 7

ENDORSEMENT OF THIS CHECK ACKNOWLEDGES PAYMENT AS FOLLOWS:

[redacted]

MANAGEMENT SERVICES 213869

4275 E. SAHARA AVENUE, SUITE 3
LAS VEGAS, NEVADA 89104
(702) 641-0008

213869

USbank.
24-Hour Banking
1-800-673-3555

94-169
1212

PAY: One hundred and 00 cents

DATE 08/06/2004 $ 100.00

TO THE ORDER OF: Star Loan Centers
610 E. Sahara, Ste. 10
Las Vegas, NV 89104-

NOT VALID AFTER 60 DAYS
TRUST ACCOUNT
NON NEGOTIABLE

⑈213869⑈ ⑆121201694⑆153790075060⑈

ENDORSEMENT OF THIS CHECK ACKNOWLEDGES PAYMENT AS FOLLOWS:

[redacted]

MANAGEMENT SERVICES 215145

4275 E. SAHARA AVENUE, SUITE 3
LAS VEGAS, NEVADA 89104
(702) 641-0008

215145

USbank.
24-Hour Banking
1-800-673-3555

94-169
1212

PAY: Three hundred Fourteen and 42 cents

DATE 09/02/2004 $ 314.42

TO THE ORDER OF: Star Loan Centers
610 E. Sahara, Ste. 10
Las Vegas, NV 89104-

NOT VALID AFTER 60 DAYS
TRUST ACCOUNT
NON NEGOTIABLE

⑈215145⑈ ⑆121201694⑆153790075060⑈

000117

000117

1. For the first cause of action.

a. For a judgment against defendant in the amount of $410.00, plus interest at 14.25% per annum plus any other late fees accrued to date.

b. For maximum damages of $1,000.00 as provided for by NRS 41.620.

c. For reasonable attorney's fees and cost of suit incurred herein.

d. For any other judgment this court may deem proper in the premises.

2. For the second cause of action.

a. For a judgment against defendant in the amount of $410.00 plus interest at 14.25% per annum plus any other late fees accrued to date.

b. For reasonable attorney's fees and costs of suit herein; and

c. For any other judgment this court may deem proper in the premises.

Dated this 16 day of September, 2004.

Respectfully Submitted

By: _____

Sean P. Hillin Esq.
Nevada Bar No: 5368
1800 East Sahara Avenue, Suite 102
Las Vegas, NV 89104
(702) 737-3939

Attorney for Gorman's Star Enterprises

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Justice Court, Las Vegas Township

CLARK COUNTY, NEVADA

RECEIVED
FEB 18 2005

FILED
FEB 9 7 40 AM '05
JUSTICE COURT
LAS VEGAS NEVADA KS
BY

GORMAN'S STAR ENTERPRISES
P.O. BOX 94527
LAS VEGAS, NV 89193

Plaintiff.

—vs—

[redacted]

Defendant.

CASE NO. [redacted]

WRIT OF EXECUTION

☒ EARNINGS ☐ OTHER PROPERTY
☐ EARNINGS, ORDER OF SUPPORT

THE STATE OF NEVADA TO THE CONSTABLE/SHERIFF, LAS VEGAS TOWNSHIP, GREETINGS:

On JANUARY 4, 2005, 19____, a Judgment, upon which there is due in United States Currency the following amounts, was entered in this action in favor of GORMAN'S STAR ENTERPRISES as Judgment Creditor and against [redacted] as Judgment Debtor. Interest and costs have accrued in the amounts shown. Any satisfaction has been credited first against total accrued interest and costs leaving the following net balance which sum bears interest at _____ % per annum, $_____ per day from issuance of this Writ to date of levy and to which sum must be added all commissions and costs of executing this Writ.

JUDGMENT BALANCE		AMOUNTS TO BE COLLECTED BY LEVY	
Principal	$1,410.00	NET BALANCE	$1,589.00
Pre-Judgment Interest		Fee This Writ	$ 6.00
Attorney's Fee	$ 103.00	Garnishment Fee	$ 5.00
Costs	$ 76.00	Mileage	20.00
JUDGMENT TOTAL	$1,589.00	Levy Fee	18.00
Accrued Costs		Advertising	
Accrued Interest		Storage	
Less Satisfaction		Interest From Date of Issuance	
NET BALANCE	$1,589.00	SUB-TOTAL	1638.00
		Commission	32.76
		TOTAL LEVY	1670.76

NOW, THEREFORE, you are commanded to satisfy the Judgment for the total amount due out of the following described personal property and if sufficient personal property cannot be found, then out of the following described real property:

[redacted]

(SEE REVERSE SIDE FOR EXEMPTIONS WHICH MAY APPLY)

RECEIVED
JAN 31 2005
JUSTICE COURT

22

JC-1 (Civil)
Rev. 10-96

000119
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Attachment 8

PAYDAY ADVANCE DISCLOSURE

CUSTOMER DISCLOSURE

NAME [redacted] NO [redacted] ACCT NO [redacted]
ADDRESS
CITY STATE

ANNUAL PERCENTAGE RATE (THE COST AS A YEARLY RATE)	FEE CHARGED	AMOUNT ADVANCE	TOTAL CHECK AMOUNT
651.79%	$50.00	$200.00	$250.00

YOUR PAYMENT SCHEDULE WILL BE:

NO OF PAYMENT	AMOUNT OF PAYMENTS	DEPOSIT DATE
1	$250.00	07/22/03

THERE WILL BE NO REFUND OF THE FEE CHARGED [redacted] CUSTOMER INITIALS [redacted] TELLER'S INITIALS [redacted]

I authorize Refugee Holdings, Inc. dba Boulder Check Cashing or its designated representative (hereinafter referred to as Boulder Check Cashing) to deposit or to cash my check, and Boulder Check Cashing agrees to defer said deposit or cashing of my check until my next payday, or until the 22 day of July, 2003. An outstanding loan made in the form of a deferred deposit cannot be extended beyond 10 weeks after the expiration of the initial loan period. A fee not to exceed $ 25.00 may be charged for any returned check(s). I hereby authorize Boulder Check Cashing and /or its financial institution to ACH debit my account for the amount due. Furthermore, I authorize Boulder Check Cashing and/or its representatives to contact any company, entity, reference, relative, supervisor, commanding officer, or other person(s) having dealings with me and/or listed on my post-dated application and supplemental back-up, submitted before or updated with this agreement. In order to obtain information and to discuss any debts which I owe Boulder Check Cashing. I understand that Boulder Check Cashing does not make any loans and that its service charges are for check cashing and/or deferred deposits.

Caution: It is important to thoroughly read this contract before signing it. I also understand that closing my account or placing a stop payment on my check may result in criminal prosecution for fraud. My signature below indicates the I have received a copy of this agreement.

NRS 604.166 Registrant may pursue collection proceedings upon default of the loan made in form of deferred deposit; charges and interest. If the borrower defaults on the original loan made in the form of a deferred deposit, or on any extension thereof, whichever is later, the registrant may immediately pursue any available collection proceedings on the amount of the loan made in the form of a deferred deposit and all accrued charges and interest that are due. The interest charged from the date of the default on the loan made in the form of a deferred deposit, or on any extension thereof, must not exceed a rate equal to or less than the prime rate at the largest bank in the State of Nevada, as ascertained by the commissioner on January 1 or July 1, as the case may be, immediately preceding the date of default, plus 10 percent.

NRS 41.620 Liability for issuance on nonexistent account or drawing on insufficient money. Issuer is liable to the payee for the amount of the check and damages equal to three times the amount of the check, not less than $100 nor more than $500.

The federal Truth in Lending Act (TILA), 15 U.S.C., Sec 1601-1667c, inclusive, is intended to provide consumers with information regarding the cost of credit in transactions that are primarily for personal, family, or household purposes.

My signature and/or endorsement on item(s) presented at Boulder Check Cashing guarantees payment of item(s) cashed at Boulder Check Cashing and I hereby offer payment if due from this or subsequent item(s) presented at Boulder Check Cashing.

X [redacted] 7/8/03
(Customer's Signature) (Date)

23

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Attachment 9

LUCKY CREDIT COMPANY, LLC

LENDER:

LUCKY CREDIT COMPANY, LLC
2550 S. RAINBOW E-1
LAS VEGAS, NV 89102
702.365-5777

BORROWER:

[redacted]

LOCATIONS TROUGHOUT LAS VEGAS PLEASE CALL FOR NEAREST BRANCH

DATE: December 1, 2003

DEMAND PROMISSORY NOTE/ LOAN AGREEMENT

FOR VALUE RECEIVED, the undersigned [redacted] jointly and severally promise to pay to Lucky Credit Company, LLC. the order of, the sum of **One Hundred sixty five ($ 165.00)**
Interest is in the amount of **521%** annually. The entire unpaid principal and any accrued interest, and any fees associated with such note that Lucky Credit Company, LLC.may charge shall be fully and immediately payable UPON DEMAND of any holder thereof.

000123

Upon default in making payment upon demand, and provided this note is turned over for collection, the undersigned agree to pay all reasonable legal fees and costs of collection to the extent permitted by law. This note shall take effect as a sealed instrument and be enforced in accordance with the laws of the State of Nevada. All parties to this note waive presentment, notice of non-payment, protest and notice of protest, and agree to remain fully bound notwithstanding the release of any party, extension or modification of terms. **Borrower will automatically be in default if the minimum payment or the balance payment has gone unpaid on the FIFTH (5TH) CALENDAR DAY. Lender also has the right to place the loan under default if Borrower's phone is either disconnected or changed. Also, lender has the full right to exercise any one or all of the following remedies if the loan is placed in default:**

1. Demand full payment of the defaulted loan which includes the following : the total of remaining payments, check processing charges, all late fees, loss of interest and the reimbursement of reasonable fees of repossession and enforcement of Lender's rights and remedies including but not limited to attorney's costs, court costs, and postage costs

[redacted]
INITIALS

000123

2 File a law suit against you where you will be served either at home or at work by the Justice Court to register a Judgment, have your wages GARNISHED and reported to the credit bureau .

[redacted] BORROWER HEREBY AGREES TO LATE FEES IN THE AMOUNT OF 2% PER DAY. IN THE EVENT THAT LENDER HAS TO GARNISH WAGES BORROWER AGREES AND AUTHORIZES A ONE TIME FLAT FEE OF $1250.00 TO BE ADDED TO THE LOAN BALANCE, THIS FEE IS A PENALTY FEE, AND CAN ONLY BE REMOVED AT THE LENDERS SOLE DESCRETION.

[redacted] IN THE EVENT THAT A COURT DEEMS THAT ANY PORTION OF THIS CONTRACT IS UNENFORCEABLE, ONLY THAT PORTION WILL BE DEEMED UNENFORCEABLE AND DOES NOT IN ANY WAY VOID THE REST OF THIS CONTRACT.

[redacted] BORROWER ACKNOWLEDGES THAT INFORMATION THAT IS PROVIDED IS TRUTHFUL AND UNDERSTANDS THAT LENDER HAS MADE ITS DECISION TO LEND MONEY TO THE BORROWER BASED ON THE TRUTHFULNESS OF SAID DOCUMENTS.

[redacted] BORROWER IS NOT UNDER ANY DURESS, AND IS OF SOUND MIND, AND AT LEAST 18 YEARS OF AGE.

[redacted] BORROWER IS NOT IN BANKRUPTCY, OR HAS NOT SPOKE TO OR IS PLANNING TO MEET WITH A BANKRUPTCY ATTORNEY.

[redacted] BORROWER ALSO IS AWARE THAT IN THE EVENT THAT TWO CONSECUTIVE PAYMENTS ARE LATE, THEN LENDER HAS THE RIGHT TO CHARGE A HIGHER ANNUAL PERCENTAGE RATE (APR) WHICH WILL INCREASE THE RATE BY 5% EVERY 2 WEEKS (120% APR). AFTER 3 ONTIME CONSECUTIVE PAYMENTS, LENDER WILL DROP THE INTEREST RATE TO THE ORIGINAL RATE OR APR.

[redacted] UPON SIGNING THIS CONTRACT BORROWER WAIVES THEIR RIGHT TO ANY LAWSUIT AND ALL CLAIMS MUST BE SETTLED WITH AN ARBITRATOR. THIS INCLUDES ANY CLASS ACTION LAWSUIT. BORROWER ALSO HOLDS LENDER HARMLESS FOR ANY FUTURE CLAIM THAT MAY ARISE.

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DISCLOSURE MADE IN COMPLINCE WITH FEDERAL TRUTH IN LENDING ACT

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	AMOUNT FINANCED	TOTAL OF PAYMENTS
521 %	$ 15.00	$ 150.00	$ 165.00
[redacted] borrower(s) initials	[redacted] borrower(s) initials	[redacted] borrower(s)initials	borrowers(s) initials

PAYMENT PLAN

Payment : One Payment of $ 165.00 Due on December 5,2003

MATURITY DATE: 12/05/2003

[redacted] [redacted] Borrower(s) initials

ALSO IF ON THE MATURITY DATE OF THIS LOAN YOU PAY ALL OF THE FINANCE CHARGE , YOUR LOAN MATURITY MAY BE EXTENDED BY EXECUTION OF AN EXTENSION AGREEMENT BETWEEN BORROWER AN LENDER, SUBJECT TO LENDERS SOLE APPROVAL AND SUBJECT TO ALL THE SAME TERMS, CONDITION AND COVENANTS AS CONTAINED IN THIS AGREEMENT

[redacted] BORROWERS INITIALS

THIS AGREEMENT COSTITUTES THE WHOLE AGREEMENT THERE IS NO ORAL, OR IMPLIED AGREEMENT .

Pursue Nevada Statutes 205.134 and 205.375 dealing with false written statements to obtain property or credit. You may face criminal sanctions resulting in your arrest.

[redacted] Borrower's Initials

BY SIGNING BELOW I FULLY UNDERSTAND ALL THE TERMS AND CONDITIONS OF THIS CONTRACT AND HAVE RECEIVED A COPY OF THIS CONTRACT

[redacted] 12/1/03

BORROWER DATE:

SSN: [redacted]

LENDER

LUCKY CREDIT COMPANY, LLC.

CO-BORROWER DATE

SSN:

000125

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000125

000126

Attachment 10

CONTRACT # [redacted]

CLIENT ID [redacted]

HANDY CASH
646-CASH

HANDY CASH LOAN CENTERS

$200 LOAN

DATE 7/7/04

LENDER: NUSTAR MANAGEMENT FINANCIAL GROUP DBA
HANDY CASH LOAN CENTERS
4532 W. CHARLESTON
LAS VEGAS, NV 89102

DEBTOR: [redacted]

TRUTH AND LENDING DISCLOSURE

ANNUAL PERCENTAGE RATE THE COST OF YOU CREDIT AS STATED AS YEARLY RATE	FINANCE CHARGE THE DOLLAR AMOUNT THE CREDIT WILL COST YOU IF TERM IS FULFILLED	AMOUNT FINANCED THE AMOUNT OF CREDIT PROVIDED TO YOU ON YOUR BEHALF	TOTAL OF PAYMENTS THE AMOUNT YOU WILL HAVE PAID AFER YOU HAVE MADE ALL PAYMENTS AS SCHEDULED
714.560%	$344.00	$200.00	$544.00

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THIS IS A LOAN OF DESIGNATED INCREMENTAL PAYMENT PERIODS. A PAYMENT MADE AT ANY TIME DURING A PAYMENT PERIOD WILL BE FOR NO LESS THAN THE TOTAL AMOUNT DUE FOR THAT PERIOD. THIS TOTAL PAYMENT DUE FOR EACH PERIOD POLICY APPLIES TO ANY TYPE PAYMENT.

PAYMENTS ARE DIVIDED INTO EIGHT (8) CONSECUTIVE PAYMENT PERIODS OF 1 OF $83.00 - 7 OF $68.00 DUE ON THE 4 AND 21 OF EACH MONTH STARTING ON Wednesday, July 21, 2004 AND ENDING ON Thursday, November 04, 2004

FIRST PAYMENT DUE DATE	FINAL PAYMENT DUE DATE	FIRST PAYMENT	FINAL PAYMENT
7/21/04	11/4/04	$83.00	$68.00

I AGREE THAT ALL PAYMENTS ARE TO BE MADE IN 8 CONSECUTIVE BI-MONTHLY INSTALLMENTS OF $68.00

FOR A TOTAL FOUR (4) MONTHS. CASH OR MONEY ORDER ONLY. NO CHECKS, NO MAIL, NO DROP BOXES.

SIGN [redacted]

SIGN [redacted]

STAMP DATE PAID IN FULL

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[redacted]

YOU WANT ME TO UNDERST... THE TERMS OF MY SECURITY AGREEMEN... WILL READ THIS AGREEMENT CAREFULLY AND IF I AGREE TO BE BOUND BY THE LAW IN THE STATE OF NEVADA AND DO PROMISE TO REPAY THIS AGREEMENT IN FULL CONDITION AND I WILL SIGN MY NAME HERE AFTER IN FULL AGREEMENT.

THE WORDS "I", "ME", "US" REFER TO EACH PERSON WHO SIGNS THIS AGREEMENT AS DEBTOR, THE WORDS YOU AND YOUR WILL REFER TO THE LENDER (SECURED PARTY)

I FULLY AGREE AND UNDERSTAND HOW THE REPAYMENT PLAN WORKS AND CONSENT TO THE PAYMENT DATES. I ALSO FULLY UNDERSTAND THAT HANDY CASH LOAN CENTERS DOES NOT WORK WITH CREDIT COUNSELING.

SECTION 1 : SECURITY

Security for the above loan by the debtor ARE (3) CHECKS :
CHECK 1: $344.00 CHECK 2: $200.00 CHECK 3: $50.00 FOR ANY BANK FEES, DEFAULTED BALANCES, MISSED PAYMENTS AND ANY OTHER APPLICABLE CHARGES

SECTION 2 : CHARGES

* Return check charges to the debtor from the lender will assessed the greater of $10.00 or the charge by the financial institution for any returned item or processing of that check in default of a loan.

* Handling and processing charges of any check will be, $15.00 each in the event the loan is in default.

Late fees in the amount of $5.00 per day will be assessed each day that account is overdue including Sundays and holidays.

* Each account setup for each loan will be charged a $15.00 computer online account setup paid on the FIRST INCREMENTAL PAYMENT, AND IS NOT FINANCED IN THIS AGREEMENT.

SIGN [redacted]
DEBTOR SIGNATURE AS TO ACKNOWLEDGEMENT TO CHARGE

SIGN _____
DEBTOR SIGNATURE AS TO ACKNOWLEDGEMENT TO CHARGE

SECTION 3 : PAYOFF BALANCE :

IT IS REQUIRED THAT A PAYMENT OR PAYOFF BALANCE MADE AT ANY TIME DURING A DESIGNATED PAYMENT PERIOD WILL BE NO LESS THAN THE TOTAL AMOUNT DUE AND OWED FOR THAT RESPECTIVE PERIOD. THIS REQUIREMENT WILL APPLY TO ANY LOAN PAYMENT OR PAYOFF BALANCE MADE. BORROWER UNDERSTANDS THAT HE CAN RETIRE THE LOAN BY PAYING THE CORRESPONDING PAYOFF BALANCE FOR THAT DESIGNATED PAYMENT PERIOD AS STATED IN THE PAYMENT PLAN. PRE-COMPUTED INTEREST IS NON-REFUNDABLE IN THE EVENT OF A PRE-PAYMENT. THE BORROWER HAS AGREED TO THIS PROVISION WHEN THE LOAN IS MADE.

SECTION 4 : REINSTATEMENT OF LOAN:

I have the full right to exercise the options of reinstatement of a loan if the loan agreement hasbeen paid in full and on the due date required by Lender.

SIGN [redacted]

SIGN _____

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[redacted] [redacted]

SECTION 5 : MAINTENANCE OF ACCOUNT: I agree to and promise to maintain an open active checking account at all times during the duration of the term of the loan A closed bank account by debtor or change or disconnect of phone number will constitute a violation of the account at which time lender may at any time exercise it's option by calling the loan in full declaring the loan in default utilizing any of the default measures to insure full payment from me.

SECTION 6 : PARTIAL PAYMENTS: AT NO TIME EVER WILL HANDY CASH LOAN CENTERS ACCEPT PARTIAL PAYMENT FOR ANY TYPE PAYMENT.

SECTION 7 : DEFAULT

I SHALL BE IN DEFAULT UNDER THE TERMS OF THE LOAN AGREEMENT UPON FAILING TO PAY ANY LOAN PAYMENT WHEN DUE OR FAILING TO OBSERVE OR PERFORM ANY OTHER COVENANT OR OBLIGATION OF DEBTOR UNDER THE LOAN. SUCH DEFAULT IS GROUND FOR REPOSSESSION OF THE SECURED PROPERTY : Debtor is automatically in default if payments or balance is unpaid by the fifth (5) day from the due date set forth in the above agreement; Lender shall have the right to exercise any one of the following remedies :

1. Terminate the loan and Debtors right under it pertaining to the Loan Security Property.
2. To deposit Debtors Security checks which is not limited to the fulfillment of the agreement.
3. Debtor shall reimburse Lender for reasonable expenses of repossession and enforcement of Lenders rights and remedies hereunder, together with any other charges or fees provided that the sums due Lender under this Loan are collected by or through as Attorney at Law, Debtor agrees to pay all costs and attorney fees actually incurred by Lender, but not limited to any loss of interest due to the lender under the full term of this loan.
4. NRS STATUES 205.134 and 205.375, dealing with false written statements to obtain property and credit.
5. GARNISHMENT OF WAGES, JUDGEMENTS, AND ANY & ALL OTHER APPLICABLE AND LAWFUL REMEDIES WILL BE EXERCISED BY HANDY CASH LOAN CENTERS AND ANY ONE OF ITS SUBSIDIARIES IN THE COLLECTION OF AN UNPAID DEFAULT LOAN.

I HAVE READ THROUGH THE AGREEMENT WHICH HAS BEEN EXPLAINED IN FULL BY THE REPRESENTATIVE OF HANDY CASH LOAN CENTERS AND I FULLY UNDERSTAND THE AGREEMENT IN IT'S ENTIRETY WITHOUT CONFUSION, AND BY SIGNING THE AGREEMENT I WILL ABIDE BY IT FULLY AND COMPLETELY AND PROMISE TO REPAY THE LOAN IN FULL.

[redacted]
DEBTOR / DATE

[redacted] 7·7·04
LOAN OFFICER / DATE

DEBTOR / DATE

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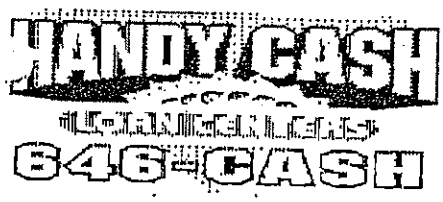

ITEMIZED CONTRACTUAL SHORT FORM AGREEMENT

1. I fully understand and agree to the repayment plan and how it works and consent to the payment dates.
2. Credit stated as yearly rate 714.560%
3. I fully understand and agree that if I go the full term of EIGHT (8) payments I will have paid $544.00 with principle and interest.
4. I fully understand and agree that the payment dates are due on the 4 and 21 of each MONTH.
5. I fully understand and agree that the late fee will start the day after my payment date and is $5.00 per day including Sundays and holidays.
6. I fully understand and agree that I will be in DEFAULT on the fifth (5) day from my payment date.
7. I fully understand and agree that if I am in DEFAULT I am responsible for all rules, terms, policies and conditions set forth in my secured agreement contract.
8. I fully understand and agree that if I am in DEFAULT I will be responsible for all loan balances, late fees, missed payments and any other applicable fee; ex.: attorney costs, collection costs, mail costs and etc.
9. I fully understand and agree that NO PARTIAL PAYMENTS are accepted.
10. I fully understand, promise and agree to maintain through the term of the loan an active checking account, an active phone number; violation of the agreement can and will result in immediate default by debtor. Resulting in lenders option to exercise the default clause of contract to call loan in full.
11. I fully understand and agree that my $15.00 computer setup fee has not been financed but will be due and collected on my first payment.
12. HOURS OF OPERATION: Monday thru Friday 9:00am - 6:00pm
    Saturday 10:00am - 2:00pm

[redacted]
signature

signature

I FULLY UNDERSTAND AND AGREE THAT BY SIGNING AND DATING (I HAVE RECEIVED A COPY OF THIS STATEMENT) I HAVE AGREED TO ABIDE BY THE CONTRACTURAL OBLIGATIONS, CONDITIONS AND TERMS OF MY LOAN AGREEMENT.

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Attachment 11

CONSUMER FIXED RATE NOTE AND DISCLOSURE STATEMENT

DATE: December 11, 2002

LOAN #: [redacted]

BORROWER: [redacted]

SSN: [redacted]

COPY

CO-BORROWER:

SSN:

In this Consumer Fixed Rate Note and Disclosure (sometimes referred to as "Agreement"), the words I, Me, and My refer to the borrower(s). The words You, Your and Lender refer to The Loan Depot, Inc. 4815 W. Russell Suite 11-K Las Vegas, NV 89118 (702) 252-8383

FEDERAL DISCLOSURES

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	AMOUNT FINANCED	TOTAL OF PAYMENTS
The cost of my credit as a yearly rate.	The dollar amount the credit will cost me:	The amount of credit provided to me or on my behalf	The amount I will have paid after I have made all payments as scheduled:
364%	$21.00	$300.00	$321.00

I have the right to receive at this time an itemization of the Amount financed. ☐ I want an itemization ☒ I do not want an itemization

PAYMENT SCHEDULE: One (1) payment(s) in the amount of $321.00 due on: December 18, 2002

DEMAND: This obligation is payable on demand.

LATE CHARGE: If any payment is not paid on due date I will pay a late charge of 3% of the principal balance per day.

PREPAYMENT: I may prepay all or any portion of my debt under this Agreement at any time without penalty.

SECURITY: This loan may be secured by Lender's security interest in checks I give to Lender or this signed note.

ORIGINATION FEE: There is no origination fee for this Agreement.

ADDITIONAL INFORMATION: See the remainder of this Agreement and any related contract documents for more information about nonpayment, defaul f any required repayment in full before the scheduled date, and prepayment in full before the scheduled date, and prepayment funds and penalties, if any.

PROMISSORY NOTE

promise to pay to the order of Lender on demand, or if no demand is made then on December 18, 2002 the sum of Three Hundred Dollars $300.00) (the principal) plus interest thereon at the rate of 7% per one week (364%)APR until principal and interest are paid in full. I will repay e principal plus interest as follows: In one payment of $321.00 on December 18, 2002 .

L PAYMENTS ARE TO BE MADE BY CASH OR MONEY ORDER. A PENALTY OF $10.00 IS ASSESSED FOR ANY RETURNED CHECK, IF ACCEPTED.

EPAYMENT OPTIONS UPON ORIGINAL AND EACH EXTENDED MATURITY DATES:
pon the original and each extended maturity date of the note Borrower will have the following repayment options:

A. Pay only interest owing at the time of maturity and extend the loan for an additional one (1) week term.
B. Pay interest and part of the principal balance owing at the time of maturity and extend the loan for an additional one (1) week term, thus ducing the amount of interest payable during the extended one (1) week term.

e interest rate for this Note shall be calculated on the basis of the actual number of days elapsed over a 365/366-day year. Interest for each successive one) week term shall be based upon the previous one (1) week term ending principal balance.

EPAYMENT: I have the right to repay this Note in full at any time without penalty.
EFAULT: Should the indebtedness represented by this Note default and have to be referred to an outside collection agency for collections, there will be a rty (30) % Collection Fee added to Borrowers total balance (principal, interest and late fees).

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ORROWER: [redacted] CO-BORROWER:

COPY

Justice Court, Las Vegas Township

CLARK COUNTY, NEVADA

The Loan Depot, Inc.
4815 W. Russell Rd. # 11-K
Las Vegas, Nevada 89118
Plaintiff,
-vs.-
[redacted]
Defendant.

CASE NO. [redacted]

FILED
2004 AUG -5 A 9:13
COURT
LAS VEGAS NEVADA
DEPUTY

WRIT OF EXECUTION

☒ EARNINGS ☐ OTHER PROPERTY

☐ EARNINGS, ORDER OF SUPPORT

THE STATE OF NEVADA, TO THE CONSTABLE/SHERIFF, LAS VEGAS TOWNSHIP, GREETINGS:

On July 26, 2004 a Judgment, upon which there is due in United States Currency the following amounts, was entered in this action in favor The Loan Depot, Inc. as Judgment Creditor and against [redacted] as Judgement Debtor, Interest and costs have accrued in the amounts shown. Any satisfaction has been credited first against total accrued interest and costs leaving the following net balance which sum bears interest at 14 % per annum, $.43 per day from issuance of this Writ to date of levy and to which sum must be added all commissions and costs of executing this Writ.

JUDGMENT BALANCE		AMOUNTS TO BE COLLECTED BY LEVY	
Principal	1140.00	NET BALANCE	1539.34
Pre Judgment Interest	16.34	Fee this Writ	6.00
Attorney's Fee	285.00	Garnishment Fee	5.00
Costs	98.00	Mileage	12-
JUDGMENT TOTAL	1539.34	Levy Fee	18-
Accrued Costs		Advertising	
Accrued interest		Storage	
Less Satisfaction		Interest from Date of Issuance	
NET BALANCE	1539.34	SUB-TOTAL	1580.34
		Commission	31.61
		TOTAL LEVY	1611.95

NOW, THEREFORE, you are commanded to satisfy the Judgement for the amount due out of the following described personal property and if sufficient personal property cannot be found, then out of the following described personal property:

[redacted]

(SEE REVERSE SIDE FOR EXEMPTIONS THAT MAY APPLY)

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Attachment 12

CONS / FIXED RATE NOTE AND DISCLOS..D ATEMENT

DATE: October 16, 2003

LOAN #: [redacted]

BORROWER: [redacted]

SSN: [redacted]

CO-BORROWER:

SSN:

In this Consumer Fixed Rate Note and Disclosure (sometimes referred to as "Agreement"), the words I, Me, and My refer to the borrower(s). The words You, Your and Lender refer to The Loan Depot, Inc. 4815 W. Russell Suite 11-K Las Vegas, NV 89118 (702) 252-8383

FEDERAL DISCLOSURES

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	AMOUNT FINANCED	TOTAL OF PAYMENTS
The cost of my credit as a yearly rate.	The dollar amount the credit will cost me:	The amount of credit provided to me or on my behalf	The amount I will have paid after I have made all payments as scheduled:
260%	$67.50	$1350.00	$1417.50

I have the right to receive at this time an itemization of the Amount financed. ☐ I want an itemization ☒ I do not want an itemizatio

PAYMENT SCHEDULE: One (1) payment(s) in the amount of $1417.50 due on: October 23, 2003

DEMAND: This obligation is payable on demand.

LATE CHARGE: If any payment is not paid on due date I will pay a late charge of 3% of the principal balance per day.

PREPAYMENT: I may prepay all or any portion of my debt under this Agreement at any time without penalty.

SECURITY: This loan may be secured by Lender's security interest in checks I give to Lender or this signed note.

ORIGINATION FEE: There is no origination fee for this Agreement.

ADDITIONAL INFORMATION: See the remainder of this Agreement and any related contract documents for more information about nonpayment, default of any required repayment in full before the scheduled date, and prepayment in full before the scheduled date, and prepayment funds and penalties, if any.

PROMISSORY NOTE

I promise to pay to the order of Lender on demand, or if no demand is made then on October 23, 2003 the sum of One Thousand-Three-Hundred&Fifty Dollars ($1350.00) (the principal) plus interest thereon at the rate of 5% per one week (260%)APR until principal and interest are paid in full. I will repay the principal plus interest as follows: In one payment of $1417.50 on October 23, 2003.

ALL PAYMENTS ARE TO BE MADE BY CASH OR MONEY ORDER. A PENALTY OF $10.00 IS ASSESSED FOR ANY RETURNED CHECK, IF ACCEPTED.

REPAYMENT OPTIONS UPON ORIGINAL AND EACH EXTENDED MATURITY DATES:
Upon the original and each extended maturity date of the note Borrower will have the following repayment options:

A. Pay only interest owing at the time of maturity and extend the loan for an additional one (1) week term.
B. Pay interest and part of the principal balance owing at the time of maturity and extend the loan for an additional one (1) week term, thus reducing the amount of interest payable during the extended one (1) week term.

The interest rate for this Note shall be calculated on the basis of the actual number of days elapsed over a 365/366-day year. Interest for each successive one (1) week term shall be based upon the previous one (1) week term ending principal balance.

PREPAYMENT: I have the right to repay this Note in full at any time without penalty.
DEFAULT: Should the indebtedness represented by this Note default and have to be referred to an outside collection agency for collections, there will be a thirty (30) % Collection Fee added to the entire total balance (principal, interest and late fees).

BORROWER: [redacted] CO-BORROWER:

33

COPY

Justice Court, Las Vegas Township

CLARK COUNTY, NEVADA

FILED

2004 DEC 27 P 1:07

The Loan Depot, Inc.
4815 W. Russell Rd. # 11-K
Las Vegas, Nevada 89118
Plaintiff,
-vs.-
[redacted]
Defendant.

CASE NO. [redacted]

WRIT OF EXECUTION

☒ EARNINGS ☐ OTHER PROPERTY

☐ EARNINGS, ORDER OF SUPPORT

COURT LAS VEGAS NEVADA BY MO DEPUTY

THE STATE OF NEVADA, TO THE CONSTABLE/SHERIFF, LAS VEGAS TOWNSHIP, GREETINGS:

On December 3, 2004 a Judgment, upon which there is due in United States Currency the following amounts, was entered in this action in favor The Loan Depot, Inc. as Judgment Creditor and against [redacted] as Judgement Debtor, Interest and costs have accrued in the amounts shown. Any satisfaction has been credited first against total accrued interest and costs leaving the following net balance which sum bears interest at 10 % per annum, $1.12 per day from issuance of this Writ to date of levy and to which sum must be added all commissions and costs of executing this Writ.

JUDGMENT BALANCE		AMOUNTS TO BE COLLECTED BY LEVY	
Principal	4103.55	NET BALANCE	5339.15
Pre Judgment Interest	61.60	Fee this Writ	6.00
Attorney's Fee	1026.00	Garnishment Fee	5.00
Costs	148.00	Mileage	
JUDGMENT TOTAL	5339.15	Levy Fee	
Accrued Costs		Advertising	
Accrued interest		Storage	
Less Satisfaction		Interest from Date of Issuance	
NET BALANCE	5339.15	SUB-TOTAL	
		Commission	
		TOTAL LEVY	

NOW, THEREFORE, you are commanded to satisfy the Judgement for the amount due out of the following described personal property and if sufficient personal property cannot be found, then out of the following described personal property:
The wages, tips and/or tokes, bonuses, commissions and vacation pay of defendant [redacted]

(SEE REVERSE SIDE FOR EXEMPTIONS THAT MAY APPLY)

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Attachment 13

LOAN DEPOT COVER SHEET

[redacted] [redacted]

Last Name First Name

Principal: $1332.35 Interest/ week: 5%

Amount Late: $532.88 Interest/ 2 weeks: 10%

Late Penalty: $2238.32 Filing Fee Amt: $113.00

Sue for Amount: $4103.55

EXPLANATION

8 weeks late = 56 ~~days late~~

$1332.35 X .03 = $39.97 per day late penalty

56 days X $39.97 = $2238.32

Original Contract Date: October 16, 2003 Original Amount: $1350.00

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Attachment 14

Return to the referring page.

Las Vegas SUN

March 08, 2005

Editorial: Preying on borrowers

LAS VEGAS SUN

In 1984 the Nevada Legislature got rid of the state law that limited finance charges for consumer loans. Gov. Richard Bryan pushed for the change so that Citicorp would come to Las Vegas and open a credit-card processing center, bringing with it several hundred good-paying jobs. There was, however, a downside -- and one that often doesn't get the attention it deserves. Not only did changing this law enable Citicorp to charge higher interest rates for consumers across the nation, but the change also paved the way for the later growth of payday loan companies. Today, there are more than 300 payday loan stores in Nevada, all of which are virtually unregulated by the state.

Payday loan companies, which readily provide cash to customers, have become controversial because of the stratospheric interest rates they charge. As the Las Vegas Sun's Steve Kanigher reported Sunday, customers of payday loan companies can get caught in a vicious circle, ending up paying much more in finance charges than the original amount borrowed. In one instance cited by the Sun, the finance charges assessed one Las Vegas woman were equivalent to an annualized interest rate of 390 percent -- about 20 times more than that offered by credit card companies.

The owners of payday loan companies dismiss the characterization of their operations as "legalized loan sharks," saying that they offer help to those who couldn't find it elsewhere. But Nevada's lack of regulation is pathetic and invites companies to take advantage of customers. Consider: Of the 36 states that permit payday loans, Nevada is one of just 10 that don't set a limit on the amount of finance charges these lenders can levy. We're glad to see that the Nevada Legislature, led by Assembly Majority Leader Barbara Buckley, D-Las Vegas, is considering regulation of payday loan companies. Buckley, as executive director of Clark County Legal Services, has fought to reduce the judgments of those who owe money to payday loan companies. She is proposing significant reforms, such as restricting loans to no more than 25 percent of an individual's gross monthl y income.

Other ideas that have worked on behalf of consumers outside of Nevada include setting a cap on finance charges, imposing a cooling-off period between loans, and creating a database to keep track of payday loans statewide. We hope the Legislature will consider the full range of measures needed to bring this problem under control.

Predatory lending in Nevada must be stopped. If anything, it's a disgrace that it has taken Nevada more than 20 years to get this far.

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Las Vegas SUN main page

Questions or problems? Click here.

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Las Vegas SUN
March 04, 2005

Payday lenders use law to seek more damages

By Steve Kanigher
<steve@lasvegassun.com>
LAS VEGAS SUN

WEEKEND EDITION

March 5 - 6, 2005

A 56-year-old Las Vegas card dealer had bad credit and a gambling problem. Medical bills were piling up. Going to one payday lender wasn't enough.

He wound up getting loans from seven different companies, paying $700 a month in interest.

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"It got to the point where I couldn't live like that so I stopped paying them," he said.

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The man, who requested anonymity, sought credit counseling, but one company refused to negotiate his $959 debt. When the company sued him in Las Vegas Justice Court the amount it sought in damages was $2,861, nearly three times what he owed.

"They did treble damages," he said. "I never heard of that before."

Chapter 604 of the Nevada Revised Statutes allows payday lenders to collect up to $50 in penalties from customers for checks that cannot be cashed because of insufficient funds. Lenders also may collect the prime rate plus 10 percent in interest on defaulted loans.

But many payday lenders who have sued customers also seek treble damages under another state law that allows Nevada merchants to recoup triple the amount of a check returned for insufficient funds, up to $500 per check.

Assembly Majority Leader Barbara Buckley, D-Las Vegas, said the lenders are using the bad check law illegally.

Check City owner Jim Marchesi, who is also president of the payday lenders trade

group Nevada Financial Services Association, agreed with Buckley, as does Paul Ashworth, a supervisory examiner with the Nevada Financial Institutions Division.

But Las Vegas attorney Sean Hillin, who has filed many of those lawsuits on behalf of payday lenders, defended the use of the bad check law. Hillin does not believe that the Chapter 604 provision that restricts lenders to a maximum of $50 in fees for returned checks prevents them from also seeking treble damages, especially in cases where the customer knows he won't be able to pay back the loan.

Without the ability to sue for treble damages, Hillin predicted that most of the smaller lenders would go out of business.

Still, the financial institutions division issued a memo to payday lenders in July 2002 that reminded them that they shouldn't be using the bad check law to sue customers.

The Nevada Assembly attempted clarification in 2003 when it unanimously approved Assembly Bill 433, which would have prevented payday lenders from using the bad check law. But the bill died in the Senate, something Hillin says confirms his belief on treble damages.

Buckley, who as executive director of Clark County Legal Services has helped borrowers fight such damages, is attempting to change the law.

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Under her proposal, lenders could not sue for triple damages under the state's bad check law. And lenders would be liable to the customer for actual and punitive damages as well as state penalties of $1,000 for each violation of the law.

"The penalties," she said, "would give them the financial disincentive not to violate the law."

Las Vegas SUN main page

Questions or problems? Click here.

Return to the referring page.
Photos: JJ and David Cowles | A letter from a payday loan company | Maureen Coulter displays documents | Cash Cow | Jim Marchesi talks about the growth of the payday loan industry

Las Vegas SUN
March 04, 2005

Borrowers beware

Payday loans are criticized, lauded in how they affect Nevadans

By Steve Kanigher
<steve@lasvegassun.com>
LAS VEGAS SUN

Las Vegas resident Annika Gonzales, a 33-year-old prison-crew supervisor, needed money fast after falling behind on a power bill just before Christmas in 2003.

So she went to a payday lender, where she borrowed $150 with a promise that she would pay it back plus a $15 finance charge within two weeks.

When Gonzales could pay only the $15 finance charge but none of the principal after two weeks, she kept rolling the loan over with a new $15 finance charge each time. After five rollovers that lasted 10 additional weeks, she had paid $90 total in finance charges without reducing any of the $150 principal.

Eventually, the lender sued her last year for $1,500, an amount that included attorney's fees, court costs and interest. After the lender began garnishing her wages, she went to Clark County Legal Services and had the judgment reduced to $220. She now thinks of payday loans as "rip-offs."

"I probably should have contacted Nevada Power sooner to make a payment arrangement or managed my money more carefully," Gonzales said.

Protective measures for consumers

These are steps the Nevada Legislature could approve that would better protect Nevada consumers who use payday loans:

- A cap on finance charges.
- A mandatory cooling-off period between loans.
- A restriction on the number of simultaneous loans to an individual.
- A statewide database to keep track of payday loans.

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The payday lending industry is enjoying rapid growth in Nevada, and encounters such as those experienced by Gonzales -- what critics call the "debt treadmill" -- are becoming more common.

Payday loans are easy to obtain. No credit checks are necessary. All one needs is proof of a job or receiving Social Security and an active checking account. The borrower typically writes a post-dated check and repays the loan either with cash or by having the lender cash the check when the loan is due.

Critics refer to payday lenders as "legalized loan sharks." The amount Gonzales was charged equates to an annualized interest rate of 390 percent, about 20 times that of a credit card.

Critics also say that enough alternatives are available that consumers who feel they have no place else to turn do not have to get stuck with high-interest payday loans that can make their debt problems even worse.

But that hasn't stopped many people, especially those who see the loans as a last chance. With the convenience and speed with which people can get money, the business is booming.

- Monetary penalties for violation of state law.
- Restrict loans to no more than 25 percent of an individual's gross monthly income.
- Permit borrowers to make periodic repayment of loans without added finance charges.
- Prohibit lenders from using state bad check law to sue borrowers for triple damages.
- Prohibit lenders from garnishing wages of military servicemen.
- Prohibit lenders from using one company name when registering with the state and another name when obtaining a city or county business license.

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Nevada is the perfect environment for a payday lender. The law allows lenders to operate with few regulations, and there's a ready-made clientele of service industry workers, many of whom live paycheck to paycheck.

Nevada is one of only 10 states that doesn't cap the amount of finance charges a payday lender can charge, according to the Consumer Federation of America, a Washington consumer watchdog.

In the other 26 states where payday lending is legal, there are finance charge caps that range from $11.87 per $100 loaned in Texas (an annualized rate of 309 percent) to $75 per $100 loaned in Missouri (an annualized rate of 1,980 percent), both based on a two-week loan.

Most other states do not allow the principal of a loan to exceed $500. In Nevada, it is possible to borrow much more per loan as long as the loan does not exceed one-third of the borrower's expected monthly income.

Florida and Oklahoma have payday loan databases to limit the number of loans people can have at one time and have a mandatory cooling-off period between loans. Consumers in Nevada can carry as many loans as they like from different lenders. There is no cooling-off period.

The Nevada Legislature is expected to try to address the issue of payday loans this session. There are at least three proposals -- two from assemblymen and one from the Nevada Financial Institutions Division -- that are aimed at better regulating the payday lending industry.

Critics, including Assembly Majority Leader Barbara Buckley, D-Las Vegas, say the industry preys on the poor and the least likely to be able to pay off the loans.

"They make most of their money off of people whose financial situations are desperate," said Buckley, who, as the head of Clark County Legal Services, has battled the industry over judgments and finance charges. "They can't pay the loans back, and the companies know it. It becomes a predatory way of creating a debt treadmill for the working class who have nobody else to fall back on.

"We have all of these service-industry jobs and all of these people without a safety net, without relatives to loan them the money. So the payday loan companies prey on these folks."

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Industry representatives, however, say that most of their customers are middle class and gainfully employed. The lenders say their services are easy to use, and that customers come to them because they have found it increasingly difficult to get short-term loans from banks.

"Calling us legalized loan sharks is such a mischaracterization," said Jim Marchesi, owner of the Check City payday loan chain and president of the Nevada Financial Services Association, a lobby group for payday lenders.

"We provide a loan product that consumers choose to use. There is huge demand for the product. We've become the bridge lender for people who want to borrow money for a short time.

"The APR (annual percentage rate) is a terrible yardstick to use because no one keeps these loans out for a whole year."

Payday loans became popular in the early 1990s and have mushroomed in Nevada since the late 1990s. There are now more than 300 state-registered payday lending stores in Nevada, and one owner believes 125,000 Nevadans at any one time take out payday loans.

Lenders justify the high finance charges by pointing to the risk and cost of making the loans. And they say they're no worse than banks that charge for bounced checks, with an annual interest rate that can exceed what a payday lender charges.

Most importantly, payday lenders say, if they closed shop, they'd be replaced by illegal loan sharks.

But consumer groups say there's little difference, especially in Nevada, which has among the nation's loosest regulations.

"It's bad for the community as a whole if a significant number of consumers are struggling to pay off these loans instead of paying other bills, diverting all that money to payday lenders instead of putting food on the table," said Jean Ann Fox, director of consumer protection for the Consumer Federation of America in Washington.

"This industry is doing just fine in other states that have a lot more restrictions than Nevada. The argument that putting more restrictions on them will put them out of business is untrue."

And some critics say that consumers can survive without payday loans, pointing to the 14 states where payday lending is either outlawed or severely restricted.

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No payday lenders have bothered to get a license in Massachusetts because of that state's 23 percent cap on annualized interest rates on loans of up to $6,000.

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Instead, the Massachusetts Office of Consumer Affairs and Business Regulation has advised consumers who need short-term emergency loans in that state to look to other sources.

The office suggests that a consumer: borrow money from friends or relatives; obtain cash advances on credit cards; get short-term loans from banks or credit unions; arrange for cash advances from employers; see if they can delay paying a noninterest bill; make pay arrangements with utility providers; ask creditors for more time to pay bills; or contact an accredited consumer credit-counseling agency for help in getting out of debt.

"Getting involved in payday loans will only worsen things for people," Chris Goetcheus, spokesman for the Massachusetts agency, said. "The rollovers are how these people make money.

"The consumers in the most desperate situation should sit down with an accredited counselor. They look at cutting down your expenses so that you can save money. The goal is to minimize your expenses to meet your income."

Finance charges

Nevada once had a usury law that limited finance charges for consumer loans. But that law was eliminated by the Legislature in 1984 to induce Citicorp to open a credit-card processing center in Las Vegas. To bring a new industry and the corresponding jobs to Nevada, lawmakers granted Citicorp's wish by lifting the ceiling on finance-charge interest rates.

Former Nevada Gov. and U.S. Sen. Richard Bryan, who governed the state then and met with Citicorp executives in New York, said eliminating the usury law was the "quid pro quo" Citicorp demanded to move to Nevada.

"They wanted the flexibility with consumer loans in case market conditions changed," Bryan said.

But without a usury law Nevada payday loan customers are worse off than consumers elsewhere, Fox said.

"They end up paying more in Nevada than consumers in the same situation who live in another state," Fox said.

Assemblywoman Chris Giunchigliani, D-Las Vegas, would like to revive the usury law, setting it at the prime rate (now 5.5 percent) plus 2 percent for consumer loans, including payday loans. She said that rate is similar to Nevada's former law.

"They shouldn't be able to profit on the backs of the middle class and poor people who cannot afford to pay," Giunchigliani said.

She can expect a stiff battle from both payday lenders and big financial institutions such as credit-card companies. Credit-card companies regularly charge an 18 percent to 25 percent annual interest rate. Payday lenders say a usury law would drive them out of business.

Because of stiff competition, Marchesi said local payday lenders have kept finance charges lower than in many states where the cap on finance charges is higher than Nevada's market rate.

"I believe the market should determine what the rate is," he said. "A cap makes no sense at all."

But the AARP, responding to the growing number of seniors who use payday loans, urges all states to implement laws that limit annualized interest rates on small loans to 36 percent.

"We need to have payday loans for people who don't have credit, but there should not be abusive practices," said Barry Gold, AARP Nevada's associate state director for advocacy. "The predatory practices of some payday lenders are intended to get people in debt.

"Two weeks to pay off a loan is not enough time for most people, and there needs to be more disclosure of the fees."

A study of short-term, high-interest lenders that was released in January by the nonprofit Nevada Fair Housing Center found that the median payday loan finance charge in Nevada is $17 for every $100 borrowed, an annualized interest rate of 443.2 percent.

But the center, which provides housing services and financial programs for lower-income clients, also found that some lenders in Nevada have finance charges of as much as $50 per $100 loan, which translates to an annualized interest rate of 1,303.6 percent.

"The way the loans are structured it sets up a situation where a person makes interest payments without reducing the principal," Jason Jarniven, a researcher for the housing center, said. "It sets up chronic repeat borrowing."

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Money needs

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He would get no argument from retired beauty salon owner and manager Maureen Coulter, who once managed salons on the Strip. After falling ill four years ago and draining her savings, Coulter ended up on Social Security disability. She got her first payday loan in 2003.

"I had some bills due, and I needed to buy Christmas gifts so I needed money," Coulter said. "I figured the banks wouldn't loan me money and I saw ads on TV for these lenders. You see two or three on every block.

"All I needed was my driver's license, a check and proof of my income, which was a printout from Social Security. They were more than happy to give me money."

Coulter, 61, went to three payday lenders. She borrowed $340 per month, with $60 in finance charges, from one lender. After four months of rollovers she had paid $240 in interest without reducing the principal.

From two other lenders she borrowed $250 each plus a $50 finance charge per month, but after four months of rollovers she had paid $250 each to both lenders in finance charges without reducing any of the principal. She was told she was paying an

annualized interest rate of 235.5 percent.

One of the lenders from whom she had borrowed $250 a month wound up suing her for $487 for defaulting on the loan. But she was able to get that reduced to $200 when she went to Las Vegas Justice Court, accompanied by a senior advocate that she knows. When the lender appealed the judge's ruling, Coulter went to Clark County Legal Services for help and the lender dropped the appeal.

Coulter vows never to use another lender.

"They're horrible," she said. "Yes, it was my fault for dealing with them. But you're better off going to an illegal loan shark because at least you know you're dealing with a shark.

"The banks won't give people like me loans because we're not working and have no assets. But if I have to, I will just do without. You just learn to live without certain things."

Some payday loan customers report more positive experiences.

Las Vegas resident Victor Laird, a 47-year-old operations manager for a delivery service, first became a customer of Cash Cow Corp. in 1998 when his father was dying of cancer and bills were piling up.

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"The most I had to borrow was $600 when I had to take my family to the funeral in San Francisco," Laird said.

Living from paycheck to paycheck, he is a repeat customer.

"I'm lucky they are there," Laird said. "If I had to pick the things I like most about them I would say the convenience and the ease with which I can go in without being bogged down with multiple credit checks.

"I use it for emergencies like paying utility bills, especially during the summertime when the bills are a lot higher. If it's Monday and a bill is due and you don't get paid until Friday, what can you do?"

But Michele Johnson sees the financial problems payday lending can cause borrowers in her capacity as president and chief executive of Consumer Credit Counseling Services of Southern Nevada. The counseling service helps individuals with mounting debt.

"The speed with which you can get $300 is much quicker than applying for a new credit card," Johnson said of payday lenders. "But it's very short-sighted borrowing.

We're not doing a good job educating consumers and they have to take more responsibility for their own actions."

Payday growth

"Fringe banking" became popular in the 1960s when loan companies began sprouting around military bases. By the 1980s check-cashing services were on the Strip and in lower-income neighborhoods. They cash checks for roughly 1 percent to 10 percent of the face value of the check. Many customers are unemployed, don't have checking accounts or don't trust banks.

In the 1990s payday lenders came to Nevada, seeking to satisfy the growing demand for convenient short-term loans from consumers who had jobs or Social Security and bank accounts, but also had poor credit.

In many cases the check cashers that were already here added payday loans to their arsenal, giving them a broader base of customers to serve.

What payday lenders offer is speed and convenience. The lines at the teller windows are usually short and the customer has his cash within minutes.

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Frank (not his real name) and his wife, regular customers of Check City in Las Vegas and parents of two small children, take out 20 loans a year. They borrow $300 to $500 at a time and usually pay off the loans in two weeks.

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"We use the cash mainly for incidentals," Frank, a business consultant, said. "I'm out of town a lot, and my wife doesn't always have access to credit. My wife was in a situation once where she needed money for formula."

But there is also a stigma attached to payday loans, so much so that many customers don't want their employers to know that they frequent payday lenders. Other customers don't want their spouses to know.

Karen (not her real name) is an example of a borrower who doesn't want her employer to know about her payday lending. The 38-year-old Las Vegas pharmacy technician didn't have the money to pay for the alternator that needed to be replaced in her car.

So she went to a payday lender and borrowed $500 plus $150 in finance charges, which she was to repay in two weeks. After rolling over the loan five times for a total of 10 weeks beyond the expiration of her initial loan, Karen had paid $900 in finance charges without paying off any of the principal.

"I was so angry with myself," Karen said. "I wondered how I was going to get myself out of this. I know a nurse who makes $50 an hour and I was surprised to see her in

the same payday loan place I was in."

Karen went to Consumer Credit Counseling Services for help rearranging her debt. The payment plan enabled her to repay the lender $80 per pay period over nine months. Her advice to individuals contemplating a payday loan: "Just don't do it. It is the worst rip-off."

"Try to talk to the people you owe and make arrangements with them," she said. "I learned to work overtime so I don't live from paycheck to paycheck now."

Popular practice

Payday lending has become so popular in Nevada, according to the housing center study, that the state has far more state-registered payday lending and check-cashing stores per 10,000 residents, 1.91, than neighboring Utah (0.56), California (0.68) Oregon (0.72) and Arizona (1.41).

The housing center found that more than 60 percent of the high-interest stores in Nevada are in neighborhoods with below-average household income. In Clark County the median household income is $44,616.

Cash Cow Corp. President David Cowles said his clientele isn't the working poor. He said he has more customers in their 30s and in the $2,000 to $2,199 net monthly income bracket than in any other age and income category.

In a 2001 analysis of 4,593 loans his company processed, Cowles said he found that 3,244, or 70.6 percent, were paid off within the initial loan period. An additional 646 loans, or 14.1 percent, were paid back after one extension. The remaining 15.3 percent required at least two extensions to be paid off.

Cowles believes anecdotally that most of his customers find payday loans to be "convenient and cost effective." He estimated that less than 10 percent are "desperate people who don't know how to manage finances."

"They often have gambling, drug or other problems and will take out multiple loans from numerous lenders until their house of cards crumbles," he said. "Those are the people used as examples by so-called consumer protection groups. They shouldn't be borrowing money in the first place."

And he also estimated that a small percentage of borrowers are "crooks."

"They'll lie on their loan application," he said. "They'll get a loan and then the next day they'll stop payment on the check or close their checking account."

Payday lenders insist that their clientele is mostly middle class. A 2002 study commissioned by the Community Financial Services Association of America -- an Alexandria, Va., payday loan trade group, found that the median income of a borrower was $34,764 and that the average age was 38.

That study found that 56 percent of the borrowers renewed their loans at least once, but that 68 percent of the renewals did not extend beyond four weeks of the expiration of the original loan.

"We don't encourage rollovers at all," Steven Schlein, a spokesman for the trade association, said. "Most of our customers pay us back on time. It's also very transitional. Most people use it only for a short period in their life."

Critics dispute the numbers and say that the industry has stretched the definition of middle class.

A December 2003 survey by the Center for Responsible Lending of Durham, N.C., a nonprofit critic of predatory lending, found that 5 million American payday loan borrowers are caught in a "debt trap" each year.

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That study also found that 31 percent of the borrowers take out at least 12 loans annually, and that only 1 percent of the loans are for emergencies.

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"People with long-term financial problems need to meet with a credit counselor," Fox said. "If you take out a payday loan, what are you going to do in two weeks when you aren't making any more money and need to pay the loan back?

"Payday loans don't solve your problem. They add up to whopping finance charges. The best thing is to deal directly with whatever is causing the financial crisis. You can ask creditors for more time or ask utilities to negotiate a payment plan."

Payday lenders in Southern Nevada are a mix of nationwide chain stores and mom-and-pop businesses.

A Web site run by Trihouse Enterprises Inc. of Las Vegas on behalf of payday lenders states that investors in payday loan companies can earn returns of 2.5 percent a month.

The payday lending business has become so lucrative, with 22,000 stores now operating nationwide, that some of the largest chains are listed on the New York Stock Exchange or on Nasdaq. Many of the nation's largest banks have also financed the debt of payday lenders.

One chain with stores in Southern Nevada, ACE Cash Express Inc. of Irving, Texas,

has 1,301 stores nationwide and is listed on Nasdaq. For the first half of fiscal 2005 the company earned $10.9 million, up from $6.7 million in the first half of fiscal 2004. Its debt has been financed by Bank of America, Wells Fargo Bank, U.S. Bank and J.P. Morgan Chase & Co.

Loose regulations

In 1997 the Nevada Legislature first tried to corral check cashers and payday lenders by requiring them to register with the financial institutions division. But the law is toothless, according to state regulators, lawmakers and payday lenders.

Cowles of Cash Cow has been one of the law's biggest critics, and even produced a detailed report on why he thought the law was so bad.

"The language is ambiguous," Cowles said. "It talks about what if a customer defaults but it doesn't define 'default.' There is a $50,000 surety bond required. For what? And (the law, Nevada Revised Statutes Chapter) 604 is not protecting consumers in any way. Some of the things are written so poorly that companies simply disregard them."

The law does not apply to numerous payday lenders, including pawnbrokers and a person who "does not hold himself out as a check-cashing service," even if they advertise the loans.

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To address that situation Buckley is proposing a new law covering all short-term lenders, including those with Web sites, that charge annualized interest of more than 40 percent on loans of less than one year.

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They would not be allowed in most cases to make a loan that exceeds 25 percent of the borrower's gross income, must accept partial payments at any time without additional charges, and must allow customers in default to repay debts over two months with at least three payments.

Lenders also could not garnish wages of individuals in the armed forces or sue for triple damages under the state's bad check law. And lenders would be liable to the customer for actual and punitive damages as well as state penalties of $1,000 for each violation of the law.

"The way it is right now in Nevada it is so bad we'd be better off having payday loans banned," Buckley said. "If it was cleaned up, I still wouldn't be its biggest fan but I wouldn't be its loudest critic either if these abuses were stopped."

Carol Tidd, commissioner of the financial institutions division, which oversees short-term lenders, is proposing even tougher penalties -- $10,000 -- for violations. Marchesi's association, which will represent many of Nevada's payday lenders this

legislative session, supports Tidd's proposed penalty because he said legitimate lenders would follow the law.

One of the toughest problems to address has to do with inconsistencies in the way payday lenders are licensed by a city or county and registered with the state. The purpose of licensing and registration is to hold companies accountable to consumers and to government regulators. But the industry has grown so rapidly that it has been difficult for the regulators to do their jobs. The county, Las Vegas, Henderson and North Las Vegas have business licenses for a combined 112 companies operating 255 check-cashing/ payday loan branches.

Some payday lenders licensed with a city or county are not registered with the financial institutions division, and vice versa. There are payday lenders with active business licenses that state records show to be closed. And there are payday lenders who go by one name at the state level and another name in the city or county.

Tidd proposes tightening that up and making companies register under one name, and she wants to coordinate efforts with city and county licensing departments.

Amended law

The Legislature amended the law in 1999 by restricting loans to one-third of the borrower's expected monthly net income. Lawmakers also agreed that a loan should not extend more than 10 weeks beyond its original expiration date.

But the rollover provision is full of loopholes. It does not prevent a consumer from obtaining multiple loans from different lenders as was the case with Richard Scutti, a 57-year-old Las Vegas security guard who said he got behind on bills because of a gambling problem and health issues.

At one point he owed seven lenders $4,500, more than half of which was interest, court costs and attorneys' fees after he got sued.

"It was a friend who got me into it," Scutti said. "He showed me how easy it was. I used to pay them off right away at first. But every time I lost money gambling I'd go back to them. I figured if I could borrow from one, I could go to another one. I'd start with two or three loans at a time.

"They would be on the phone all the time. They would say, 'Why don't you hock your TV or VCR or bicycle.' They would say, 'If you don't come down and make a payment, we will sue you.' "

After he was sued, $3,200 of his wages were garnished. He got that amount reduced to $2,600 after going to Clark County Legal Services, climbed out of debt by working

extra shifts and began to control his gambling problem. Scutti said he no longer needs payday loans.

"If someone gambles, I would advise that they borrow money from friends or family but not loan companies because the interest is so high," Scutti said.

Another loophole in the rollover provision is that it can start anew every few weeks if the lender simply has the customer rip up the original check and write a new one. That's what happened with former customer Coulter.

Her first loan was for $250 plus a $50 finance charge, which she was to pay back within a month. She could only pay the finance charge when the loan came due so for five months straight she paid a $50 finance charge but not the principal. In five months she accumulated $250 in finance charges, equal to the initial loan amount.

"After the first month they would shred the check and then I would write another check for $300," Coulter said. "So it looks like you're getting another loan but you're not."

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Photos: JJ and David Cowles | A letter from a payday loan company | Maureen Coulter displays documents | Cash Cow | Jim Marchesi talks about the growth of the payday loan industry

Major players

Many of the nation's biggest players in payday loans have set up shop in Southern Nevada. They include:

• ACE Cash Express Inc. of Irving, Texas, which has 1,301 stores nationwide and trades its stock on Nasdaq. For the first half of its fiscal 2005, the company earned $10.9 million, up from $6.7 million earned in the first half of fiscal 2004. Its debt has been financed by Bank of America, Wells Fargo Bank, US Bank and JP Morgan Chase Bank, offering proof that large mainstream banks have been willing to back payday lenders.

• Advance America Cash Advance Centers of Nevada Inc., whose parent -- based in Spartanburg, S.C. -- is the nation's largest payday lender with 2,290 stores in 34 states. A recent addition to the New York Stock Exchange, Advance America posted $351.4 million in revenue for the first nine months of 2004, a 13 percent increase over the first three quarters of 2003, but its earnings dropped 7 percent to $68.8 million. Bloomberg reported in November that

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Advance America received $140 million in revolving credit and loans from Wells Fargo Bank.

• Cash America Inc. of Nevada, whose parent company, Cash America of Fort Worth, Texas, is traded on the New York Stock Exchange and runs more than 750 stores nationwide. The parent company earned a record $56.8 million last year, almost doubling the $30 million it earned in 2003. The company last fall also purchased Las Vegas-based SuperPawn and its 41 stores.

• Check City, which is based in Las Vegas and has 40 stores, including branches in Utah, Virginia and Maryland. Owner Jim Marchesi is also president of the Nevada Financial Services Association, a state lobbyist for payday lenders.

• Check 'n' Go of Nevada Inc., affiliated with parent CNG Financial of Mason, Ohio, which operates more than 900 branches in 30 states. CNG Financial has received financial backing from National City Corp. bank.

• EMG Acquisition Co. of Nevada LLC, which is affiliated with the Easy Money store chain that also has done business in California, Utah, New Mexico and in the South. EMG's limited liability company is listed in default by the Nevada Secretary of State's office.

• Moneytree Inc. of Seattle, the largest payday lender based in the West. With more than 100 branches, Moneytree operates in California, Colorado, Idaho, Washington and Nevada.

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Las Vegas SUN
March 04, 2005

Florida, Oklahoma databases reduce loans per customer

By Steve Kanigher
<steve@lasvegassun.com>
LAS VEGAS SUN

WEEKEND EDITION

March 5 - 6, 2005

To discourage their residents from taking out more payday loans than they can handle, Florida and Oklahoma have developed databases that track each loan.

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While Nevadans may take out as many payday loans as they desire, Florida residents may take out only one payday loan at a time, and Oklahomans are restricted to two loans at once.

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The databases have done such a good job of tracking individual loans that consumers are using payday lenders less frequently than in the past, officials of both states said.

Nevada is not considering a database, though Assemblywoman Chris Giunchigliani, D-Las Vegas, said she would like the Nevada Legislature to consider a mandatory cooling-off period that payday loan customers must endure between loans. That would help consumers avoid mounting high-interest debt, she said.

"I don't think you'll see the Legislature put them (payday lenders) out of business but the bad ones need to be cleaned up," she said.

Commissioner Carol Tidd of the Nevada Financial Institutions Division said her department, which regulates payday lenders, does not have the money to operate a database that could help track cooling-off periods.

But money is no problem in Florida and Oklahoma because their databases are financed by transaction fees that are charged to the borrowers when they get their loans. It works out to $1 per transaction in Florida and 46 cents per transaction in Oklahoma. Both states use the same company, Veritec Solutions LLC of Jacksonville,

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Fla., to design the computer software and operate the databases.

The databases can be accessed by all payday lenders in both states so that they can determine whether an individual seeking a loan already has one that hasn't been paid off.

In the three years that the database has been operating in Florida, the number of loans taken out by the average borrower has dropped from 12.1 per year to 8.4, according to Mike Ramsden, financial administrator for the Florida Office of Financial Regulation. Florida has a 24-hour cooling-off period between payday loans.

"The Florida Legislature wanted to make sure consumers didn't get too reliant on this type of lending because of its high cost," Ramsden said of the database. "It works tremendously well."

Oklahoma's system kicked in last year. One thing noticed by Jack Stone, deputy administrator of the Oklahoma Department of Consumer Credit, is that it is now much more difficult for a borrower to exaggerate on a loan application the number of payday loans he has outstanding.

"We knew that customers were lying before," Stone said. "The database is very good because it has cleaned that up."

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Cash Cow Corp. President David Cowles of Las Vegas is one payday lender who believes a database would be worth considering in Nevada. He and many other payday lenders already use privately operated databases such as Teletrack to determine whether prospective customers have had a history of passing bad checks.

"If we know a customer is in a situation where it will be difficult for him to repay us, we won't loan him the money," Cowles said.

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March 04, 2005

New rules unlikely to affect Nevada lenders

LAS VEGAS SUN

WEEKEND EDITION

March 5 - 6, 2005

Stock prices for ACE Cash Express and other major payday lenders tumbled last week after the Federal Deposit Insurance Corp. tightened regulations for lenders that partner with federally chartered banks. Those lenders are now prohibited from giving payday loans to individuals who have had another outstanding loan from them for three of the previous 12 months.

The order affects only 12 of the 5,200 federally chartered banks, and the FDIC will not name those banks under federal privacy guidelines. The Nevada Financial Institutions Division does not keep data on Nevada payday lenders that partner with federally chartered banks, Commissioner Carol Tidd said.

But FDIC spokesman David Barr in

Washington said he believed the impact on payday lenders in Las Vegas would be minimal since Nevada is a state where payday lending is legal and loosely regulated.

"I would say that this will have minimal impact in Las Vegas because a lot of the payday lenders that partner with banks tend to be in states with more restrictive payday lending laws," Barr said.

The Consumer Federation of America, a consumer watchdog group in Washington, reported in July that 11 of the nation's 13 largest payday loan chains are partnered with federally insured banks. Three of those companies do business in Southern Nevada. They are Advance America (eight stores), ACE Cash Express (17 stores) and Check 'n' Go (six stores).

But the federation said those companies partner with banks only in certain states in order to avoid usury laws and small-loan laws. Nevada has no such laws.

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January 2005

Short-Term, High Interest Cash Lending in Nevada:

A Study of the Industry and Recommendations for Consumer Protections

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Executive Summary

There has been a rapid proliferation of check cashers and payday lenders in Nevada. In 1998, there were 16 check cashing and payday loan branches in the state; by 2004, that number had swelled to 381, an increase of 2281 percent in just 7 years.

In Nevada, there are 1.91 check cashing/payday lending branches for every 10,000 people. There are more payday lenders per capita in Nevada than in any neighboring state.

According to a survey of payday lenders in Clark County, the median finance charge per $100 borrowed is $17.00 (443.21% APR) for a two-week period. The up-front fees charged by Nevada lenders are comparable to those of lenders in nationwide surveys.

In addition to costly fees charged up-front, Nevada lenders pile abusive late fees on to their debt collection suits. The most abusive lenders examined were Budget Loans and Lucky Cash 4 U. The amount owed by the typical borrower sued by Budget Loans was 6.60 times the original loan amount; the amount owed by the typical borrower sued by Lucky Cash 4 U was 5.27 times the original loan amount.

To try to determine who borrows from short-term, high interest lenders, Nevada Fair Housing Center (NFHC) examined the geographic distribution of payday loan stores. In Clark County, these loan stores are most concentrated in census tracts with a median household income of less than $25,000.

NFHC also examined the geographic distribution of short-term, high interest lenders to investigate whether they predominate in neighborhoods with high minority compositions. In Clark County, these lenders are most concentrated in neighborhoods with a minority composition higher than that of the county overall.

Studies conducted by state regulators in Illinois, Indiana, Wisconsin, North Carolina and Washington have found that cycles of repeat borrowing are a problem for a significant number of payday loan borrowers. Nevada would benefit from a similar study.

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Introduction

In Nevada, as in the rest of the country, there has been a rapid proliferation of short-term, high interest cash lenders. Between 1998 and 2004, the number of check cashers and payday lenders in Nevada increased more than 20-fold, from 16 to 381. Although business models vary greatly, these lenders generally provide cash loans ranging from $100 to $500, though some go as high as $1000. The loans are usually for a short-term of 14 days or less. The annualized interest rates on these loan products are typically 400 percent to 500 percent.

As the concentration of short-term, high interest lenders has increased in Nevada—reaching as many as four locations on a single block in some places—the controversy over the legitimacy of the industry has increased as well. Local consumer advocates and politicians have expressed concerns that payday lenders target low-income consumers and stifle redevelopment efforts in older wards (Squires 2003). In 2003, these concerns led the Las Vegas City Council to consider an ordinance that that would prevent payday loan stores from locating within 1,000 feet of each other and within 200 feet of residences.

Short-term, high interest lenders counter these attacks by insisting that they provide a useful service—short-term, unsecured cash loans—that traditional lending institutions have abandoned. In addition, the lenders insist that high labor and administrative costs and a greater risk also demand higher interest rates than those on larger, longer-term loans made by mainstream financial institutions.

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The controversy over short-term, high interest loans in Nevada continues and focuses on three major issues: (1) what is the customer base of short-term, high interest lenders? (2) Do short-term, high interest loans trap consumers in cycles of chronic, repeat borrowing? And, (3) do short-term, high interest lenders employ abusive debt collection practices?

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In 2005, the Nevada legislature will consider several bills that deal with these issues. One bill aims to curb recurrent borrowing and limit the amounts sought by lenders in debt collection cases. To contribute to an understanding of payday lending in the state, Nevada Fair Housing Center, Inc. (NFHC) has conducted a study of the industry. After providing an overview of the industry, this paper will examine each of the three controversial issues in turn and provide recommendations for consumer protections.

A3-24

Overview of Short-Term, High Interest Cash Lending in Nevada

There are two major types of short-term, high interest cash loans are available in Nevada: payday loans/deferred-deposit loans and short-term, high interest cash installment loans.

Payday loans/Deferred-Deposit Loans. In a payday loan transaction, the lender provides the borrower with an amount of cash equal to the amount of a check provided by the borrower, less any interest charged for the transaction. The check acts as security for the loan. The deferred deposit service agrees not to cash the check until the customer's next payday. If the customer does not have sufficient funds to cover the cashed check at the next payday, the customer can pay the interest to extend (or rollover) the loan for another pay-period (usually two weeks).

Cash Installment Loans. Short-term, high interest cash loans are also available from some installment lenders. In these transactions, the lender provides cash and the borrower signs a promissory note agreeing to repay the loan plus interest in a specified period of time (the customer does not provide a post-dated check). Some lenders require repayment in less than 30 days, much like a payday loan. Also like a payday loan, if the borrower is unable to repay the loan on the due date, the borrower can pay the interest to extend the loan for another period. Other lenders require repayment in a series of bi-weekly installments. The installment payments often run from 6 to 18 weeks, which is longer than the typical payday loan. If borrowers miss a payment, they must pay a late fee on top of their next installment.

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To get a sense of the types of short-term, high interest loans offered in Nevada, NFHC conducted a telephone survey of Clark County payday lenders. For payday lenders with more than one branch, NFHC picked one location to call because the loan products were likely to be the same at each location. NFHC called 105 locations. 28 locations (representing 39% of all locations in Clark County) responded in full about their loan products, 22 locations (representing 18% of all locations) responded partially, 21 locations (representing 10% of all locations) provided check cashing services only and 34 locations (representing 33% of all locations) refused to respond over the phone or were unreachable.

The survey revealed that finance chargers per $100 borrowed ranged from $10 (182.50% APR) to $50 (1303.57% APR) for a two-week period. The median finance charge per $100 borrowed was $17.00 (443.21% APR). All 28 locations that responded in full permitted rollovers,[1] though three locations limited the number of rollovers to two or three.

[1] The term "rollover" refers to paying just the interest or finance charge on a short-term loan to extend it for another term—usually 2 weeks. Rollovers are similar to "back-to-back transactions," which involve taking out a new loan to repay an old one. At the end of a back-to-back transaction, the borrower still owes the entire principal.

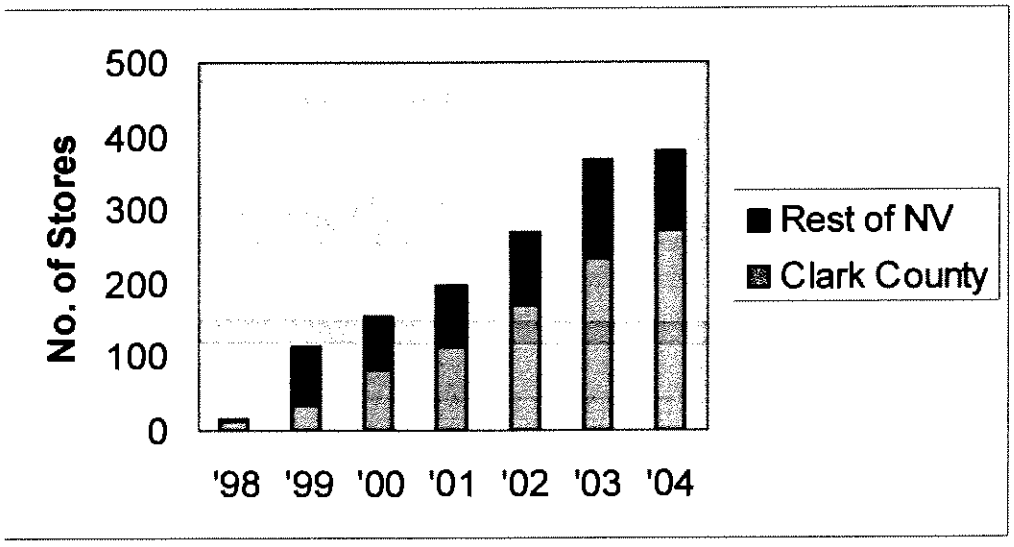
A 4 - 24

These findings are widely consistent with previous surveys of the terms offered by payday lenders. In a survey of 235 lenders in 20 different states, the Consumer Federation of America and the U.S. Public Interest Research Group found an average fee of $18.28 (470% APR) per $100 borrowed for a two-week period (Consumer Federation of America 2001). A study of Illinois lenders by the Financial Institutions Division found an average finance charge of $20 (521% APR) per $100 borrowed while a similar study in Indiana found an average finance charge of $27.20 on an average loan of $165.74 for an APR of 498.75 percent.

Growth of the Industry

Check cashing and payday lending were first authorized in Nevada by legislation passed in 1997. Since that time, there has been a rapid proliferation of check cashing and payday loan stores. In 1998, there were 16 of these branches in Nevada; by 2004, that number had swelled to 381, an increase of 2281 percent over 6 years. As Figure 1 shows, most of that increase has occurred in Clark County.

Figure 1: Growth of Check Cashing/Payday Loan Branches in Clark County and the Rest of Nevada



Source: State of Nevada Financial Institutions Division

While the concentration of check cashing and payday loan branches has been increasing throughout the country, it is particularly high in Nevada. There are 1.91 of these branches for every 10,000 people. Figure 2 shows that Nevada has more payday loan stores relative to its population than any neighboring state. There are 1.41 payday lenders per 10,000 population in Arizona, 0.68 in California, 1.58 in Idaho, 0.72 in Oregon and 0.56 in Utah. The concentration of these lenders is also higher in Nevada than in Colorado (0.90), Illinois (0.73), and Indiana (0.93).

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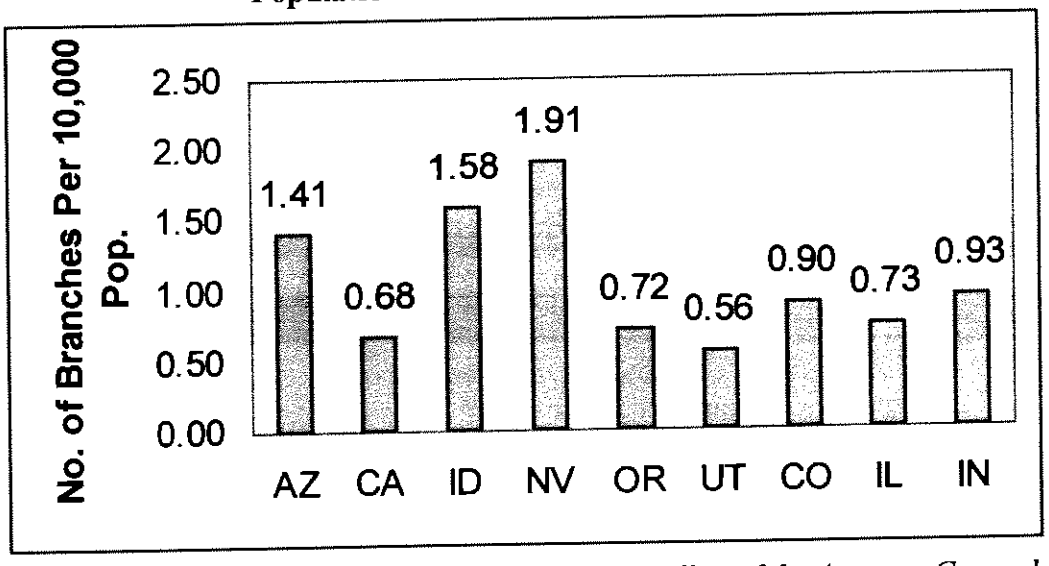
Figure 2: Number of Check Cashing/Payday Loan Branches[2] per 10,000 Population in Nevada and Other States



Sources: Arizona State Banking Department; Colorado Office of the Attorney General; Idaho Department of Finance; Indiana Division of Financial Institutions; McDonald and Santana; Nevada Division of Financial Institutions; Oregon Division of Finance and Corporate Securities; Utah Commissioner of Financial Institutions; Feltner and Williams.

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Because the concentration of check cashers and payday lenders is so great in Nevada, it is particularly important to assess the industry's impact on communities here. The sections that follow examine the three central controversies over short-term, high interest lending in Nevada: do lenders target low-income and minority consumers; do customers become ensnared in cycles repeat borrowing, and do lenders employ abusive debt collection practices?

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[2] This graph under-represents the number of short-term, high interest lenders in Nevada because it only includes check cashing/payday loan branches. Short-term, high interest installment lenders were not included because comparable data for the other states were not available.

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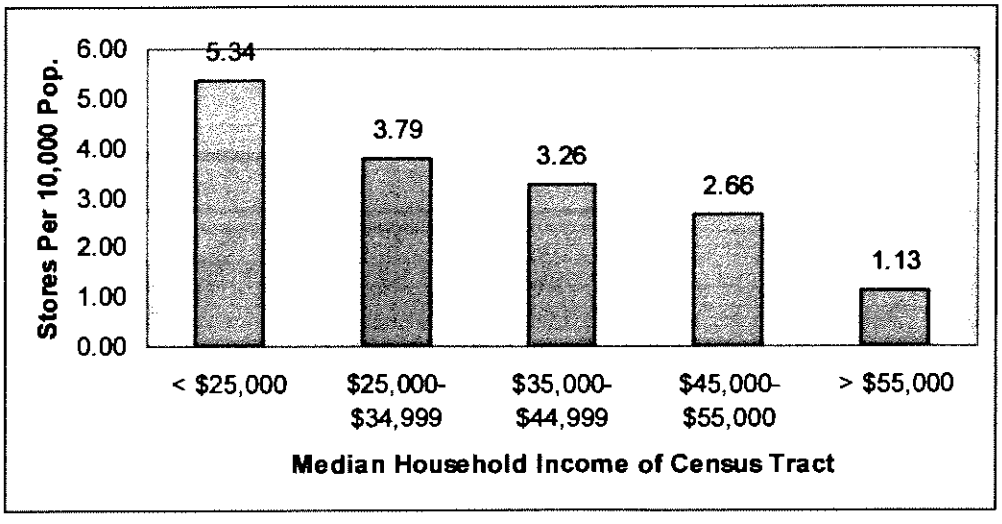
What is the Customer Base of Short-Term, High Interest Lenders?

Critics of payday loan companies argue that the business specifically targets cash-strapped and minority households. A payday lending business plan leaked to the Consumer Federation of America identifies neighborhoods with many households receiving public assistance as opportune places to locate (Consumer Federation of America 2001). Proponents of the industry flatly deny those claims and counter that their typical customer comes from a household making between $35,000 and $45,000 a year (Squires 2003).

The best way to find out who borrows from payday lenders is to analyze data collected from payday loan applications (Illinois Financial Institutions Division; Indiana Financial Institutions Division; Wisconsin Department of Financial Institutions). In the absence of such a comprehensive data set, NFHC examined the geographic distribution of payday loan branches and short-term, high interest installment loan branches to investigate whether they are disproportionately located in census tracts with low median household incomes (see p. 32 for a map of short-term, high interest lenders in Clark County).

NFHC found that statewide, over 60 percent of short-term, high interest loan branches are located in census tracts with low or moderate median household incomes. In Clark County, the relationship between the location of these lenders and low household incomes is even more striking. Figure 3 shows that the concentration of these loan stores is highest in neighborhoods where the median household income is the lowest. In census tracts with a median household income less than $25,000, there are 5.34 short-term, high interest lenders per 10,000 population. This is almost twice the countywide concentration of 2.89 stores per 10,000 population.

Figure 3: Concentration of Short-Term, High Interest Lenders by Median Income of Census Tract



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NFHC's findings generally agree with those of previous studies. Several state regulators have studied payday lenders and their customer base. The Indiana Department of Financial Institutions found that the average income of payday loan customers was $24,673 a year. This finding was based on the examination of 5,134 customer files and 54,508 loans. The Wisconsin Department of Financial Institutions (2001) examined 321 files at 14 lender branches. The average take-home pay of the borrowers in Wisconsin was $18,675.[3]

In 1999, the Illinois Department of Financial Institutions collected data from over 600 loan applications completed by payday loan customers. They found the average annual salary to be $24,104. 40 percent of the customers were men; 60 percent were women. The average age was 36.6 years old. The Woodstock Institute analyzed the Illinois data further and found that 19 percent of the customers made less than $15,000 a year; 38 percent made between $15,000 and $24,999, 31 percent made between $25,000 and $39,999; and 12 percent made more than $40,000 a year.

Two economists at the Credit Research Center conducted a nationwide survey of payday loan customers (Elliehausen and Lawrence 2001). They found that 23.1 percent of the respondents came from households making less than $25,000 a year; 51.5 percent made between $25,000 and $50,000 a year and 25.4 percent made more than $50,000 dollars a year. A little over half (56.5%) of the payday loan customers reported having a credit card, which is significantly less than the adult population overall (72.5%) (Caskey 2002).

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NFHC also examined the geographic distribution of short-term, high interest loan branches to see if they predominate in neighborhoods with a high minority composition. Statewide, 55% of these loan stores are located in census tracts with a higher minority composition than the state as a whole.

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In Clark County, the concentration of short-term, high interest loan branches is highest in census tracts with a minority composition ranging from 40 to 49.99 percent (Figure 4). Short-term, high interest lenders are not most concentrated in the census tracts with the highest minority composition. Still, the data show that short-term, high interest lenders are disproportionately located in neighborhoods with a minority composition higher than that of the county overall.

[3] The results of the nationwide survey and the results of the studies by state regulators are not directly comparable. The nationwide study collected data on *family* income; the studies by state regulators collected data on *individual* income. The studies by state regulators did not collect any data on family size.

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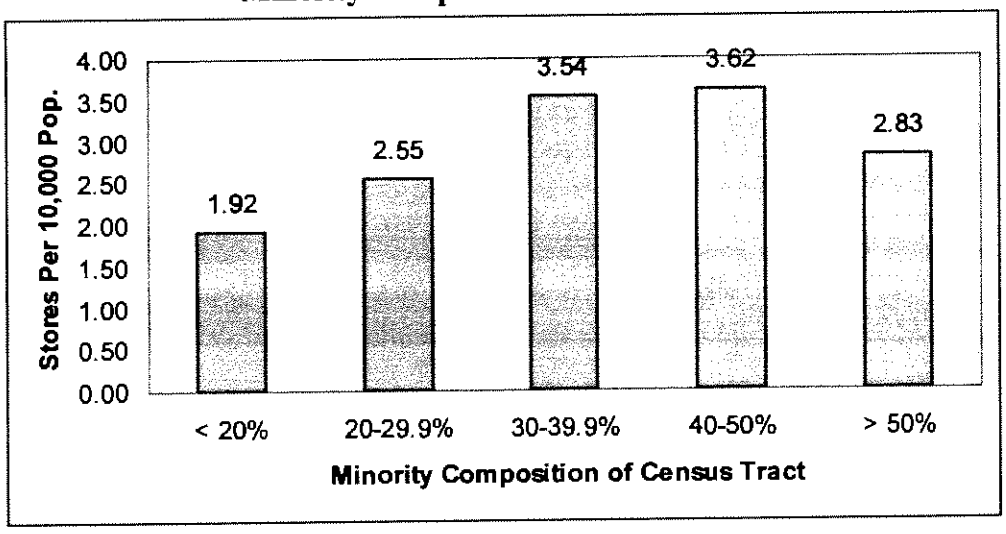
Figure 4: Concentration of Short-Term, High Interest Lenders by Minority Composition of Census Tract



While Nevada would benefit from a comprehensive study of short-term loan applications to find out exactly who borrows from short-term cash lenders, the data clearly show that these lenders tend to cluster in census tracts with lower household incomes. The evidence from Nevada is broadly consistent with a nationwide survey of payday loan customers and studies conducted in other states.

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Do Short-Term, High Interest Loans Trap Consumers in Cycles of Repeat Borrowing?

Gail, a mother of three children, took out a short-term, high interest installment loan. She received $150 cash after signing a promissory note agreeing to repay $165 four days later. Unable to repay the entire sum in a short period of time, Gail paid $15 to rollover[4] the loan. She paid $15 each week for 9 consecutive weeks before defaulting. Although she had paid a total of $135—almost the entire loan amount—the principal had never been reduced. Four weeks after defaulting, Gail's lender, Lucky Cash 4 U, filed a debt collection suit against her. After charging interest at 2 percent per day upon default and a "wage garnishment" charge of $1250, the lender was awarded $1487—more than 9 times the original loan amount. Gail sought help from Clark County Legal Services and was able to vacate the judgment. The suit was settled for $226.

Consumer advocates use stories like Gail's to indict the short-term, high interest loan industry. They argue that these loans are inherently predatory because they are structured so that clients can get stuck in a cycle of debts. Consumers living from paycheck-to-paycheck are not likely to be able to repay a high interest loan in a short period of two weeks or less. Because the risk of becoming a recurrent borrower is high, consumer advocates argue that states should adopt consumer protection laws that eliminate rollovers.

Industry spokespeople dismiss consumer advocates' claims as anecdotal and object to the elimination of rollovers. They maintain that while the debt cycle is a problem for a small portion of their customers, the vast majority repays on time. The Best Practices of the Community Financial Services Association, the trade association of payday lenders, recommends a limitation of four rollovers.

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Several state agencies responsible for the regulation of financial institutions conducted studies of customer files at payday loan branches. These studies suggest that recurrent borrowing is a larger problem than industry lobbyists suggest. The Illinois Financial Institutions Division conducted a survey of payday loan stores in 1999. Examiners visited 60 lenders and compiled data from ten randomly selected customer files from each lender (for a total of 600 files examined). The study found that the average customer made $24,104 a year and took out 10.93 loans in the twelve months preceding the examination date. In similar studies, the Indiana Financial Institutions Division found an average of 10.19 loans per customer in 1999 and the Wisconsin Department of Financial Institutions found an average of 11.9 loans per customer in 2001.

The North Carolina Commissioner of Banks and the Washington State Financial Institutions Division conducted more comprehensive studies of lending frequencies. The North Carolina study included data on all payday loan transactions in 2000; the Washington study included data on all payday loan transactions made by the four largest payday lenders in the state. The results of these studies are displayed in Table 1 below.

[4] The term "rollover" refers to paying the interest or finance charge on a short-term loan to extend it for another term—usually 2 weeks. A related practice, the "back-to-back transaction," involves taking out a new loan to repay an old one. As with a rollover, the borrower still owes the same principal at the end of a back-to-back transaction.

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The North Carolina Commissioner of Banks found that almost a third (30.16 percent) of all payday loan borrowers took out more than 10 loans in a single year. Washington state regulators found that almost half (43.87 percent) of all borrowers took out more than 10 loans in a single year. A significant minority of customers in each state took out more than 20 loans in a single year: 7.59 percent (or 32,718 customers) in North Carolina and 8.27 percent (or 16,034 customers) in Washington.

Table 1: Frequency of Borrowing from Payday Lenders in North Carolina and Washington

# of Loans Taken Out in a Single Year	No. of Customers in NC	Percent of Customers in NC	No. of Customers in WA	Percent of Customers in WA
1-5	202,910	47.06	104,630	48.54
6-10	98,231	22.78	41,932	21.61
11-15	62,383	14.47	63,265	14.07
16-20	34,952	8.11	14,483	7.46
21-25	24,092	5.59	10,464	5.4
> 25	8,626	2.00	5,570	2.87

Source: North Carolina Commissioner of Banks; State of Wisconsin Department of Financial Institutions); State of Washington Financial Institutions Division

Caskey (2002) points out that these studies are likely to underestimate the number of loans a typical customer takes out in a given year because they do not account for borrowers taking out loans from different lenders. Moreover, the studies fail to distinguish between recent customers and old customers. The loan file of a new customer whose most recent loan occurred within the last month or two would not have had time to accumulate many loans. When Caskey re-analyzed the Wisconsin data and restricted his analysis to long-term customers, he found that 44 percent had taken out more than twenty loans in a single year. Less than 4 percent had fewer than five loans.

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Skillern (2002) examined the payday lending industry in North Carolina. Using data collected by the North Carolina Commissioner of Banks, he quantified rollover and repeat borrowing as a portion of the overall revenue and loan volume of North Carolina payday lenders. He found that payday lenders had a powerful economic incentive to encourage recurrent borrowing. A smaller number of repeat customers generated more revenue for payday lenders than a larger number of occasional borrowers. The 38 percent of all customers who took out between 1 and 3 loans in a year generated 12 percent of total industry revenues. The 18 percent of customers who took out 12 or more loans in a single year generated 40 percent of the industry's revenues.

These studies by economists and regulators in other states belie the claims of payday loan industry lobbyists that repeat borrowing is a rare occurrence. The only way to accurately gauge the extent of repeat borrowing in Nevada would be to conduct a study similar to those completed by state regulators in Illinois, Indiana, Wisconsin, North Carolina and Washington. Considering that short-term, high interest lending is more pervasive in Nevada than in these states, a similar study here seems prudent.

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Do Payday Lenders Employ Abusive Debt Collection Practices?

If the due date on a payday loan arrives and the client has not come in to rollover the loan, the lender cashes the post-dated check provided by the customer. If the customer's account contains sufficient funds, the loan is repaid and the transaction is complete. If the check is returned for insufficient funds, the lender contacts the customer to arrange repayment as promptly as possible. If the loan remains unpaid, some lenders write it off as uncollectible. Others file debt collection cases against their delinquent customers.

Consumer advocates have protested that many payday lenders engage in abusive debt collection practices. These practices include suing their customers for treble damages and threatening criminal prosecution if the loans are not repaid (Consumer Federation of America 2001; Johnson 2001). Some lenders have also threatened borrowers with foreclosure (Johnson 2001).

NFHC investigated the debt collection practices of local payday lenders and short-term installment lenders. It would be impossible to investigate the debt collection practices of every short-term lender in Clark County, so NFHC selected five payday lenders and four short-term installment lenders known to file debt collection cases. The payday lenders studied were Check City, Rapid Cash, Cool Cash, Cash Out and Easy Cash. The installment lenders studied were Your Credit, Inc., Budget Loans, Gentry Finance and Lucky Cash 4 U.

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Debt collection suits in Las Vegas are filed with the Justice Court. The Civil Records Division of the Justice Court pulled 15 case files for each lender. From each file, NFHC colleted data about: the original loan (loan amount, finance charge, APR, and loan term); the amount the lender sought to collect on top of the original loan (returned-check fees, late fees, treble damages, suit costs, attorney's fees); and the outcome of the case (Had a judgment been issued? Had the judgment been satisfied? Had a writ of execution garnishing the defendant's wages been issued?).

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NFHC restricted its examination to files that contained all of the necessary information. Files that contained a complaint only were discarded. There were 9 complete files for Check City, 10 for Cool Cash, 11 for Rapid Cash, and 5 for Easy Cash. There were only 3 complete files for Cash Out, so the results of the examination of these files have not been included. There were 13 complete files for Your Credit, Inc., 10 for Budget Loans, 10 for Gentry Finance, and 10 for Lucky Cash 4 U. The total number of complete files included was 78. Table 2 summarizes NFHC's findings for each lender.

Check City. For the 9 debt collection cases filed by Check City, the typical loan amount was $250 with a finance charge of $43 (392.38% APR). In addition to the amount of the original loan and two $25 returned-check fees, Check City sought "late charges" ranging from $30 to $240. Although the contract signed by Check City's customers does not specify how the amount of the "late charges" is calculated, Check City appears to charge $30 for every $100 borrowed.

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Rapid Cash and Easy Cash. Rapid Cash and Easy Cash are separate companies, but their debt collection practices are similar. The typical loan amount for Rapid Cash was $462.50; for Easy Cash it was $250. The typical finance charges at Rapid Cash and Easy Cash were $75 (495% APR) and $50 (730% APR), respectively. Rapid Cash and Easy Cash did not impose late charges as Check City did. Instead, they sued for treble damages under NRS 41.620.

NRS 41.620 enables merchants to collect three times the amount of a check returned for insufficient funds, up to $500. It is intended to deter people from committing fraud by issuing checks that they know will bounce. The statute that authorizes check-cashing and payday lending, however, limits the fees lenders can collect on returned checks and precludes the use of 41.620 (NRS 604.162). Moreover, in July of 2002, the Commissioner of Nevada Financial Institutions Division issued a memo explicitly prohibiting the use of NRS 41.620 by payday lenders (Walsahw 2002).

Despite FID's prohibition, NFHC found that Rapid Cash, Easy Cash and Cool Cash regularly sued for treble damages under NRS 41.620. This allowed them to collect $500 on top of the original loan amount and returned-check fees, which is substantially more than the typical late charge of $120 at Check City.

Cool Cash. NFHC examined 10 cases filed by Cool Cash, Inc. The typical loan provided by the company was $500. The median finance charge was $105 and the median APR was 359.12%. Like Rapid Cash and Easy Cash, Cool Cash did not impose late charges but instead sued for treble damages under NRS 41.620. Unlike Rapid Cash and Easy Cash, however, Cool Cash required its customers to write a separate check for every $100 borrowed. This allowed Cool Cash to circumvent the $500 cap in NRS 41.620.

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For example, in Case # 04C-003038, the defendant borrowed $300. He wrote three checks, each for $130 (there was a finance charge of $90). When all three checks bounced, Cool Cash sued for the sum of three times the original amount of each check, or $1170 ($390+$390+$390=$1170). Had the defendant written one check for $300, Cool Cash would have been able to sue for only $500 in damages under NRS 41.620. The median amount Cool Cash sued for under NRS 41.620 was $1017.50, which is substantially more than the typical late charges imposed by Check City and the damages sued for by Rapid Cash and Easy Cash.

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Table 2: Late Fees and Damages Sought In Debt Collection Suits

Lender (Type)	Median Loan Amt.	Median Fin. Chg.	Median APR	Median Late Fees	Median "Damages"
Check City (Payday)	$400	$53	391.07%	$120	0
Rapid Cash (Payday)	$462.50	$75	$421.41%	0	$500
Cool Cash (Payday)	$500	$105	359.12	0	$1017.50
Easy Cash (Payday)	$250	$50	521.43%	0	$500
Your Credit (Installment)	$100	$31.12	242.02	$120	0
Budget Loans (Installment)	$250	$40	521.43%	$1096.52	0
Gentry Finance (Installment)	$200	$92.40	216.74%	$120	0
Lucky Cash 4 U (Installment)	$300	$60	521%	$904	0

To assess whether the payday lenders' debt collection practices were abusive, NFHC compared the total amount to be paid by the borrower (including suit costs and attorney's fees) with the original loan amount. This provides a measure of how costly debt collection suits are to payday loan customers.[5] The results of these calculations are summarized in Table 3.

[5] Actually, this method is likely to underestimate the total cost to the borrower because it does not account for the number of finance charges the customer paid to rollover the loan before going into default.

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Table 3: Amounts Awarded to Lenders and Total Amounts Owed by Borrowers in Debt Collection Suits

Lender (Type)	Median Amount Awarded	Median Total Judgment	Amt. In Total Judgment to Original Loan Amt.
Check City (Payday)	$605	$829	2.14
Rapid Cash (Payday)	$1025	$1279	2.66
Easy Cash (Payday)	$825	987.82	3.95
Cool Cash (Payday)	$1687.50	$1922.38	5.28
Gentry Finance (Installment)	$311.76	$390.12	2.56
Your Credit (Installment)	$251.12	$390.12	3.37
Lucky Cash 4 U (Installment)	$1204	$1499	5.27
Budget Loans (Installment)	$1095.71	$1461	6.60

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By this measure, Cool Cash was the most abusive of the payday lenders studied. The amount owed by the typical borrower sued by Cool Cash was more than five times the amount of the original loan. For example, in Case Number 04C-004278, the customer initially borrowed $200. At the end of the debt collection case, the customer owed $1134.11, including suit costs and attorney's fees. On this $200 loan, Cool Cash netted $780[6] after recovering the original loan amount and paying the suit costs and attorneys fees.

Check City, in contrast, was the least abusive of the payday lenders studied. The typical Check City customer had to pay 2.14 times the amount of the original loan. For example, in Case Number 04C-001583, the customer initially borrowed $250. At the end of the debt collection case, the customer owed $471, including suit costs and attorney's fees. On this $200 loan, Check City netted $119 after recovering the original loan amount and paying the suit costs and attorney's fees. Although Check City was the least abusive by this measure, the debt collection suit is still costly for the borrower.

[6] The $780 figure does not represent pure profit. The amount of the $780 that goes to payroll and administrative costs is unknown.

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Installment loan companies that provide short-term, high interest loans are not licensed under the same chapter of Nevada Revised Statutes under which check cashing and payday lending companies are registered.[7] However, NFHC's analysis of debt collection cases indicates that installment loan companies offer short-term loans with amounts, maturities and interest rates comparable to those of payday loan companies (Table 2). Installment loan companies also employ similar debt collection practices.

Your Credit, Inc. For the 13 debt collection cases filed by Your Credit, the typical loan amount was $100, and the typical finance charge was $31.12 (242.02% APR) (Table 2). In addition to the amount of the original loan, Your Credit sought a "late charge" ranging from $10.38 to $160.00.

Budget Loans. For the 10 debt collection cases filed by Budget Loans, the typical loan amount was $250, the typical finance charge was $40.00 (521.43% APR), and the typical maturity was 14 days (Table 1). In addition to the amount of the original loan, Budget Loans sought a "penalty" ranging from $375 to $838.44 and "accrued interest" ranging from $127 to $949. Budget Loans would also offer credits to its customers, reducing the amount owed by a marginal amount.

Lucky Cash 4 U. For the 10 debt collection cases filed by Lucky Cash 4 U, the typical loan amount was $300, the typical finance charge was $60.00 (521.43% APR), and the typical maturity was 10 days (Table 1). In addition to the amount of the original loan, Lucky Cash 4 U sought "late fees," "accrued costs," "delinquency costs," and "administrative costs" from the borrower. The average sum of these charges was $1119.13 on top of the initial loan amount.

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Gentry Finance. The loans provided by Gentry Finance are structured differently than the loans provided by most payday lenders and short-term, installment lenders. Instead of having to repay the entire loan amount and finance charge on their next payday, borrowers repay the loan and finance charge in a series of bi-weekly installments. Of the lenders we examined, Gentry Finance has the highest finance charges in absolute terms but the lowest charges when expressed as APR's.

For the 10 debt collection cases filed by Gentry Finance, the typical loan amount was $200 with a finance charge of $92.40 (216.74% APR) and a maturity of 16 weeks (Table 2). In addition to the amount of the original loan, Gentry Finance sought "late charges" ranging from $20 to $120.

[7] Check Cashers and Payday Lenders are registered under NRS Chapter 604. Installment lenders are licensed under NRS Chapter 675.

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To assess whether the installment lenders' debt collection practices were abusive, NFHC compared the total amount to be paid by the borrower (including suit costs and attorney's fees) with the original loan amount, as it did for payday lenders (Table 3). By this measure, Budget Loans was the most abusive of both the payday and installment lenders studied. The amount owed by the typical borrower sued by Budget Loans was almost seven times the amount of the original loan. Gentry Finance, in contrast, was the least abusive of both the payday lenders and the installment lenders studied. Gentry finance was typically awarded less than twice the original loan amount. The amount owed by the typical borrower sued by Gentry Finance was a little over twice the original loan amount.

The findings of NFHC's study of payday loan companies and installment loan companies that offer short-term, high interest loans complement a study of the debt collection practices of Americash, a payday lender in Illinois (Monsignor John Egan Campaign 2004). Researchers found that the average APR of Americash's loan products was 573.18%. The average award in a debt collection case was nearly triple the average original loan amount. The researchers looked at every debt collection case filed by Americash in 2002 and 2003. They found that the borrower's wages were garnished in 97.8% of the cases in 2002 and 98.5% of the cases in 2003.

Installment loan companies in Nevada offer short-term, high interest loans that are structured like payday loans. They also employ abusive practices to collect on delinquent loans. These findings suggest that any future regulation of the payday loan industry should also apply to installment loan companies that offer short-term, high interest loans.

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Conclusions and Recommendations for Consumer Protections

The controversy over short-term, high interest lending in Nevada has centered on three major issues: (1) who borrows from payday lenders? (2) Do borrowers become stuck in cycles of chronic, repeat borrowing? And, (3) do lenders employ abusive debt collection practices? The answers to these questions can help craft legislation containing appropriate consumer protections.

NFHC's study of the geography of payday lending in Nevada and Clark County reveals that short-term, high interest lenders are more highly concentrated in low-income census tracts. These findings are consistent with nationwide surveys and studies in other states that find the typical payday loan customer to be of modest means. Low-income customers living paycheck-to-paycheck have difficulty repaying a high interest loan in a short, two-week period. This increases the likelihood of recurrent borrowing. Studies by state regulators have shown that cycles of repeat borrowing are a problem for a significant number of payday loan customers (Illinois Financial Institutions Division; Indiana Financial Institutions Division; Wisconsin Financial Institutions Division 2001; North Carolina Commissioner of Banks; Stegman and Ferris 2003). Legislative action can take steps to can address this problem.

1. Require lenders to allow partial payments. Short-term, high interest lenders should be required to accept partial payments in any amount without charge.

2. Prohibit rollovers and require a repayment plan. Rather than allowing borrowers to make a series of interest-only payments that do not reduce the loan principal, lenders should establish installment repayment plans for borrowers who cannot repay the full amount on the due date.

3. Prohibit lending to customers with two or more outstanding loans. Several states require lenders to consult a database that tracks a customer's outstanding loans. Such a database would be necessary in Nevada as well.

4. Prohibit loans of more than ¼ of a borrower's net monthly income.

When borrowers default on their short-term, high interest loans, some lenders file debt collection suits with the Las Vegas Justice Court. NFHC's examination of debt collection suits revealed that these lenders employ abusive collection practices. Some lenders add exorbitant "late charges" to the loan principal. Others sue their customers for damages under NRS 41.620. Borrowers with a suit filed against them end up paying anywhere from twice the original loan amount to more than six times the original loan amount. Legislative action can take steps to prohibit abusive debt collection practices as well.

In debt collection cases, lenders should be limited to recouping the principal, a returned check fee (if it was a deferred deposit transaction), the suit costs and an attorney's fee. Any additional fees are excessive and abusive because lenders already compensate for the risk of default by charging high interest rates up front.

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Though legislative action is an important step towards reducing abuses, the prolific growth of the payday loan industry makes it difficult for state regulators to adequately enforce the statutes governing payday lending. For example, some lenders regularly sue their customers for treble damages even though the Nevada Financial Institutions Division explicitly prohibits this practice (Walsahw 2002). Borrowers must be able to pursue a private right of action against a lender who violates Nevada law.

Removing a borrower's private right of action is not a rare practice among short-term, high interest lenders. The loan contracts of at least 5 of the lenders in NFHC's study of Justice Court documents included an arbitration clause waiving the borrower's right to sue the lender. This is another practice that legislative action ought to prohibit.

Currently, payday lenders and short-term installment lenders are covered by different chapters of Nevada law. As the analysis of court documents revealed, however, they offer comparable products and employ similar, abusive debt collection practices. It is important that the consumer protections discussed above apply to both payday and short-term, high interest installment loans. This could be accomplished by inserting the protections into both chapters of Nevada law or by consolidating all short-term, high interest loans into a single chapter. Lenders in other states have proved adept at evading consumer protection statutes (Feltner and Williams 2004; Morstad 2001). If consumer protections in Nevada are not applied to both payday loans and short-term installment loans, lenders will just adopt the loan product with the fewest protections.

Consumer advocates have documented how payday lenders in states with comprehensive payday lending statutes partner with out-of-state banks to circumvent consumer protections (Consumer Federation of America 2004; National Consumer Law Center). To prevent Nevada lenders from doing the same, consumer protections must apply to lenders who make the loans themselves and to lenders who act as agents for a federally or state-chartered bank, thrift, savings association or credit union.

This study has documented abusive practices in the Nevada payday loan industry. Increasing consumer protections is prudent public policy. If comprehensive consumer protections are not adopted in Nevada, the abuses documented in this study will only continue.

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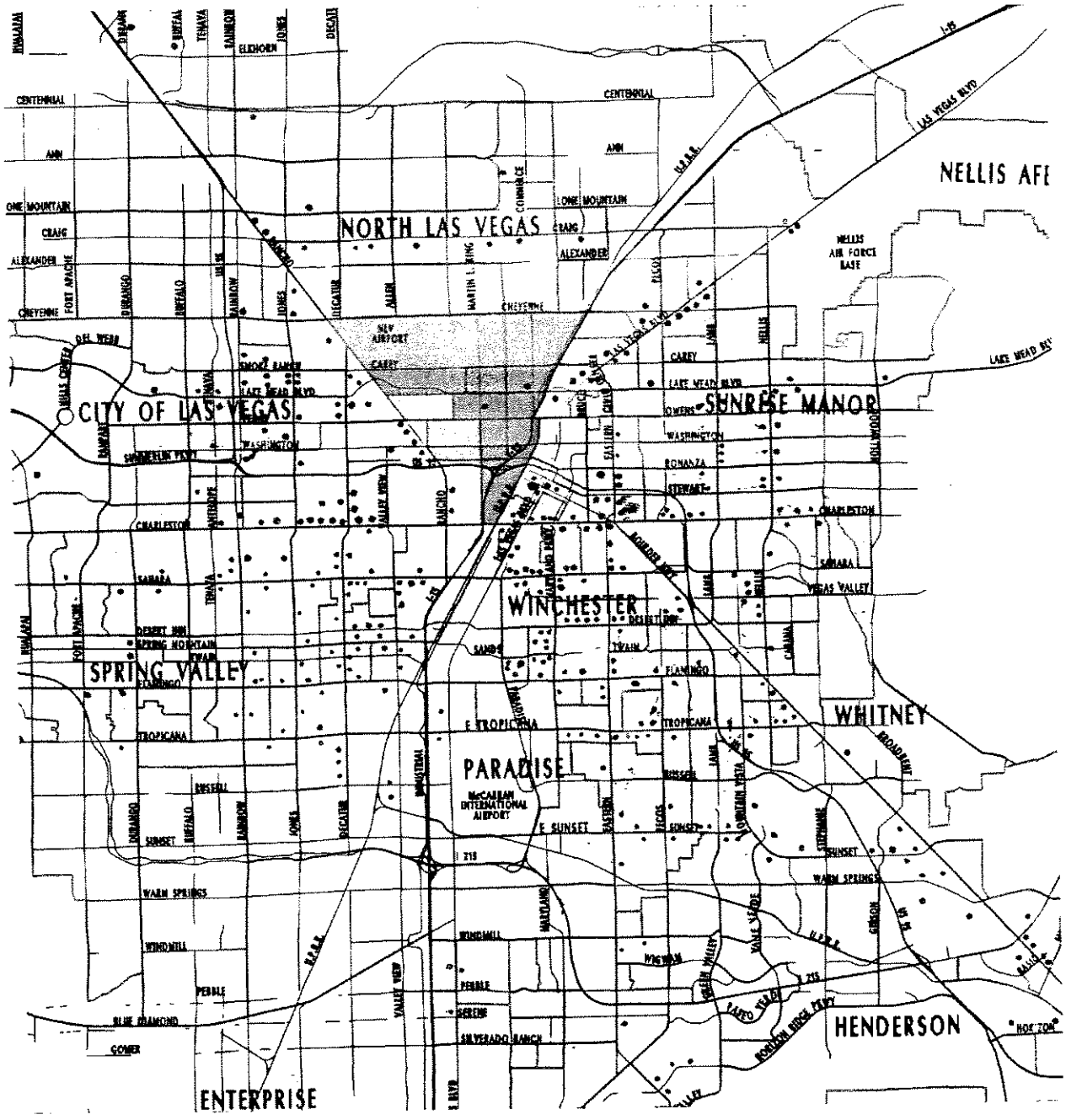
Map of Short-Term, High Interest Lender Branches in Clark County



Location of Short-Term, High Interest Lending Branches In Clark County

Koster's Cash Loans • Ace America's Cash Express • Moneytree •
Max Cash • Check City • Budget Loans • All Other •

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Acknowledgements

Nevada Fair Housing Center, Inc. is grateful to the people that contributed to this study. Martin Lotz and the staff of the Las Vegas Justice Court Civil Records Division generously provided access to debt collection cases filed in Justice Court. Heather Brannagan of Clark County Legal Services provided insight into the abusive debt collection practices of payday lenders. Barbara Buckley, Esq. and Dan Wulz, Esq. of Clark County Legal Services gave invaluable feedback on a previous draft of this study. However, the views expressed in this paper are those of Nevada Fair Housing Center, Inc.

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About Nevada Fair Housing Center, Inc.

Nevada Fair Housing Center, Inc. (NFHC) enforces the Fair Housing Act, protects consumers from predatory lending and administers financial literacy, asset-building, and first-time home-buyer programs. Through programs that ensure equal access to capital and credit, NFHC supports neighborhood revitalization. NFHC also works with local municipalities to implement long range plans to affirmatively further fair housing.

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Good afternoon, my name is Azucena Valladolid. I am Director of Counseling for Consumer Credit Counseling Service, a not-for-profit United Way organization serving residents of the State of Nevada for over 30 years. CCCS provides basic financial and asset building services including down-payment assistance, IDA accounts, establishment of checking and savings accounts, income tax preparation, financial literacy, financial counseling, mortgage default/delinquency counseling and debt management and repayment. We provide financial counseling, face-to-face, to over 650 individuals and families each month and it is these clients and the disturbing trends being experienced I would like to briefly speak about today.

As you are aware, the payday and small loan industry has grown incredibly the last few years and we see the affects on a daily basis with consumers seeking solutions (other than bankruptcy) for their indebtedness. Obligations to payday or small loan companies added to an already over-burdened consumer results in a downward financial spiral. It also seems evident marketing by the industry is directed to minorities, low to moderate-income individuals, and seniors. Spanish speaking consumers sign documents in English, knowing only what they are told, which may very well not be the same thing.

In March 2005, our agency, on a statewide basis, counseled 660 unduplicated individuals/families. Of those, **17.4% owed one or more payday loans.** These consumers were obligated to from **one to seventeen** different

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SUBMITTED BY: Azucena Valladolid

payday/small loans and, in over 95% of the clients, this debt was in addition to other consumer debt (credit card, retail, etc.).

I spoke earlier of seniors and will provide an example which is, unfortunately, not rare. A 71-year-old gentleman came in for assistance. His total net monthly income is $1,000.25 from social security. He owed 15 payday and four small loan companies – 19 creditors with monthly payments totaling $3,627. This started with one loan of $100.00. His social security check arrives on the 3rd of each month. On the 16th he borrowed $100, to be repaid on the 30th. Unfortunately, he had no income until the 3rd so when the loan became due, he borrowed from another payday company to pay the interest on the first....and on and on and on, resulting in almost $4,000 in debt. Moreover, this amount did not reflect costs associated with the legal action that was being processed.

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A Spanish-speaking client enlisted our assistance to repay his 6 payday loans. On January 25, 2005 One of the companies responded in writing to our agency, accepting the proposed payment of $67 on a $400 balance. On February 26, 2005, a lawsuit was filed for treble damages, resulting in a demand for $1,978.08 plus 15% interest per two weeks. All this for a $400 debt the company agreed to accept payments on.

The examples could continue, as we see them daily. Consumers are being exploited. Being indebted to 19 creditors as a 71-year old with no possible way to repay is exploitation. Owing $400 and liquidating the debt as agreed upon by the payday loan company only to be sued for almost $2,000 is exploitation. I am

asking you consider the proposed legislation to provide protection for the residents of Nevada. Thank you for allowing me to speak.

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Nevada Fair Housing Center, Inc.

paving the way to a world of resources

Testimony Before

The Committee On Commerce And Labor

Payday Lending

Nevada Fair Housing Center appreciates the opportunity to present this statement to the Nevada State Assembly Committee on Commerce and Labor. We offer this testimony in strong support of A.B. 384, which increases consumer protections for borrowers of short-term, high interest loans.

Nevada Fair Housing Center, Inc. enforces the Fair Housing Act, protects consumers from predatory mortgage lending and administers financial literacy and first-time home-buyer programs. Through programs that promote equal access to capital and credit, NFHC supports neighborhood revitalization and community economic development.

As part of our efforts to ensure that low-income neighborhoods can access capital and credit on fair terms, we conducted a study of payday lenders and other short-term, high interest cash lenders in Nevada. Our findings can help craft legislation that includes appropriate consumer protections.

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Short-term, high interest lenders make money in two ways: on the front-end of the transaction in the form of finance charges and interest and on the back-end of the transaction in the form of late fees and rollovers. We are mainly concerned with abusive practices on the back end.

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Abusive Debt Collection Practices

When a short-term, high interest loan goes unpaid, some lenders file debt collection suits with the Las Vegas Justice Court. Lenders are certainly entitled to recoup the amount of money they originally lent. Our study, however, documents a number of abusive debt collection practices that lenders use to collect sums well in excess of the original loan amount.

We investigated the debt collection practices of 9 short-term, high interest installment lenders. Some lenders add exorbitant late charges to their debt collection suits. Others sue their customers for treble damages under NRS 41.620.

NRS 41.620 enables merchants to collect three times the amount of a check returned for insufficient funds, up to $500. It is intended to deter check-fraud. It is not intended to allow unscrupulous lenders to pile damages on to their debt collection suits. In July of 2002, the Commissioner of Nevada Financial Institutions Division issued a memo explicitly prohibiting the use of NRS 41.620 by payday lenders (Walsahw 2002).

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SUBMITTED BY: Gail Burks

Despite this prohibition, our study found that some lenders [1] regularly sue for treble damages under NRS 41.620. Moreover, they require borrowers to write multiple checks for a single transaction, allowing them to circumvent the $500 limit.

For example, in one case we examined (no. 04C-003038), the customer borrowed $300. He wrote three checks, each for $130 (there was a finance charge of $90). When all three checks were returned for insufficient funds, the lender[2] sued for treble damages on each check, or for $1170 ($390+$390+$390=$1170). Had the customer written one check for $300, the lender would have been able to sue for only $500 in damages. In this case, the court ordered the borrower to pay $1832, including court costs and attorney's fees. He had repaid $1728 at the time of our examination. The court had issued a writ of execution garnishing his wages for the remainder.

Our findings suggest that such examples are not rare. For the most abusive lenders in our study,[3] the typical borrowers ended up paying a sum more than five or six times the original loan amount.

A.B. 384 takes important steps to reign in these abusive debt collection practices. Specifically, it:

- Clearly states what fees and rate of interest can be charged on delinquent accounts;
- Explicitly prohibits the use of NRS 41.620 by deferred-deposit and payday lenders;
- Prohibits lenders from making multiple loans to one customer at a single time; and
- Prohibits lenders from requiring borrowers to write multiple checks for a single loan.

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The issue of rollovers

The second issue we're concerned with is rollovers. The term "rollover" refers to paying just the interest or finance charge on a short-term loan to extend it for another term—usually 2 weeks. Some customers pay to rollover their loans many times but never reduce the loan principal.

Consumer advocates argue that payday loans are structured to encourage such cycles of repeat borrowing. Payday lenders, on the other hand, insist that only a very small percentage of customers get stuck on the debt treadmill.

Although we lack data specific to Nevada on borrowing frequency, we reviewed a

[1] Rapid Cash, Easy Cash and Cool Cash
[2] Cool Cash
[3] The typical Budget Loans customer ended up paying 6.60 times the original loan mount; the typical Cool Cash customer ended up paying 5.28 times the original loan amount.

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number of studies conducted by regulators in other states. State regulators in Illinois, Indiana and Wisconsin found that the typical customer took out between 10 and 12 payday loans a year. The North Carolina Commissioner of Banks and the Washington State Financial Institutions Division found that a significant minority of customers in each state took out more than 20 loans in a single year: over 7 percent (32,718 customers) did so in North Carolina and over 8 percent (16,034 customers) did so in Washington.

A study based on data collected by the North Carolina Commissioner of Banks found that payday lenders have a strong economic incentive to encourage recurrent borrowing. A smaller number of repeat customers generated far more revenue for payday lenders than a larger number of occasional borrowers.[4]

These studies show that recurrent borrowing is a problem that warrants the attention of policymakers. AB 384 would help address this problem by:

- Prohibiting rollovers and requiring a repayment plan upon default;
- Prohibiting loans greater than ¼ of a borrower's expected monthly gross income;
- Prohibiting lenders from making loans to customers with loans already outstanding;
- Prohibiting back-to-back transactions;
- Requiring lenders to accept partial payments in any amount at no charge; and
- Requiring lenders to provide customers with copies of the loan agreement and the repayment schedule.

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The issues of rollovers, late charges, and treble damages are highly contentious ones. The lenders will argue that prohibiting rollovers and limiting late charges and damages will remove the economic incentive for borrowers to repay on time. They're really trying to protect their own economic incentive to encourage cycles of repeat borrowing and charge abusive late fees.

It is possible to preserve the borrower's incentive to repay while putting a stop to serial rollovers and abusive late fees. AB 384 does just that.

Our study documented abusive practices in the Nevada payday loan industry. Increasing consumer protections is prudent public policy. If comprehensive consumer protections are not adopted in Nevada, the abuses documented in our study will only continue.

[4] The 38 percent of all customers who took out between 1 and 3 loans in a year generated 12 percent of total industry revenues, or $15 million. The 18 percent of customers who took out 12 or more loans in a single year generated 40 percent of total industry revenues, or $49 million. From Skillern, Peter "Small Loans, Big Bucks: An Analysis of the Payday Lending Industry in North Carolina." Community Reinvestment Association of North Carolina, available at: http://www.cra-nc.org/small%20loans%20big%20bucks.pdf .

R3 -3

MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON COMMERCE AND LABOR

Seventy-Third Session
April 13, 2005

The Committee on Commerce and Labor was called to order at 12:26 p.m., on Wednesday, April 13, 2005. Chairwoman Barbara Buckley presided in Room 4100 of the Legislative Building, Carson City, Nevada, and, via simultaneous videoconference, in Room 4401 of the Grant Sawyer State Office Building, Las Vegas, Nevada. Exhibit A is the Agenda. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Ms. Barbara Buckley, Chairwoman
Mr. John Oceguera, Vice Chairman
Ms. Francis Allen
Mr. Bernie Anderson
Mr. Morse Arberry Jr.
Mr. Marcus Conklin
Mrs. Heidi S. Gansert
Ms. Chris Giunchigliani
Mr. Lynn Hettrick
Ms. Kathy McClain
Mr. David Parks
Mr. Richard Perkins
Mr. Bob Seale
Mr. Rod Sherer

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COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblywoman Sheila Leslie, Assembly District No. 27, Washoe County
Assemblyman John Marvel, Assembly District No. 32, Humboldt County, Lander County, and Washoe County

Assemblywoman Giunchigliani:
I like the idea. It has become the new trend and I think there need to be some protections out there. I did not get the letter. I wouldn't mind doing an amend and do pass. If we have to have a subsequent change or correction, at least this moves it further.

Chairwoman Buckley:
We could get copies of the emails and letters to Assemblywoman Weber now and copy them for every Committee member, then take it up later. We don't have to rush it. We should allow people to look at it all, and make sure the sponsor has it as well.

Assemblyman Hettrick:
My wife had the permanent cosmetics done. I think it is a good thing to do something, because what they made her sign off on was worse than a surgical procedure, as far as the risk. I think we ought to have people who are qualified doing it. I think it is reasonable to proceed with something here. I would be in support of that.

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Chairwoman Buckley:
Let's do that. Let's get the copies to everybody and then we will bring it back.

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We will take A.B. 384 next.

Assembly Bill 384: Makes various changes relating to certain short-term, high-interest loans. (BDR 52-806)

Diane Thornton, Committee Policy Analyst:
[Submitted Exhibit K.] A.B. 384 was sponsored by Assemblywoman Buckley and was heard on April 6, 2005. This bill establishes uniform standards and procedures for the licensing and regulation of check-cashing services, deferred deposit services, payday loan services, and title loan services. The bill provides consumer protections including regulating customer repayment and default of these loans and requiring that the loan establishments comply with the federal Fair Debt Collection Practices Act [15 U.S.C. 1692]. The measure also provides remedies and administrative penalties. Behind Tab F is a mock-up of the amendment (Exhibit L) proposed by Assemblywoman Buckley.

Chairwoman Buckley:
I am continuing to work with consumer advocates and the industry. We are taking great care. If the Committee is willing to do an amend and do pass, I will bring the final amendment back to the Committee to allow us to continue to do some technical tweaking and further tightening of the language.

Assemblyman Anderson:
I see the need for legislation in this area.

ASSEMBLYMAN ANDERSON MOVED TO AMEND AND DO PASS ASSEMBLY BILL 384.

ASSEMBLYMAN CONKLIN SECONDED THE MOTION.

Assemblyman Seale:
Weren't there several bills in this same vein?

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Chairwoman Buckley:
Yes, the other one was A.B. 340, sponsored by Assemblywoman Giunchigliani. She indicated that she is still amending it and it wasn't ready for work session yet. It does not conflict. None of the provisions are in the same statute numbers, even though it does deal with the same subject.

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Assemblyman Hettrick:
I will vote for this on the basis of what we have done. I have to indicate that I do have a concern. In Section 14, line 11, I know the fees always seem exorbitant, but 40 percent, calculated on an annual basis, will be so de minimis as to eliminate the industry entirely. I am concerned that number may be too low. I think the general direction of the bill is good.

Chairwoman Buckley:
Section 14 defines short-term loans as being subject to this chapter. Short-term loan is defined as anyone who charges more than a 40 percent APR [annual percentage rate]. The bill still allows them under this chapter to charge a higher interest rate. That is not the cap section. The way it was structured, everything had to be redefined.

Assemblywoman Gansert:
I didn't see a cap section. Is there a cap section?

Chairwoman Buckley:
Yes, the cap section is on page 15, Section 32.7. It states that a licensee may collect only the following amounts:

1. The principal amount of the loan.
2. The interest rate as disclosed on the federal truth and lending statement.
3. After the date of default, as defined by the bill, prime plus 10.
4. An insufficient fund fee.

In paragraph 2, it says that you may not charge the customer any other fees or cost. We are still working on that language because we want to make it crystal clear since the industry is very clever. The limitation upon default of prime plus 10 is in current law, NRS [*Nevada Revised Statutes*] 604. What we are really trying to tighten up here is, you get your contract amount, you get your interest rate in the contract up to default, upon default you get prime plus 10 for a period not to exceed 3 months, you get the bad check fee, and that is it. Collection charges of $2,000 for a $200 loan would be eliminated. That would be the heart of the bill. We will make that very clear for legislative history in case this is challenged. That is the intent.

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THE MOTION CARRIED. (Assemblyman Arberry and Assemblyman Parks were not present for the vote.)

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Assembly Bill 437: Revises provisions governing manufactured home parks. (BDR 10-1027)

Diane Thornton, Committee Policy Analyst:
[Submitted Exhibit M.] A.B. 437 was sponsored by the Committee on Commerce and Labor, and was heard April 1, 2005. This bill revises several provisions regarding manufactured home parks. The landlord of a manufactured home park is required to post a copy of the utility bill for the park if the utility bill is for multiple tenants. The bill revises which representative must meet with the tenants upon receiving a request to hear any complaints or suggestions. The bill also revises the provisions governing the closure of a manufactured home park and revises the provisions regarding the limited dealer's license.

Behind Tab G is an amendment (Exhibit N) proposed by Joe Guild from the Manufactured Home Community Owners. This amendment has four sections to it. The first two sections deal with who should meet with the tenants. In Section 3, sub 3, page 3, "managing" is deleted; "with working knowledge of

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Original exhibits are on file at the Legislative Counsel Bureau Research Library in Carson City.

Contact the Library at (775) 684-6827 or library@lcb.state.nv.us.

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The following measure may be considered for action by the Assembly Committee on Commerce and Labor during today's work session:

☐ ASSEMBLY BILL 384

Makes various changes relating to certain short-term, high-interest loans. (BDR 52-806)

Sponsored By: **Assemblywoman Buckley**

Date Heard: **April 6, 2005**

Discussion

This bill establishes uniform standards and procedures for the licensing and regulation of check-cashing services, deferred deposit services, payday loan services and title loan services. The bill provides consumer protections including regulating customer repayment and default of these loans and requiring that the loan establishments comply with the federal Fair Debt Collection Practices Act. The measure also provides remedies and administrative penalties.

Proposed Conceptual Amendment(s)

Behind **Tab F** is a mock up of the amendment proposed by Assemblywoman Buckley.

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SUBMITTED BY: Diane Thornton

MOCK-UP

PROPOSED AMENDMENT TO ASSEMBLY BILL NO. 384

PREPARED FOR THE ASSEMBLY COMMITTEE ON COMMERCE AND LABOR
APRIL 11, 2005

PREPARED BY THE LEGAL DIVISION

NOTE: THIS DOCUMENT SHOWS PROPOSED AMENDMENTS IN CONCEPTUAL FORM. THE LANGUAGE AND ITS PLACEMENT IN THE OFFICIAL AMENDMENT MAY DIFFER.

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~green bold double strikethrough~~ is language proposed to be deleted in this amendment and (5) green bold dashed underlining is deleted language in the original bill that is proposed to be retained in this amendment.

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

Section 1. Title 52 of NRS is hereby amended by adding thereto a new chapter to consist of the provisions set forth as sections 2 to 86, inclusive, of this act.

Sec. 2. *As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 3 to 17, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 3. *"Cashing" means providing currency or a negotiable instrument in exchange for a check.*

Sec. 4. *1. "Check" means:*

(a) A draft, other than a documentary draft, payable on demand and drawn on a bank; or

(b) A cashier's check or teller's check.

2. An instrument may be a check even though it is described on its face by another term, such as "money order."

Sec. 5. *"Check-cashing service" means any licensee engaged in the business of cashing checks for a fee, service charge or other consideration.*

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SUBMITTED BY: Diane Thornton

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Sec. 6. *"Commissioner" means the Commissioner of Financial Institutions.*

Sec. 7. *"Customer" means any person who receives or attempts to receive check-cashing services, deferred deposit loan services, ~~payday~~ short-term loan services or title loan services from a licensee.*

Sec. 8. *"Default" means the failure of a customer to pay a loan in ~~compliance with~~ full when required by the terms ~~in~~ of a lawful loan agreement~~.~~ , or any extension thereof. The date of a default must be determined in the manner set forth in section 17.3 of this act.*

Sec. 9. *"Deferred deposit loan" means a transaction in which, pursuant to a written agreement:*

1. A customer tenders to a licensee:

(a) A personal check drawn upon the account of the customer; or

(b) Written authorization for an electronic transfer of money for a specified amount from the account of the customer; and

2. The licensee:

(a) Provides to the customer an amount of money that is equal to the face value of the check or the amount specified in the written authorization for an electronic transfer of money, less any fee charged for the transaction; and

(b) Agrees, for a specified period, not to cash the check or execute the electronic transfer of money for the amount specified in the written authorization.

Sec. 10. *"Deferred deposit loan service" means any licensee engaged in the business of making deferred deposit loans for a fee, service charge or other consideration.*

Sec. 11. *"Electronic transfer of money" means any transfer of money, other than a transaction initiated by a check or other similar instrument, that is initiated through an electronic terminal, telephone, computer or magnetic tape for the purpose of ordering, instructing or authorizing a financial institution to debit or credit an account.*

Sec. 11.5. *1. "Extension" means 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, regardless of the name given to the extension or rollover.*

2. The term does not include a grace period.

Sec. 11.7. *"Grace period" means any period of deferment offered gratuitously by a licensee to a customer if the licensee complies with the provisions of section 17.5 of this act.*

Sec. 12. *"Licensee" means any person who has been issued one or more licenses to operate a check-cashing service, deferred deposit loan service, ~~payday~~ short-term loan service or title loan service pursuant to the provisions of this chapter.*

Sec. 13. *"Loan" means any deferred deposit loan, ~~payday~~ short-term loan or title loan , or any extension thereof, made by a licensee at ~~a~~*

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~~*place of business for which he is licensed, or through the Internet or other electronic means,*~~ *any location or through any method, including, without limitation, 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.*

Sec. 14. *1. "*~~*Payday*~~ *Short-term* ***loan"*** ~~*has the meaning ascribed to it by the Commissioner pursuant to section 21 of this act.*~~ *means a loan made to a customer pursuant to a loan agreement which, under its original terms:*

(a) Charges fees or a rate of interest, or any combination thereof, that when calculated as an annualized percentage rate is more than 40 percent; and

(b) Requires the loan to be paid in full in less than 1 year.

2. The term does not include:

(a) A deferred deposit loan; or

(b) A title loan.

Sec. 15. ***"***~~*Payday*~~ *Short-term* ***loan service" means any licensee engaged in the business of providing*** ~~*payday*~~ *short-term* ***loans for a fee, service charge or other consideration.***

Sec. 16. ***"Title loan" means a loan made to a customer who secures the loan with the title to a motor vehicle.***

Sec. 17. ***"Title loan service" means any licensee engaged in the business of providing title loans for a fee, service charge or other consideration.***

Sec. 17.3. *For the purposes of this chapter, a default on a loan occurs:*

1. On the day immediately following the date on which the loan is required to be paid in full under the original terms of the loan agreement; or

2. If there is a lawful extension of the loan agreement, on the day immediately following the date on which the loan is required to be paid in full under the original terms of the extension.

Sec. 17.5. *The provisions of this chapter do not prohibit a licensee from offering a customer a grace period on the repayment of a loan, except that the licensee shall not charge the customer:*

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

2. Any fees or interest on the outstanding loan during such a grace period.

Sec. 18. ***1. The provisions of this chapter must be interpreted so as to effectuate their general purpose to provide for, to the extent practicable, uniform regulation of the loans and transactions that are subject to the provisions of this chapter.***

2. If there is a conflict between the provisions of this chapter and the provisions of any other general law regulating loans and similar transactions, the provisions of this chapter control.

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Sec. 19. *This chapter or any part thereof may be modified, amended or repealed so as to effect a cancellation or alteration of any license or right of a licensee under this chapter, provided that such cancellation or alteration shall not impair or affect the obligation of any preexisting lawful loan agreement between any licensee and any customer.*

Sec. 20. *The provisions of this chapter do not apply to:*

1. A person doing business pursuant to the authority of any law of this State or of the United States relating to banks, savings banks, trust companies, savings and loan associations, credit unions, development corporations, mortgage brokers, mortgage bankers, thrift companies or insurance companies.

~~*2. A person licensed to make installment loans pursuant to chapter 675 of NRS, if the Commissioner determines that the person is not subject to the provisions of this chapter.*~~

2. A person who is primarily engaged in the retail sale of goods or services who:

(a) As an incident to or independently of a retail sale or service, from time to time cashes checks for a fee or other consideration of not more than $2; and

(b) Does not hold himself out as a check-cashing service.

3. A person while performing any act authorized by a license issued pursuant to chapter 671 of NRS.

4. A person who holds a nonrestricted gaming license issued pursuant to chapter 463 of NRS while performing any act in the course of that licensed operation.

5. A person who is exclusively engaged in a check-cashing service relating to out-of-state checks.

6. A corporation organized pursuant to the laws of this State that has been continuously and exclusively engaged in a check-cashing service in this State since July 1, 1973.

7. A pawnbroker, unless the pawnbroker operates a check-cashing service, deferred deposit loan service, ~~payday~~ short-term loan service or title loan service.

8. A real estate investment trust, as defined in 26 U.S.C. § 856.

~~9~~. An employee benefit plan, as defined in 29 U.S.C. § 1002(3), if the loan is made directly from money in the plan by the plan's trustee.

~~10~~. An attorney at law rendering services in the performance of his duties as an attorney at law if the loan is secured by real property.

~~11~~. A real estate broker rendering services in the performance of his duties as a real estate broker if the loan is secured by real property.

~~12~~. Any firm or corporation:

(a) Whose principal purpose or activity is lending money on real property which is secured by a mortgage;

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(b) Approved by the Federal National Mortgage Association as a seller or servicer; and

(c) Approved by the Department of Housing and Urban Development and the Department of Veterans Affairs.

~~14~~13. A person who provides money for investment in loans secured by a lien on real property, on his own account.

~~15~~14. A seller of real property who offers credit secured by a mortgage of the property sold.

Sec. 21. *1. The Commissioner shall adopt by regulation a definition of the term:*

~~(a) "Motor~~ "motor vehicle" as that term is used in the definition of "title loan" for this chapter.

~~(b) "Payday loan," including, without limitation, regulations that define a payday loan as a loan made by a licensee to a customer who secures the loan with a promissory note.~~

2. The Commissioner may establish by regulation the fees that a licensee who provides check-cashing services may impose for cashing checks.

3. The Commissioner shall adopt any other regulations as are necessary to carry out the provisions of this chapter.

Sec. 21.5. *1. A person shall not operate a check-cashing service, deferred deposit loan service, short-term loan service or title loan service unless the person is licensed with the Commissioner pursuant to the provisions of this chapter.*

2. A person must have a license regardless of the location or method that the person uses to operate such a service, including, without limitation, 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.

Sec. 22. *1. Except as otherwise provided in section 23 of this act, each application for a license pursuant to the provisions of this chapter must be accompanied by a surety bond payable to the State of Nevada in the amount of $50,000 for the use and benefit of any customer receiving the services of the licensee.*

2. The bond must be in a form satisfactory to the Commissioner, issued by a bonding company authorized to do business in this State and must secure the faithful performance of the obligations of the licensee respecting the provision of the services.

3. A licensee shall, within 10 days after the commencement of any action or notice of entry of any judgment against him by any creditor or claimant arising out of business regulated by this chapter give notice thereof to the Commissioner by certified mail with details sufficient to identify the action or judgment. The surety shall, within 10 days after it pays any claim or judgment to a creditor or claimant, give notice thereof

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to the Commissioner by certified mail with details sufficient to identify the creditor or claimant and the claim or judgment so paid.

4. Whenever the principal sum of the bond is reduced by recoveries or payments thereon, the licensee shall furnish:

(a) A new or additional bond so that the total or aggregate principal sum of the bonds equals the sum required pursuant to subsection 1; or

(b) An endorsement, duly executed by the surety, reinstating the bond to the required principal sum.

5. The liability of the surety on the bond to a creditor or claimant is not affected by any misrepresentation, breach of warranty, failure to pay a premium or other act or omission of the licensee, or by any insolvency or bankruptcy of the licensee.

6. The liability of the surety continues as to all transactions entered into in good faith by the creditors and claimants with the agents of the licensee within 30 days after:

(a) The death of the licensee or the dissolution or liquidation of his business; or

(b) The termination of the bond,

➥ whichever event occurs first.

7. A licensee or his surety shall not cancel or alter a bond except after notice to the Commissioner by certified mail. The cancellation or alteration is not effective until 10 days after receipt of the notice by the Commissioner. A cancellation or alteration does not affect any liability incurred or accrued on the bond before the expiration of the 30-day period designated in subsection 6.

Sec. 23. *1. In lieu of any surety bond, or any portion of the principal sum thereof as required pursuant to the provisions of this chapter, a licensee may deposit with the State Treasurer or with any bank, credit union or trust company authorized to do business in this State as the licensee may select, with the approval of the Commissioner:*

(a) Interest-bearing stocks;

(b) Bills, bonds, notes, debentures or other obligations of the United States or any agency or instrumentality thereof, or guaranteed by the United States; or

(c) Any obligation of this State or any city, county, town, township, school district or other instrumentality of this State or guaranteed by this State,

➥ in an aggregate amount of, based upon principal amount or market value, whichever is lower, of not less than the amount of the required surety bond or portion thereof.

2. The securities must be held to secure the same obligation as would the surety bond, but the depositor may receive any interest or dividends and, with the approval of the Commissioner, substitute other suitable securities for those deposited.

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Sec. 24. *1. Except as otherwise provided in subsection 3, an officer or employee of the Division of Financial Institutions of the Department of Business and Industry shall not:*

(a) Be directly or indirectly interested in or act on behalf of any licensee;

(b) Receive, directly or indirectly, any payment from any licensee;

(c) Be indebted to any licensee;

(d) Engage in the negotiation of loans for others with any licensee; or

(e) Obtain credit or services from a licensee conditioned upon a fraudulent practice or undue or unfair preference over other customers.

2. An employee of the Division of Financial Institutions in the unclassified service of the State shall not obtain new extensions of credit from a licensee while in office.

3. Any officer or employee of the Division of Financial Institutions may be indebted to a licensee on the same terms as are available to the public generally.

4. If an officer or employee of the Division of Financial Institutions has a service, a preferred consideration, an interest or a relationship prohibited by this section at the time of his appointment or employment, or obtains it during his employment, he shall terminate it within 120 days after the date of his appointment or employment or the discovery of the prohibited act.

Sec. 25. *1. An application for a license pursuant to the provisions of this chapter must be made in writing, under oath and on a form prescribed by the Commissioner. The application must include:*

(a) If the applicant is a natural person, the name and address of the applicant.

(b) If the applicant is a business entity, the name and address of each:

(1) Partner;

(2) Officer;

(3) Director;

(4) Manager or member who acts in a managerial capacity; and

(5) Registered agent,

of the business entity.

(c) Such other information, as the Commissioner determines necessary, concerning the financial responsibility, background, experience and activities of the applicant and its:

(1) Partners;

(2) Officers;

(3) Directors; and

(4) Managers or members who act in a managerial capacity.

(d) The address of each location at which the applicant proposes to do business , including, without limitation, each location where the

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applicant will operate 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.

(e) If the applicant is or intends to be licensed to provide more than one type of service pursuant to the provisions of this chapter, a statement of that intent and which services he provides or intends to provide.

2. Each application for a license must be accompanied by:

(a) A nonrefundable application fee;

(b) Such additional expenses incurred in the process of investigation as the Commissioner deems necessary; and

(c) A fee of not less than $100 or more than $500, prorated on the basis of the licensing year.

➥ All money received by the Commissioner pursuant to this subsection must be placed in the Investigative Account for Financial Institutions created by NRS 232.545.

3. The Commissioner shall adopt regulations establishing the amount of the fees required pursuant to this section.

Sec. 26. *1. A person may apply for a license for an office or other place of business located outside this State from which the applicant will conduct business in this State if the applicant or a subsidiary or affiliate of the applicant has a license issued pursuant to this chapter for an office or other place of business located in this State and if the applicant submits with the application for a license a statement signed by the applicant which states that the applicant agrees to:*

~~1.~~ (a) Make available at a location within this State the books, accounts, papers, records and files of the office or place of business located outside this State to the Commissioner or a representative of the Commissioner; or

~~2.~~ (b) Pay the reasonable expenses for travel, meals and lodging of the Commissioner or a representative of the Commissioner incurred during any investigation or examination made at the office or place of business located outside this State.

➥ The person must be allowed to choose between the provisions of ~~subsection 1 or 2~~ paragraphs (a) or (b) in complying with the provisions of this ~~section~~. subsection.

2. This section applies, without limitation, to any office or other place of business located outside this State from which the applicant will conduct business in this State 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.

Sec. 27. *1. Upon the filing of the application and the payment of the fees required pursuant to section 25 of this act, the Commissioner shall investigate the facts concerning the application and the requirements provided for in section 29 of this act.*

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2. The Commissioner may hold a hearing on the application at a time not less than 30 days after the date the application was filed or more than 60 days after that date. The hearing must be held in the Office of the Commissioner or such other place as he may designate. Notice in writing of the hearing must be sent to the applicant and to any licensee to which a notice of the application has been given and to such other persons as the Commissioner may see fit, at least 10 days before the date set for the hearing.

3. The Commissioner shall make his order granting or denying the application within 10 days after the date of the closing of the hearing, unless the period is extended by written agreement between the applicant and the Commissioner.

Sec. 28. *If the Commissioner finds that any applicant does not possess the requirements specified in this chapter, he shall:*

1. Enter an order denying the application and notify the applicant of the denial.

2. Within 10 days after the entry of such an order, file his findings and a summary of the evidence supporting those findings and deliver a copy thereof to the applicant.

Sec. 29. *1. The Commissioner shall enter an order granting an application if he finds that the financial responsibility, experience, character and general fitness of the applicant are such as to command the confidence of the public and to warrant belief that the business will be operated lawfully, honestly, fairly and efficiently.*

2. If the Commissioner grants an application, the Commissioner shall:

(a) File his findings of fact together with the transcript of any hearing held pursuant to the provisions of this chapter; and

(b) Issue to the licensee a license in such form and size as is prescribed by the Commissioner for each location at which the licensee proposes to do business.

3. Each licensee shall prominently display his license at the location where he does business. ~~Not more than one place of business may be maintained under the same license.~~ The Commissioner may issue additional licenses to the same licensee ~~for other business locations upon compliance with all the provisions of this chapter governing the issuance of a single license~~. for each branch location at which the licensee is authorized to operate under the license, including, without limitation, each branch location where the licensee is authorized to operate 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. Nothing in this subsection requires a license for any place of business devoted to accounting, recordkeeping or administrative purposes only.

4. Each license shall:

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(a) State the address at which the business is to be conducted; and

(b) State fully:

(1) The name and address of the licensee;

(2) If the licensee is a copartnership or association, the names of its members; and

(3) If the licensee is a corporation, the date and place of its incorporation.

5. A license is not transferable or assignable.

Sec. 30. *1. A license issued pursuant to the provisions of this chapter expires annually on the anniversary of the issuance of the license. A licensee must renew his license on or before the date on which the license expires by paying:*

(a) A renewal fee; and

(b) An additional fee for each branch location at which the licensee is authorized to operate under the license.

2. A licensee who fails to renew his license within the time required by this section is not licensed pursuant to the provisions of this chapter.

3. The Commissioner may reinstate an expired license upon receipt of the renewal fee and a fee for reinstatement.

4. The Commissioner shall adopt regulations establishing the amount of the fees required pursuant to this section.

Sec. 31. *1. A licensee shall immediately notify the Commissioner of any change of control of the licensee.*

2. A person who acquires stock, partnership or member interests resulting in a change of control of the licensee shall apply to the Commissioner for approval of the transfer. The application must contain information which shows that the requirements for obtaining a license pursuant to the provisions of this chapter will be satisfied after the change of control. If the Commissioner determines that those requirements will not be satisfied, he may deny the application and forbid the applicant from participating in the business of the licensee.

3. As used in this section, "change of control" means:

(a) A transfer of voting stock, partnership or member interests which results in giving a person, directly or indirectly, the power to direct the management and policy of a licensee; or

(b) A transfer of at least 25 percent of the outstanding voting stock, partnership or member interests of the licensee.

Sec. 32. *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. Make a loan that exceeds 25 percent of the expected gross monthly income of the customer during the term of the loan unless justified by particular circumstances. A licensee is not in violation of the provisions of this subsection if the customer presents evidence of his

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gross monthly income to the licensee and represents to the licensee in writing that the loan does not exceed 25 percent of the expected gross monthly income of the customer during the term of the loan.

3. Make more than one loan to the same customer at one time or before any outstanding balance is paid in full on an existing loan unless:

(a) The customer is seeking multiple loans that do not exceed the limit set forth in subsection 2;

(b) The licensee charges the same rate of interest for any additional loan as he charged for the initial loan; and

(b) The licensee does not charge a fee for any additional loan.

4. Take any note or promise to pay which does not disclose the date and amount of the loan, a schedule or description of the payments to be made thereon and the rate or aggregate amount of the interest, charges and fees negotiated and agreed to by the licensee and customer. Compliance with the federal Truth in Lending Act, 15 U.S.C. §§ 1601 et seq., constitutes compliance with this subsection.

~~4~~5. Take any instrument, including a check or written authorization for the electronic transfer of money , in which blanks are left to be filled in after the loan is made.

~~5~~6. Make any transaction contingent on the purchase of insurance or any other goods or services or sell any insurance to the customer with the loan.

~~6~~7. Accept :

(a) Collateral as security for a loan ~~under this chapter an~~ , except that a title to a motor vehicle may be accepted as security for a title loan.

(b) An assignment of wages, salary, commissions or other compensation for services, whether earned or to be earned, as security for a loan. ~~or accept a~~

(c) A check as security for a ~~payday~~ short-term loan or title loan.

(d) More than one check or written authorization for the electronic transfer of money for each deferred deposit loan.

(e) A check or written authorization for the electronic transfer of money for any deferred deposit loan in an amount which exceeds the amount of total payments set forth in the disclosure statement required by the federal Truth in Lending Act, 15 U.S.C. §§ 1601 et seq., that is provided to the customer.

~~7~~8. 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 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.

~~8~~9. Fail to comply with a payment plan which is negotiated and agreed to by the licensee and customer.

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10. Charge any fee to cash a check which represents the proceeds of a loan.

~~9~~11. ***Commence a civil action before*** *~~a customer defaults on his loan pursuant to the payment~~ the expiration of the original term of a loan agreement or before the expiration of any repayment* ***plan,*** *extension or grace period* ***negotiated and agreed to by the licensee and customer.*** *, unless otherwise authorized pursuant to this chapter.*

~~10~~12. ***Take any confession of judgment or any power of attorney running to himself or to any third person to confess judgment or to appear for the customer in a judicial proceeding.***

~~11~~13. ***Use or attempt to use an affiliate or agent to avoid the requirements or prohibitions of this chapter.***

~~12~~14. ***Engage in a deceptive trade practice, including, without limitation, making a false representation.***

~~13~~15. ***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.***

Sec. 32.1. *1. A person shall not act as an agent for or assist a licensee in the making of a loan unless the licensee complies with all applicable federal and state laws and regulations.*

2. The provisions of this section do not apply to the agent or assistant to a state or federally chartered bank, thrift company, savings and loan association or industrial loan company if the state or federally chartered bank, thrift company, savings and loan association or industrial loan company:

(a) Initially advances the loan proceeds to the customer;

(b) Does not sell, assign or transfer a preponderant economic interest in the loan to the agent or assistant or an affiliate or subsidiary of the state or federally chartered bank, thrift company, savings and loan association or industrial loan company, unless selling, assigning or transferring a preponderant economic interest is expressly permitted by the primary regulator of the state or federally chartered bank, thrift company, savings and loan association or industrial loan company; and

(c) Develops the product on its own.

3. If a licensee acts as an agent for or assists a state or federally chartered bank, thrift company, savings and loan association or industrial loan company in the making of a loan and the licensee can show that the standards set forth in subsection 2 are satisfied, the licensee must comply with all other provisions in this chapter to the extent they are not preempted by other state or federal law.

Sec. 32.2. *1. A customer may rescind a loan on or before the close of business on the next day of business at the location where the loan was initiated. To rescind the loan, the customer must deliver to the licensee:*

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(a) A sum of money equal to the face value of the loan, less any fee charged to the customer to initiate the loan; or

(b) The original check, if any, which the licensee gave to the customer pursuant to the loan. Upon receipt of the original check, the licensee shall refund any fee charged to the customer to initiate the loan.

2. If a customer rescinds a loan pursuant to this section, the licensee:

(a) Shall not charge the customer any fee for rescinding the loan; and

(b) Upon receipt of the sum of money or check pursuant to subsection 1, shall give to the customer a receipt showing the account paid in full and return to the customer:

(1) If the customer gave to the licensee a check or a written authorization for an electronic transfer of money to initiate a deferred deposit loan, the check or written authorization stamped "void";

(2) If the customer gave to the licensee a promissory note to initiate a short-term loan, the promissory note stamped "void"; or

(3) If the customer gave to the licensee a title to a motor vehicle to initiate the title loan, the title.

Sec. 32.3. *1. A customer may pay a loan, or any extension thereof, in full at any time, without an additional charge or fee, before the date his final payment on the loan, or any extension thereof, is due.*

2. If a customer pays the loan in full, including all interest, charges and fees negotiated and agreed to by the licensee and customer, the licensee shall:

(a) Return to the customer:

(1) If the customer gave to the licensee a check or a written authorization for an electronic transfer of money to initiate a deferred deposit loan, the check or the written authorization stamped "void";

(2) If the customer gave to the licensee a promissory note to initiate a short-term loan, the promissory note stamped "void"; or

(3) If the customer gave to the licensee a title to a motor vehicle to initiate a title loan, the title; and

(b) Give to the customer a receipt with the following information:

(1) The name and address of the licensee;

(2) The identification number assigned to the loan agreement or other information that identifies the loan;

(3) The date of the payment;

(4) The amount paid;

(5) An itemization of interest, charges and fees;

(6) A statement that the loan is paid in full; and

(7) If more than one loan made by the licensee to the customer was outstanding at the time the payment was made, a statement indicating to which loan the payment was applied.

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Sec. 32.4. *1. A customer may make a partial payment on a loan, or any extension thereof, at any time without an additional charge or fee.*

2. If a customer makes such a partial payment, the licensee shall give to the customer a receipt with the following information:

(a) The name and address of the licensee;

(b) The identification number assigned to the loan agreement or other information that identifies the loan;

(c) The date of the payment;

(d) The amount paid;

(e) An itemization of interest, charges and fees;

(f) The balance due on the loan; and

(g) If more than one loan made by the licensee to the customer was outstanding at the time the payment was made, a statement indicating to which loan the payment was applied.

Sec. 32.5. *1. The licensee and customer may enter into a repayment plan if:*

(a) The customer defaults on the original loan, or any extension thereof; or

(b) Before such a default, the customer indicates that he is unable to pay the original loan in full pursuant to the terms set forth in the original loan agreement, or any extension thereof.

2. The licensee shall provide written notice of the provisions of this section to the customer.

3. If the licensee and customer enter into a repayment plan pursuant to this section, the licensee shall:

(a) Provide to the customer a document which confirms that the customer has entered into a repayment plan and which states the date and terms of the repayment plan; and

(b) If the repayment plan is for a deferred deposit loan, return to the customer the check or written authorization for an electronic transfer of money that the customer used to initiate the deferred deposit loan, with the check or written authorization stamped "void."

4. If the licensee and customer enter into a repayment plan pursuant to this section, the licensee shall honor the terms of the repayment plan, and the licensee shall not:

(a) Establish or extend the period for repayment beyond 8 weeks after the date of default on the original loan agreement;

(b) Charge the customer any interest on the outstanding loan in addition to the interest charged pursuant to the original loan agreement;

(c) Charge the customer any fees or costs to enter into the repayment plan, regardless of the name given to the fees or costs, including, without limitation, origination fees, set-up fees, repayment plan fees, collection fees, transaction fees, negotiation fees, handling fees, processing fees, late fees, default fees and postage costs;

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(d) Accept any security or collateral from the customer to enter into the repayment plan;

(e) Sell to the customer any insurance or require the customer to purchase insurance or any other goods or services to enter into the repayment plan;

(f) Make any other loan to the customer, unless the customer is seeking multiple loans that do not exceed the limit set forth in subsection 2 of section 32 of this act; or

(g) Commence a civil action against the customer:

(1) During the term of the repayment plan; or

(2) If the customer stops making payments during the term of the repayment plan, sooner than 31 days after the date on which the customer made his last payment pursuant to the repayment plan.

5. Each time a customer makes a payment pursuant to a repayment plan, the licensee shall give to the customer a receipt with the following information:

(a) The name and address of the licensee;

(b) The identification number assigned to the loan agreement or other information that identifies the loan;

(c) The date of the payment;

(d) The amount paid;

(e) The balance due on the loan or, when the customer makes the final payment, a statement that the loan is paid in full; and

(f) If more than one loan made by the licensee to the customer was outstanding at the time the payment was made, a statement indicating to which loan the payment was applied

Sec. 32.6. *If a customer agrees to establish or extend the period for the repayment, renewal, refinancing or consolidation of an outstanding loan by using the proceeds of a new loan to pay the balance of the outstanding loan, the licensee shall not establish or extend such a period beyond 8 weeks after the date of default on the original loan.*

Sec. 32.7. *1. If a customer defaults on a loan, or on any extension thereof, whichever is later, the licensee may collect only the following amounts from the customer:*

(a) The principal amount of the loan.

(b) The interest accrued before the date of default on the original loan at the rate of interest set forth in the disclosure statement required by the federal Truth in Lending Act, 15 U.S.C. §§ 1601 et seq., that is provided to the customer. If there is an extension of the loan, the licensee may charge and collect interest pursuant to this paragraph for a period not to exceed 8 weeks after the date of default on the original loan.

(c) The interest accrued after the date of default on the original loan or after any extension that is allowed pursuant to paragraph (b), whichever is later, at a rate of interest not to exceed the prime rate at the largest bank in Nevada, as ascertained by the Commissioner, on January

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1 or July 1, as the case may be, immediately preceding the date of default, plus 10 percent. The licensee may charge and collect interest pursuant to this paragraph for a period not to exceed 3 months. After that period, the licensee shall not charge or collect any interest on the loan.

(d) Any fees allowed pursuant to section 32.8 of this act for a check that is not paid upon presentment because the account of the customer contains insufficient funds or has been closed.

2. Except for the interest and fees permitted pursuant to subsection 1, the licensee shall not charge a customer in default any other interest, fees or costs, regardless of the name given to the interest, fees or costs, including, without limitation, origination fees, set-up fees, collection fees, transaction fees, negotiation fees, handling fees, processing fees, late fees, default fees and postage costs.

Sec. 32.8. *1. A licensee may collect a fee of not more than $25 if a check is not paid upon presentment because the account of the customer contains insufficient funds or has been closed.*

2. If the account of the customer contains insufficient funds, the licensee may collect only two fees of $25 each regardless of the number of times the check is presented for payment.

3. If the account of the customer has been closed, the licensee may collect only one fee of $25 regardless of the number of times the check is presented for payment.

Sec. 33. *1. A licensee shall not conduct the business of making loans under any name ~~or~~ , at any place ~~other than that stated~~ or by any method, including, without limitation, 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 as permitted* ***in the license*** *, or branch license issued to the licensee.*

2. Nothing in this section shall prevent the making of loans by mail or prohibit accommodations to a customer when necessitated by hours of employment, sickness or other emergency situations.

Sec. 34. *1. Except as otherwise provided in subsection 2, a licensee may not conduct the business of making loans within any office, suite, room or place of business in which any other business is solicited or engaged in, except an insurance agency or notary public, or in association or conjunction with any other business, unless authority to do so is given by the Commissioner.*

2. A licensee may conduct the business of making loans in the same office or place of business as:

(a) A mortgage broker if:

(1) The licensee and the mortgage broker:

(I) Operate as separate legal entities;

(II) Maintain separate accounts, books and records;

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(III) Are subsidiaries of the same parent corporation; and

(IV) Maintain separate licenses; and

(2) The mortgage broker is licensed by this State pursuant to chapter 645B of NRS and does not receive money to acquire or repay loans or maintain trust accounts as provided by NRS 645B.175.

(b) A mortgage banker if:

(1) The licensee and the mortgage banker:

~~*(I) Operate as separate legal entities;*~~

~~*(II)*~~*(I) Maintain separate accounts, books and records;*

~~*(III)*~~*(II) Are subsidiaries of the same parent corporation; and*

~~*(IV)*~~*(III) Maintain separate licenses; and*

(2) The mortgage banker is licensed by this State pursuant to chapter 645E of NRS and, if the mortgage banker is also licensed as a mortgage broker pursuant to chapter 645B of NRS, does not receive money to acquire or repay loans or maintain trust accounts as provided by NRS 645B.175.

Sec. 35. *1. A licensee who wishes to change the address of an office or other place of business for which he has a license pursuant to the provisions of this chapter must, at least 10 days before changing the address, give written notice of the proposed change to the Commissioner.*

2. Upon receipt of the proposed change of address pursuant to subsection 1, the Commissioner shall provide written approval of the change and the date of the approval.

3. If a licensee fails to provide notice as required pursuant to subsection 1, the Commissioner may impose a fine in an amount not to exceed $500.

4. This section applies, without limitation, to any office or other place of business at which the licensee intends to operate a kiosk, through the Internet, through any telephone, facsimile machine or other telecommunication device or through any other machine, network, system, device or means.

Sec. 36. *1. Each licensee shall keep and use in his business such books and accounting records as are in accord with ~~sound and~~ accepted accounting practices.*

2. Each licensee shall maintain a separate record or ledger card for the account of each customer and shall set forth separately the amount of cash advance and the total amount of interest and charges, but such a record may set forth precomputed declining balances based on the scheduled payments, without a separation of principal and charges.

3. Each licensee shall preserve all such books and accounting records for at least 2 years after making the final entry therein.

4. Each licensee who operates outside this State an office or other place of business that is licensed pursuant to provisions of this chapter shall:

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(a) Make available at a location within this State the books, accounts, papers, records and files of the office or place of business located outside this State to the Commissioner or a representative of the Commissioner; or

(b) Pay the reasonable expenses for travel, meals and lodging of the Commissioner or a representative of the Commissioner incurred during any investigation or examination made at the office or place of business located outside this State.

➥ The licensee must be allowed to choose between the provisions of paragraph (a) or (b) in complying with this subsection.

5. As used in this section, "amount of cash advance" means the amount of cash or its equivalent actually received by a customer or paid out at his direction or in his behalf.

Sec. 37. *1. A licensee shall post in a conspicuous place in every location at which he conducts business under his license, a notice that states the fees he charges for providing check-cashing services, deferred deposit loan services, ~~payday~~ short-term loan services or title loan services.*

2. If a licensee offers loans to customers ~~through the Internet or other electronic means, he~~ 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, 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*** *~~entering~~ 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 charges for making each type of loan; and

(b) A list of the states where the licensee is licensed or authorized to ~~offer loans through the Internet or other electronic means.~~ conduct business from outside this State with customers located in this State.

Sec. 38. *1. Before making any loan to a customer, a licensee shall provide to the customer a written loan agreement which ~~is in~~ may be kept by the customer and which must be written in:*

(a) ***English*** *~~and may be kept by the customer.~~ , if the transaction is conducted in English; or*

(b) Spanish, if the transaction is conducted in Spanish.

2. ~~The Commissioner shall prescribe by regulation the form and contents of the loan agreement required pursuant to this section.~~ ***The loan agreement must include, without limitation, the following information:***

(a) The name and address of the licensee and the customer;

(b) The date of the loan;

(c) The nature of the security for the loan;

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(d) The amount of the loan obligation, including, without limitation, an itemization of the interest, charges and fees the customer must pay if the licensee makes a loan to the customer;

(e) The description or schedule of payments on the loan;

(f) A disclosure of the right of the customer to rescind a loan pursuant to the provisions of this chapter;

(g) A disclosure of the right of the customer to pay his loan in full or in part with no additional charge pursuant to the provisions of this chapter;

(h) Disclosures required for a similar transaction by the federal Truth in Lending Act, 15 U.S.C. §§ 1601 et seq.; and

(i) Disclosures required under any applicable state statute or regulation.

Sec. 39. *1. If a customer defaults on a loan, the licensee ~~shall~~ may collect the ~~loan~~ debt owed to the licensee only in a professional, fair and lawful manner . ~~and~~ When collecting such a debt, the licensee must act in accordance with and must not violate sections 803 to 813, inclusive, of the federal Fair Debt Collection Practices Act, 15 U.S.C. §§ ~~1692 et seq.~~ 1692a to 1692k, inclusive, even if the licensee is not otherwise subject to the provisions of that Act.*

2. If a licensee initiates a civil action against a customer to collect a debt, the court may award:

(a) Court costs; and

(b) Reasonable attorney's fees. In determining the amount of the attorney's fees and whether they are reasonable, the court shall consider the complexity of the case, the amount of the debt and whether the licensee could have used less costly means to collect the debt.

Sec. 40. *Any loan lawfully made outside this State as permitted by the laws of the state in which the loan was made may be collected or otherwise enforced in this State in accordance with its terms.*

Sec. 41. *1. If a customer is called to active duty in the military, a licensee shall:*

(a) Defer for the duration of the active duty all collection activity against the customer; and

(b) Honor the terms of any repayment plan between the licensee and customer, including, without limitation, any repayment plan negotiated through military counselors or third-party credit counselors.

2. When collecting any defaulted loan, a licensee shall not:

(a) Garnish any wages or salary paid to a customer for active service in the military; or

(b) Contact the military chain of command of a customer in an effort to collect the defaulted loan.

3. As used in this section, "military" means the Armed Forces of the United States, a reserve component thereof or the National Guard.

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PROPOSED AMENDMENT TO AB384

Sec. 42. ~~*1. A person may apply to the Commissioner for an exemption from the provisions of this chapter governing the making of a loan.*~~

~~*2. The Commissioner may grant the exemption if he finds that:*~~

~~*(a) The making of the loan would not be detrimental to the financial condition of the licensee, customer or person who is providing the money for the loan;*~~

~~*(b) The licensee, customer or person who is providing the money for the loan has established a record of sound performance, efficient management, financial responsibility and integrity;*~~

~~*(c) The making of the loan is likely to increase the availability of capital for a sector of the state economy; and*~~

~~*(d) The making of the loan is not detrimental to the public interest.*~~

~~*3. The Commissioner:*~~

~~*(a) May revoke an exemption unless the loan for which the exemption was granted has been made;*~~

~~*(b) Shall issue a written statement setting forth the reasons for his decision to grant, deny or revoke an exemption; and*~~

~~*(c) Shall adopt regulations which provide the application forms to be used to apply for an exemption and establish the fees to be paid with the application.*~~

Sec. 43. *1. For the purpose of discovering violations of this chapter or of securing information lawfully required under this chapter, the Commissioner or his duly authorized representatives may at any time investigate the business and examine the books, accounts, papers and records used therein of:*

(a) Any licensee;

(b) Any other person engaged in the business of making loans or participating in such business as principal, agent, broker or otherwise; and

(c) Any person who the Commissioner has reasonable cause to believe is violating or is about to violate any provision of this chapter, whether or not the person claims to be within the authority or beyond the scope of this chapter.

2. For the purpose of examination, the Commissioner or his authorized representatives shall have and be given free access to the offices and places of business, and the files, safes and vaults of such persons.

3. For the purposes of this section, any person who advertises for, solicits or holds himself out as willing to make any deferred deposit loan, ~~payday~~ short-term loan or title loan is presumed to be engaged in the business of making loans.

Sec. 44. *1. The Commissioner may require the attendance of any person and examine him under oath regarding:*

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(a) Any check-cashing service or loan service regulated pursuant to the provisions of this chapter; or

(b) The subject matter of any audit, examination, investigation or hearing; and

2. The Commissioner may require the production of books, accounts, papers and records for any audit, examination, investigation or hearing.

Sec. 45. *At least once each year, the Commissioner or his authorized representatives shall make an examination of the place of business of each licensee and of the loans, transactions, books, accounts, papers and records of the licensee so far as they pertain to the business for which he is licensed pursuant to the provisions of this chapter.*

Sec. 46. *1. The Commissioner shall charge and collect from each licensee a fee of $40 per hour for any supervision, audit, examination, investigation or hearing conducted pursuant to this chapter or any regulations adopted pursuant thereto.*

2. The Commissioner shall bill each licensee upon the completion of the activity for the fee established pursuant to subsection 1. The licensee shall pay the fee within 30 days after the date the bill is received. Except as otherwise provided in this subsection, any payment received after the date due must include a penalty of 10 percent of the fee plus an additional 1 percent of the fee for each month, or portion of a month, that the fee is not paid. The Commissioner may waive the penalty for good cause.

3. The failure of a licensee to pay the fee required pursuant to subsection 1 as provided in this section constitutes grounds for revocation of the license of the licensee.

Sec. 47. *If the Commissioner finds that probable cause for revocation of any license exists and that enforcement of the provisions of this chapter requires immediate suspension of a license pending investigation, he may, upon 5 days' written notice and a hearing, enter an order suspending a license for a period not exceeding 20 days, pending a hearing upon the revocation.*

Sec. 48. *1. Whenever the Commissioner has reasonable cause to believe that any person is violating or is threatening to or intends to violate any provision of this chapter, he may, in addition to all actions provided for in this chapter and without prejudice thereto, enter an order requiring the person to desist or to refrain from such violation.*

2. The Attorney General or the Commissioner may bring an action to enjoin a person from engaging in or continuing a violation or from doing any act or acts in furtherance thereof. In any such action, an order or judgment may be entered awarding a preliminary or final injunction as may be deemed proper.

3. In addition to all other means provided by law for the enforcement of a restraining order or injunction, the court in which an

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action is brought may impound, and appoint a receiver for, the property and business of the defendant, including books, papers, documents and records pertaining thereto, or so much thereof as the court may deem reasonably necessary to prevent violations of this chapter through or by means of the use of property and business. A receiver, when appointed and qualified, has such powers and duties as to custody, collection, administration, winding up and liquidation of such property and business as may from time to time be conferred upon him by the court.

Sec. 49. *1. If the Commissioner has reason to believe that grounds for revocation or suspension of a license exist, he shall give 20 days' written notice to the licensee stating the contemplated action and, in general, the grounds therefor and set a date for a hearing.*

2. At the conclusion of a hearing, the Commissioner shall:

(a) Enter a written order either dismissing the charges, revoking the license, or suspending the license for a period of not more than 60 days, which period must include any prior temporary suspension. The Commissioner shall send a copy of the order to the licensee by registered or certified mail.

(b) Impose upon the licensee a fine of $500 for each violation by the licensee of any provision of this chapter or any regulation adopted pursuant thereto.

(c) If a fine is imposed pursuant to this section, enter such order as is necessary to recover the costs of the proceeding, including his investigative costs and attorney's fees.

3. The grounds for revocation or suspension of a license are that:

(a) The licensee has failed to pay the annual license fee;

(b) The licensee, either knowingly or without any exercise of due care to prevent it, has violated any provision of this chapter or any lawful regulation adopted pursuant thereto;

(c) The licensee has failed to pay a tax as required pursuant to the provisions of chapter 363A of NRS;

(d) Any fact or condition exists which would have justified the Commissioner in denying the licensee's original application for a license pursuant to the provisions of this chapter; or

(e) The licensee failed to open an office for the conduct of the business authorized by his license within ~~120~~ 180 days after the date his license was issued, or has failed to remain open for the conduct of the business for a period of ~~120~~ 180 days without good cause therefor.

4. Any revocation or suspension applies only to the license granted to a person for the particular office for which grounds for revocation or suspension exist.

5. An order suspending or revoking a license becomes effective 5 days after being entered unless the order specifies otherwise or a stay is granted.

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Sec. 50. *A licensee may surrender any license issued pursuant to the provisions of this chapter by delivering it to the Commissioner with written notice of its surrender, but a surrender does not affect his civil or criminal liability for acts committed prior thereto.*

Sec. 51. *A revocation, suspension, expiration or surrender of any license does not impair or affect the obligation of any preexisting lawful loan agreement between the licensee and any customer. Such a loan agreement and all lawful charges thereon may be collected by the licensee, its successors or assigns.*

Sec. 52. *1. 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.*

2. The licensee shall make the report under oath and on a form prescribed by the Commissioner.

3. If any person or affiliated group holds more than one license in this State, it may file a composite annual report.

Sec. 53. *1. A court of this State may exercise jurisdiction over a party to a civil action arising under the provisions of this chapter on any basis not inconsistent with the Constitution of the State of Nevada or the Constitution of the United States.*

2. Personal service of summons upon a party outside this State is sufficient to confer upon a court of this State jurisdiction over the party so served if the service is made by delivering a copy of the summons, together with a copy of the complaint, to the party served in the manner provided by statute or rule of court for service upon a person of like kind within this State.

3. In all cases of such service, the defendant has 40 days, exclusive of the day of service, within which to answer or plead.

4. This section provides an additional manner of serving process and does not invalidate any other service.

Sec. 54. *1. Except as otherwise provided in this section, if a licensee willfully:*

(a) Enters into a loan agreement for an amount of interest or any other charge or fee that violates the provisions of this chapter or any regulation adopted pursuant thereto;

(b) Demands, collects or receives an amount of interest or any other charge or fee that violates the provisions of this chapter or any regulation adopted pursuant thereto; or

(c) Commits any other act or omission that violates the provisions of this chapter or any regulation adopted pursuant thereto,

⇨ the loan is void and the licensee is not entitled to collect, receive or retain any principal, interest or other charges or fees with respect to the loan.

2. The provisions of this section do not apply if:

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(a) A licensee shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error of computation, notwithstanding the maintenance of procedures reasonably adapted to avoid that error; and

(b) Within 60 days of discovering the error, the licensee notifies the customer of the error and makes whatever adjustments in the account are necessary to correct the error.

Sec. 55. *In addition to any other remedy or penalty, if a licensee violates any provision of this chapter or any regulation adopted pursuant thereto, the customer may bring a civil action against the licensee for any or all of the following relief:*

1. Actual and consequential damages;

2. An additional amount, as statutory damages, which is equal to $1,000 for each violation;

3. Punitive damages;

4. Reasonable attorney's fees and costs; and

5. Any other legal or equitable relief that the court deems appropriate.

Sec. 56. ~~*As used in sections 56 to 69, inclusive, of this act, unless the context otherwise requires, "licensee" means any person who has been issued a license to operate a check-cashing service or deferred deposit loan service.*~~

Sec. 57. ~~*A person shall not operate a check-cashing service or deferred deposit loan service unless the person is licensed with the Commissioner pursuant to the provisions of this chapter.*~~

Sec. 58. *A licensee who provides check-cashing services shall give written notice to each customer of the fees he charges for cashing checks. The customer must sign the notice before the licensee provides the check-cashing service.*

Sec. 59. ~~*1. A person shall not act as an agent for or assist a licensee in the making of a deferred deposit loan unless the licensee complies with all applicable federal and state laws and regulations.*~~

~~*2. The provisions of this section do not apply to the agent or assistant to a state or federally chartered bank, thrift company, savings and loan association or industrial loan company if the state or federally chartered bank, thrift company, savings and loan association or industrial loan company:*~~

~~*(a) Initially advances the loan proceeds to the customer;*~~

~~*(b) Does not sell, assign or transfer a preponderant economic interest in the deferred deposit loan to the agent or assistant or an affiliate or subsidiary of the state or federally chartered bank, thrift company, savings and loan association or industrial loan company, unless selling, assigning or transferring a preponderant economic interest is expressly permitted by the primary regulator of the state or federally chartered*~~

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~~bank, thrift company, savings and loan association or industrial loan company; and~~

~~(c) Develops the product on its own.~~

~~3. If a licensee acts as an agent for or assists a state or federally chartered bank, thrift company, savings and loan association or industrial loan company in the making of a deferred deposit loan and the licensee can show that the standards set forth in subsection 2 are satisfied, the licensee must comply with all other provisions in this chapter to the extent they are not preempted by other state or federal law.~~

Sec. 60. ~~A licensee shall not:~~

~~1. Charge any fee to cash a check which represents the proceeds of a deferred deposit loan.~~

~~2. Make more than one deferred deposit loan to the same customer at one time.~~

~~3. Accept more than one check or authorization for the electronic transfer of money for each deferred deposit loan.~~

~~4. Accept any collateral for a deferred deposit loan~~.

Sec. 61. ~~1. A customer may rescind a deferred deposit loan on or before the close of business on the next day of business at the location where the deferred deposit loan was initiated. To rescind the deferred deposit loan, the customer must deliver to the licensee:~~

~~(a) A sum of money equal to the face value of the check or the amount specified in the written authorization for an electronic transfer of money which the customer gave to the licensee to initiate the deferred deposit loan, less any fee charged to the customer to initiate the deferred deposit loan; or~~

~~(b) The original check, if any, which the licensee gave to the customer pursuant to the deferred deposit loan. Upon receipt of the original check, the licensee shall refund any fee charged to the customer to initiate the deferred deposit loan.~~

~~2. If a customer rescinds a deferred deposit loan pursuant to this section, the licensee:~~

~~(a) Shall not charge the customer any fee for rescinding the deferred deposit loan; and~~

~~(b) Upon receipt of the sum of money or check pursuant to subsection 1, shall:~~

~~(1) Return to the customer the check or written authorization for the electronic transfer of money which the customer gave to the licensee to initiate the deferred deposit loan; and~~

~~(2) Give to the customer a receipt showing the account paid in full.~~

Sec. 62. ~~1. A customer may pay his deferred deposit loan in full at any time, without an additional charge or fee, before the date his final payment on the loan is due as set forth in the loan agreement.~~

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~~2. If a customer pays the deferred deposit loan in full, including all interest, charges and fees negotiated and agreed to by the licensee and customer, the licensee shall:~~

~~(a) Return to the customer the check or written authorization for the electronic transfer of money which the customer gave to the licensee to initiate the deferred deposit loan; and~~

~~(b) Give to the customer a receipt with the following information:~~

~~(1) The name and address of the licensee;~~

~~(2) The identification number assigned to the loan agreement;~~

~~(3) The date of the payment;~~

~~(4) The amount paid;~~

~~(5) An itemization of interest, charges and fees;~~

~~(6) A statement that the loan is paid in full; and~~

~~(7) If more than one deferred deposit loan was outstanding at the time the payment was made, a statement indicating to which loan the payment was applied.~~

Sec. 63. ~~1. A customer may make a partial payment on his deferred deposit loan at any time without an additional charge or fee.~~

~~2. If a customer makes such a partial payment, the licensee shall give to the customer a receipt with the following information:~~

~~(a) The name and address of the licensee;~~

~~(b) The identification number assigned to the loan agreement;~~

~~(c) The date of the payment;~~

~~(d) The amount paid;~~

~~(e) An itemization of interest, charges and fees;~~

~~(f) The balance due on the loan; and~~

~~(g) If more than one deferred deposit loan was outstanding at the time the payment was made, a statement indicating to which loan the payment was applied.~~

Sec. 64. ~~1. If a customer defaults on an original deferred deposit loan, the licensee shall provide, not later than 3 business days after the date of default, written notice to the customer that the customer has the right to enter into a repayment plan. The written notice must clearly explain in English that:~~

~~(a) To enter into a repayment plan, the customer and licensee must sign a written agreement;~~

~~(b) The licensee shall not charge the customer any fees or costs to enter into the repayment plan, including, without limitation, collection fees, transaction fees, late fees and postage costs;~~

~~(c) To repay the outstanding loan, the customer:~~

~~(1) Must make all payments within 8 weeks after the date of default of the original loan; and~~

~~(2) May make three or more payments over that period; and~~

~~(d) If the customer does not repay the outstanding loan within 8 weeks after the date of default of the original loan, the licensee may:~~

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~~(1) If the customer gave to the licensee a check to initiate the deferred deposit loan, deposit the check; or~~

~~(2) If the customer gave to the licensee a written authorization for an electronic transfer of money to initiate the deferred deposit loan, execute the electronic transfer of money for the amount specified in the written authorization.~~

~~2. The written agreement establishing the repayment plan must contain the following information:~~

~~(a) The name and address of the licensee;~~

~~(b) The identification number assigned to the original loan agreement;~~

~~(c) The balance due on the outstanding loan;~~

~~(d) The interest, charges and fees accrued before the date of default;~~

~~(e) The interest rate being charged on the outstanding loan;~~

~~(f) The date each payment is due; and~~

~~(g) The date by which the customer must make the final payment to comply with paragraph (e) of subsection 1.~~

~~3. As used in this section, "business day" means any day the licensee is open for business at the location where the customer entered into the deferred deposit loan.~~

Sec. 65. ~~If a customer agrees to establish or extend the period for the repayment, renewal, refinancing or consolidation of an outstanding deferred deposit loan by using the proceeds of a new loan to pay the balance of the outstanding loan, the licensee shall not establish or extend such a period beyond 8 weeks after the date of default on the original loan.~~

Sec. 66. ~~1. If a customer defaults on a deferred deposit loan, or on any extension thereof, whichever is later, the licensee may collect only the following amounts from the customer:~~

~~(a) The principal of the loan;~~

~~(b) The interest, charges and fees accrued before the date of default;~~

~~(c) Any fees imposed pursuant to section 68 of this act; and~~

~~(d) After the date of default, a rate of interest not to exceed the prime rate at the largest bank in Nevada, as ascertained by the Commissioner, on January 1 or July 1, as the case may be, immediately preceding the date of default, plus 10 percent, upon all money from the date of default.~~

~~2. After the date of default, the licensee shall not charge the customer any other fees or costs, including, without limitation, collection fees, transaction fees, late fees and postage costs.~~

Sec. 67. ~~1. A licensee who provides a cash loan to a customer shall not charge the customer who defaults on the loan an amount of interest and other fees which exceeds the amount of the principal loaned to the customer.~~

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~~2. For the first 8 weeks of the loan, the licensee may charge the customer an interest rate agreed upon in writing by the customer and licensee.~~

~~3. After 8 weeks, the licensee shall not charge the customer:~~

~~(a) A rate of interest which exceeds the prime rate at the largest bank in Nevada, as ascertained by the Commissioner, on January 1 or July 1, as the case may be, immediately preceding the date of the loan, plus 10 percent; and~~

~~(b) Any other fees or costs, including, without limitation, collection fees, transaction fees, late fees and postage costs.~~

Sec. 68. ~~1. If a customer gives to a licensee a check or a written authorization for an electronic transfer of money to initiate a deferred deposit loan, the licensee may collect a fee of not more than $25 if the check is not paid upon presentment or the written authorization for an electronic transfer of money cannot be executed because the account of the customer:~~

~~(a) Contains insufficient funds;~~

~~(b) Contains an order to stop payment on that check or electronic transfer of money;~~

~~(c) Has been closed; or~~

~~(d) Denies payment for any other similar reason.~~

~~2. The licensee may collect only two fees of $25 each regardless of the number of times the check is presented for payment or the electronic transfer of money is attempted if the account of the customer contains insufficient funds.~~

~~3. The licensee may collect only one fee of $25 regardless of the number of times the check is presented for payment or the electronic transfer of money is attempted if the account of the customer:~~

~~(a) Contains an order to stop payment on that check or electronic transfer of money;~~

~~(b) Has been closed; or~~

~~(c) Denies payment for any other similar reason.~~

~~4. A customer is not liable for damages pursuant to NRS 41.630 or to criminal prosecution for a violation of chapter 205 of NRS unless the customer acted fraudulently or with criminal intent.~~

Sec. 69. ~~The Commissioner may establish by regulation the fees that a licensee who provides check-cashing services may impose for cashing checks.~~

Sec. 70. ~~As used in sections 70 to 77, inclusive, of this act, unless the context otherwise requires, "licensee" means a person who has been issued a license to operate a payday loan service.~~

Sec. 71. ~~A person shall not operate a payday loan service unless the person is licensed with the Commissioner pursuant to the provisions of this chapter.~~

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Sec. 72. ~~1. A customer may rescind a payday loan on or before the close of business on the next day of business at the location where the payday loan was initiated. To rescind the payday loan, the customer must deliver to the licensee:~~

~~(a) A sum of money equal to the face value of the promissory note which the customer gave to the licensee to initiate the payday loan, less any fee charged to the customer to initiate the payday loan; or~~

~~(b) The original check, if any, which the licensee gave to the customer pursuant to the payday loan. Upon receipt of the original check, the licensee shall refund any fee charged to the customer to initiate the payday loan.~~

~~2. If a customer rescinds a payday loan pursuant to this section, the licensee:~~

~~(a) Shall not charge the customer any fee for rescinding the payday loan; and~~

~~(b) Upon receipt of the sum of money or check pursuant to subsection 1, shall return to the customer:~~

~~(1) The promissory note; and~~

~~(2) A receipt showing the account paid in full.~~

Sec. 73. ~~1. A customer may pay his payday loan in full at any time, without an additional charge or fee, before the date his final payment on the loan is due as set forth in the loan agreement.~~

~~2. If a customer pays the payday loan in full, including all interest, charges and fees negotiated and agreed to by the licensee and customer, the licensee shall:~~

~~(a) Return the promissory note which the customer gave to the licensee to initiate the payday loan; and~~

~~(b) Give to the customer a receipt with the following information:~~

~~(1) The name and address of the licensee;~~

~~(2) The identification number assigned to the loan agreement;~~

~~(3) The date of the payment;~~

~~(4) The amount paid;~~

~~(5) An itemization of interest, charges and fees;~~

~~(6) A statement that the payday loan is paid in full; and~~

~~(7) If more than one payday loan was outstanding at the time the payment was made, a statement indicating to which payday loan the payment was applied.~~

Sec. 74. ~~1. A customer may make a partial payment on his payday loan at any time without a charge or fee.~~

~~2. If a customer makes such a partial payment, the licensee shall give to the customer a receipt with the following information:~~

~~(a) The name and address of the licensee;~~

~~(b) The identification number assigned to the payday loan agreement;~~

~~(c) The date of the payment;~~

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~~(d) The amount paid;~~

~~(e) An itemization of interest, charges and fees;~~

~~(f) The balance due on the payday loan; and~~

~~(g) If more than one payday loan was outstanding at the time the payment was made, a statement indicating to which loan the payment was applied.~~

Sec. 75. ~~1. If a customer defaults on an original payday loan, the licensee shall provide, not later than 3 business days after the date of default, written notice to the customer that the customer has the right to enter into a repayment plan. The written notice must clearly explain in English that:~~

~~(a) To enter into a repayment plan, the customer and licensee must sign a written agreement;~~

~~(b) The licensee shall not charge the customer any fees or costs to enter into the repayment plan, including, without limitation, collection fees, transaction fees, late fees and postage costs;~~

~~(c) To repay the outstanding loan, the customer:~~

~~(1) Must make all payments within 8 weeks after the date of default of the original loan; and~~

~~(2) May make three or more payments over that period; and~~

~~(d) If the customer does not repay the outstanding loan within 8 weeks after the date of default of the original loan, the licensee may execute the promissory note which the customer gave to the licensee to initiate the payday loan.~~

~~2. The written agreement establishing the repayment plan must contain the following information:~~

~~(a) The name and address of the licensee;~~

~~(b) The identification number assigned to the original loan agreement;~~

~~(c) The balance due on the outstanding loan;~~

~~(d) The interest, charges and fees accrued before the date of default;~~

~~(e) The interest rate being charged on the outstanding loan;~~

~~(f) The date each payment is due; and~~

~~(g) The date by which the customer must make the final payment to comply with paragraph (c) of subsection 1.~~

~~3. As used in this section, "business day" means any day the licensee is open for business at the location where the customer entered into the payday loan.~~

Sec. 76. ~~If a customer agrees to establish or extend the period for the repayment, renewal, refinancing or consolidation of an outstanding payday loan by using the proceeds of a new loan to pay the balance of the outstanding loan, the licensee shall not establish or extend such a period beyond 8 weeks after the date of default on the original loan.~~

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Sec. 77. ~~1. If a customer defaults on a payday loan, or on any extension thereof, whichever is later, the licensee may collect only the following amounts from the customer:~~

~~(a) The principal of the loan;~~

~~(b) The interest, charges and fees accrued before the date of default; and~~

~~(c) After the date of default, a rate of interest not to exceed the prime rate at the largest bank in Nevada, as ascertained by the Commissioner, on January 1 or July 1, as the case may be, immediately preceding the date of default, plus 10 percent, upon all money from the date of default.~~

~~2. After the date of default, the licensee shall not charge the customer any other fees or costs, including, without limitation, collection fees, transaction fees, late fees and postage costs.~~

Sec. 78. ~~As used in sections 78 to 86, inclusive, of this act, unless the context otherwise requires, "licensee" means a person who has been issued a license to operate a title loan service.~~

Sec. 79. ~~A person shall not operate a title loan service unless the person is licensed with the Commissioner pursuant to the provisions of this chapter.~~

Sec. 80. *A licensee who makes title loans shall not:*

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

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

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

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

Sec. 81. ~~1. A customer may rescind a title loan on or before the close of business on the next day of business at the location where the title loan was initiated. To rescind the title loan, the customer must deliver to the licensee:~~

~~(a) A sum of money equal to the value of the title loan, less any fee charged to the customer to initiate the title loan; or~~

~~(b) The original check, if any, which the licensee gave to the customer pursuant to the title loan. Upon receipt of the original check, the licensee shall refund any fee charged to the customer to initiate the title loan.~~

~~2. If a customer rescinds a title loan pursuant to this section, the licensee:~~

~~(a) Shall not charge the customer any fee for rescinding the title loan; and~~

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~~(b) Upon receipt of the sum of money or check pursuant to subsection 1, shall return to the customer:~~

~~(1) The title of the motor vehicle which the customer gave to the licensee to initiate the title loan; and~~

~~(2) A receipt showing the account paid in full.~~

Sec. 82. ~~1. A customer may pay his title loan in full at any time, without an additional charge or fee, before the date his final payment on the loan is due as set forth in the loan agreement.~~

~~2. If a customer pays the title loan in full, including all interest, charges and fees negotiated and agreed to by the licensee and customer, the licensee shall:~~

~~(a) Return the motor vehicle title which the customer gave to the licensee to initiate the title loan; and~~

~~(b) Give to the customer a receipt with the following information:~~

~~(1) The name and address of the licensee;~~

~~(2) The identification number assigned to the loan agreement;~~

~~(3) The date of the payment;~~

~~(4) The amount paid;~~

~~(5) An itemization of interest, charges and fees;~~

~~(6) A statement that the title loan is paid in full; and~~

~~(7) If more than one title loan was outstanding at the time the payment was made, a statement indicating to which title loan the payment was applied.~~

Sec. 83. ~~1. A customer may make a partial payment on his title loan at any time without a charge or fee.~~

~~2. If a customer makes such a partial payment, the licensee shall give to the customer a receipt with the following information:~~

~~(a) The name and address of the licensee;~~

~~(b) The identification number assigned to the loan agreement;~~

~~(c) The date of the payment;~~

~~(d) The amount paid;~~

~~(e) An itemization of interest, charges and fees;~~

~~(f) The balance due on the loan; and~~

~~(g) If more than one title loan was outstanding at the time the payment was made, a statement indicating to which title loan the payment was applied.~~

Sec. 84. ~~1. If a customer defaults on an original title loan, the licensee shall provide, not later than 3 business days after the date of default, written notice to the customer that the customer has the right to enter into a repayment plan. The written notice must clearly explain in English that:~~

~~(a) To enter into a repayment plan, the customer and licensee must sign a written agreement;~~

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~~(b) The licensee shall not charge the customer any fees or costs to enter into the repayment plan, including, without limitation, collection fees, transaction fees, late fees and postage costs.~~

~~(c) To repay the outstanding loan, the customer:~~

~~(1) Must make all payments within 8 weeks after the date of default of the original loan; and~~

~~(2) May make three or more payments over that period; and~~

~~(d) If the customer does not repay the outstanding loan within 8 weeks after the date of default of the original loan, the licensee may repossess and sell the motor vehicle which the customer used to secure the title loan.~~

~~3. The written agreement establishing the repayment plan must contain the following information:~~

~~(a) The name and address of the licensee;~~

~~(b) The identification number assigned to the original loan agreement;~~

~~(c) The balance due on the outstanding loan;~~

~~(d) The interest, charges and fees accrued before the date of default;~~

~~(e) The interest rate being charged on the outstanding loan;~~

~~(f) The date each payment is due; and~~

~~(g) The date by which the customer must make the final payment to comply with paragraph (c) of subsection 1.~~

~~3. As used in this section, "business day" means any day the licensee is open for business at the location where the customer entered into the title loan.~~

Sec. 85. ~~If a customer agrees to establish or extend the period for the repayment, renewal, refinancing or consolidation of an outstanding title loan by using the proceeds of a new loan to pay the balance of the outstanding loan, the licensee shall not establish or extend such a period beyond 8 weeks after the date of default on the original loan.~~

Sec. 86. *1. Except as otherwise provided in this section, if a customer defaults on a title loan, the sole remedy of the licensee who made the title loan is to commence a legal action to seek repossession and sale of the motor vehicle which the customer used to secure the title loan. The licensee may not pursue the customer personally for:*

(a) Payment of the loan; or

(b) Any deficiency after repossession and sale of the motor vehicle which the customer used to secure the title loan.

2. After repossession and sale of the motor vehicle securing the title loan, the licensee shall return to the customer any proceeds from the sale of the motor vehicle which exceed the amount owed on the title loan.

3. If a customer uses fraud to secure a title loan, the licensee may bring a civil action against the customer for any or all of the following relief:

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(a) The amount of the loan obligation, including, without limitation, the aggregate amount of the interest, charges and fees negotiated and agreed to by the licensee and customer;

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

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

4. As used in this section, "fraud" means an intentional misrepresentation, deception or concealment of a material fact known to the customer with the intent to deprive the licensee of his rights or property or to otherwise injure the licensee. The term includes giving to a licensee as security for a title loan the title to a motor vehicle which does not belong to the customer.

Sec. 86.5. NRS 598D.130 is hereby amended to read as follows:

598D.130 A mortgage, deed of trust or other instrument that encumbers home property as security for repayment of a home loan must expressly indicate in writing in *a size equal to at least 14-point bold type on the front page of* the mortgage, deed of trust or other instrument that the home loan is a home loan as defined in NRS 598D.040 *, and is subject to the provisions of § 152 of the Home Ownership and Equity Protection Act of 1994, 15 U.S.C. § 1602(aa), and the regulations adopted by the Board of Governors of the Federal Reserve System pursuant thereto, including, without limitation, 12 C.F.R. § 226.32.*

Sec. 87. NRS 232.545 is hereby amended to read as follows:

232.545 1. An Investigative Account for Financial Institutions is hereby created in the State General Fund. The Account consists of money which is:

(a) Received by the Department of Business and Industry in connection with the licensing of financial institutions and the investigation of persons associated with those institutions; and

(b) Required by law to be placed therein.

2. The Director of the Department of Business and Industry or his designee may authorize expenditures from the Investigative Account to pay the expenses incurred:

(a) In investigating applications for licensing of financial institutions and in investigating persons associated with those institutions;

(b) In conducting special investigations relating to financial institutions and persons associated with those institutions; and

(c) In connection with mergers, consolidations, conversions, receiverships and liquidations of financial institutions.

3. As used in this section, "financial institntion" means an institution for which licensing or registration is required by the provisions of titles 55 and 56 ~~[and chapters 604 and 649]~~ of NRS ~~[.]~~ *, chapter 649 of NRS and sections 2 to 86, inclusive, of this act.*

Sec. 88. NRS 363A.050 is hereby amended to read as follows:

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363A.050 1. Except as otherwise provided in subsection 2, "financial institution" means:

(a) An institution licensed, registered or otherwise authorized to do business in this State pursuant to the provisions of *title 55 or 56 of NRS or* chapter ~~[604,]~~ 645B, 645E or 649 of NRS or ~~[title 55 or 56 of NRS,]~~ *sections 2 to 86, inclusive, of this act,* or a similar institution chartered or licensed pursuant to federal law and doing business in this State;

(b) Any person primarily engaged in:

(1) The purchase, sale and brokerage of securities;

(2) Originating, underwriting and distributing issues of securities;

(3) Buying and selling commodity contracts on either a spot or future basis for the person's own account or for the account of others, if the person is a member or is associated with a member of a recognized commodity exchange;

(4) Furnishing space and other facilities to members for the purpose of buying, selling or otherwise trading in stocks, stock options, bonds or commodity contracts;

(5) Furnishing investment information and advice to others concerning securities on a contract or fee basis;

(6) Furnishing services to holders of or brokers or dealers in securities or commodities;

(7) Holding or owning the securities of banks for the sole purpose of exercising some degree of control over the activities of the banks whose securities the person holds;

(8) Holding or owning securities of companies other than banks, for the sole purpose of exercising some degree of control over the activities of the companies whose securities the person holds;

(9) Issuing shares, other than unit investment trusts and face-amount certificate companies, whose shares contain a provision requiring redemption by the company upon request of the holder of the security;

(10) Issuing shares, other than unit investment trusts and face-amount certificate companies, whose shares contain no provision requiring redemption by the company upon request by the holder of the security;

(11) Issuing unit investment trusts or face-amount certificates;

(12) The management of the money of trusts and foundations organized for religious, educational, charitable or nonprofit research purposes;

(13) The management of the money of trusts and foundations organized for purposes other than religious, educational, charitable or nonprofit research;

(14) Investing in oil and gas royalties or leases, or fractional interests therein;

(15) Owning or leasing franchises, patents and copyrights which the person in turn licenses others to use;

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(16) Closed-end investments in real estate or related mortgage assets operating in such a manner as to meet the requirements of the Real Estate Investment Trust Act of 1960, as amended;

(17) Investing; or

(18) Any combination of the activities described in this paragraph,

➥ who is doing business in this State;

(c) Any other person conducting loan or credit card processing activities in this State; and

(d) Any other bank, bank holding company, national bank, savings association, federal savings bank, trust company, credit union, building and loan association, investment company, registered broker or dealer in securities or commodities, finance company, dealer in commercial paper or other business entity engaged in the business of lending money, providing credit, securitizing receivables or fleet leasing, or any related business entity, doing business in this State.

2. The term does not include a credit union organized under the provisions of chapter 678 of NRS or the Federal Credit Union Act.

Sec. 89. NRS 645B.0119 is hereby amended to read as follows:

645B.0119 "Financial services license or registration" means any license or registration issued in this State or any other state, district or territory of the United States that authorizes the person who holds the license or registration to engage in any business or activity described in the provisions of this chapter, *title 55 or 56 of NRS or* chapter ~~[604,]~~ 645, 645A, 645C, 645E or 649 of NRS or ~~[title 55 or 56 of NRS .]~~ *sections 2 to 86, inclusive, of this act.*

Sec. 90. NRS 658.098 is hereby amended to read as follows:

658.098 1. On a quarterly or other regular basis, the Commissioner shall collect an assessment pursuant to this section from each:

(a) Check-cashing service or deferred deposit *loan* service that is supervised pursuant to ~~[chapter 604 of NRS;]~~ *sections 2 to 86, inclusive, of this act;*

(b) Collection agency that is supervised pursuant to chapter 649 of NRS;

(c) Bank that is supervised pursuant to chapters 657 to 668, inclusive, of NRS;

(d) Trust company that is supervised pursuant to chapter 669 of NRS;

(e) Development corporation that is supervised pursuant to chapter 670 of NRS;

(f) Corporation for economic revitalization and diversification that is supervised pursuant to chapter 670A of NRS;

(g) Person engaged in the business of selling or issning checks or of receiving for transmission or transmitting money or credits that is supervised pursuant to chapter 671 of NRS;

(h) Savings and loan association that is supervised pursuant to chapter 673 of NRS;

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(i) Person engaged in the business of lendiug that is supervised pursuant to chapter 675 of NRS;

(j) Person engaged in the business of debt adjusting that is supervised pursuant to chapter 676 of NRS;

(k) Thrift company that is supervised pursuant to chapter 677 of NRS; and

(l) Credit union that is supervised pursuant to chapter 678 of NRS.

2. The Commissioner shall determine the total amount of all assessments to be collected from the entities identified in subsection 1, but that amount must not exceed the amount necessary to recover the cost of legal services provided by the Attorney General to the Commissioner and to the Division of Financial Institutions. The total amount of all assessments collected must be reduced by any amounts collected by the Commissioner from an entity for the recovery of the costs of legal services provided by the Attorney General in a specific case.

3. The Commissioner shall collect from each entity identified in subsection 1 an assessment that is based on:

(a) A portion of the total amount of all assessments as determined pursuant to subsection 2, such that the assessment collected from an entity identified in subsection 1 shall bear the same relation to the total amount of all assessments as the total assets of that entity bear to the total of all assets of all entities identified in subsection 1; or

(b) Any other reasonable basis adopted by the Commissioner.

4. The assessment required by this section is in addition to any other assessment, fee or cost required by law to be paid by an entity identified in subsection 1.

5. Money collected by the Commissioner pursuant to this section must be deposited in the State Treasury pursuant to the provisions of NRS 658.091.

Sec. 91. NRS 675.040 is hereby amended to read as follows:

675.040 This chapter does not apply to:

1. A person doing business under the authority of any law of this State or of the United States relating to banks, savings banks, trust companies, savings and loan associations, credit unions, development corporations, mortgage brokers, mortgage bankers, thrift companies, pawnbrokers or insurance companies.

2. A real estate investment trust, as defined in 26 U.S.C. § 856.

3. An employee benefit plan, as defined in 29 U.S.C. § 1002(3), if the loan is made directly from money in the plan by the plan's trustee.

4. An attorney at law rendering services in the performance of his duties as an attorney at law if the loan is secured by real property.

5. A real estate broker rendering services in the performance of his duties as a real estate broker if the loan is secured by real property.

6. Except as otherwise provided in this subsection, any firm or corporation:

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(a) Whose principal purpose or activity is lending money on real property which is secured by a mortgage;

(b) Approved by the Federal National Mortgage Association as a seller or servicer; and

(c) Approved by the Department of Housing and Urban Development and the Department of Veterans Affairs.

7. A person who provides money for investment in loans secured by a lien on real property, on his own account.

8. A seller of real property who offers credit secured by a mortgage of the property sold.

9. A person holding a nonrestricted state gaming license issued pursnant to the provisions of chapter 463 of NRS.

10. A person licensed to do business pursuant to sections 2 to 86, inclusive, of this act.

Sec. 92. NRS 675.060 is hereby amended to read as follows:

675.060 1. No person may engage in the business of lending in this State without first having obtained a license from the Commissioner *pursuant to this chapter or sections 2 to 86, inclusive, of this act* for each office or other place of business at which the person engages in such business.

2. For the purpose of this section, a person engages in the business of lending in this State if he:

(a) Solicits loans in this State or makes loans to persons in this State, unless these are isolated, incidental or occasional transactions; or

(b) Is located in this State and solicits loans outside of this State or makes loans to persons located outside of this State, unless these are isolated, incidental or occasional transactions.

Sec. 93. NRS 604.010, 604.020, 604.030, 604.040, 604.050. 604.060, 604.070, 604.080, 604.090, 604.100, 604.110, 604.120, 604.130, 604.140, 604.150, 604.160, 604.162, 604.164, 604.166, 604.170, 604.180 and 604.190 are hereby repealed.

Sec. 94. If, on October 1, 2005, a person:

1. Holds a valid license or certificate of registration that was issued by the Commissioner of Financial Institutions pursuant to chapter 604 or 675 of NRS before October 1, 2005; and

2. Satisfies the definition of "licensee" as set forth in the amendatory provisions of section 12 of this act,

➥ the person shall be deemed to hold a valid license issued by the Commissioner of Financial Institutions pursuant to the amendatory provisions of sections 2 to 86, inclusive, of this act.

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LEADLINES OF REPEALED SECTIONS

604.010 Definitions.
604.020 "Cashing" defined.
604.030 "Check" defined.
604.040 "Check-cashing service" defined.
604.050 "Commissioner" defined.
604.060 "Deferred deposit" defined.
604.070 "Deferred deposit service" defined.
604.080 "Licensee" defined.
604.090 Registration required; applicability of chapter.
604.100 Application for registration: Contents; fee.
604.110 Surety bond.
604.120 Deposit of securities in lieu of surety bond.
604.130 Certificate of registration: Issuance; form and size; contents; display.
604.140 Expiration and renewal of certificate of registration.
604.150 Change of control of licensee: Notification and application to Commissioner.
604.160 Licensee to post and give written notice of fees charged; signature of customer required on notice.
604.162 Limitations on fees for check not paid upon presentment because of insufficient funds.
604.164 Licensee deferring deposits to provide each customer with written agreement; contents.
604.166 Licensee may pursue collection proceedings upon default on loan made in form of deferred deposit; charges and interest.
604.170 Regulations.
604.180 Prohibited acts by licensee relating to deferred deposit.
604.190 Commissioner to charge licensee fee for supervision, examination, audit, investigation or hearing; billing and payment; penalty for late payment; failure to pay grounds for revocation of certificate of registration.

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PROPOSED AMENDMENT TO AB384

MINUTES OF THE
SENATE COMMITTEE ON COMMERCE AND LABOR

Seventy-third Session
May 6, 2005

The Senate Committee on Commerce and Labor was called to order by Chair Randolph J. Townsend at 8:03 a.m. on Friday, May 6, 2005, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4406, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Randolph J. Townsend, Chair
Senator Warren B. Hardy II, Vice Chair
Senator Sandra J. Tiffany
Senator Joe Heck
Senator Michael Schneider
Senator Maggie Carlton
Senator John Lee

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GUEST LEGISLATORS PRESENT:

Assemblywoman Barbara E. Buckley, Assembly District No. 8
Assemblywoman Chris Giunchigliani, Assembly District No. 9
Assemblywoman Peggy Pierce, Assembly District No. 3

STAFF MEMBERS PRESENT:

Shirley Parks, Committee Secretary
Kevin Powers, Committee Counsel
Scott Young, Committee Policy Analyst
Donna Winter, Committee Secretary

OTHERS PRESENT:

Jon L. Sasser, Washoe County Senior Law Project
William R. Uffelman, Nevada Bankers Association
Thelma Clark, Nevada Silver Haired Legislative Forum

third day of the month, you can make the payment automatically on the fourth day of the month. Without the language in section 1, subsection 2 of the bill, we would not have effectively been able to do that.

SENATOR TIFFANY:
So, instead of being able to go after any account, it has to be very specific and identified.

MR. UFFELMAN:
It has to be specifically identified as opposed to saying any account.

THELMA CLARK (Nevada Silver Haired Legislative Forum):
We support A.B. 257 as amended.

ROBERT DESRUISSEAUX (Northern Nevada Center for Independent Living):
We are in support of A.B. 257, recognizing that some of the numbers Assemblywoman Pierce gave you earlier show how much seniors as well as individuals with disabilities depend on their social security payments. It is relatively easy to see what a negative impact those unexpected or unanticipated withdrawals from an account could have on an individual's life, especially the 20 percent who have social security as 100 percent of their income.

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CHAIR TOWNSEND:
I will close the hearing on A.B. 257.

SENATOR CARLTON MOVED TO DO PASS A.B. 257.

SENATOR TIFFANY SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR HARDY WAS ABSENT FOR THE VOTE.)

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CHAIR TOWNSEND:
I will open the hearing on A.B. 384.

ASSEMBLY BILL 384 (1st Reprint): Makes various changes relating to certain short-term, high-interest loans. (BDR 52-806)

ASSEMBLYWOMAN BARBARA E. BUCKLEY (Assembly District No. 8):
I have a PowerPoint presentation (Exhibit E). The impetus of this bill is the increasing number of people who seek the assistant of credit-counseling agencies and other community resources, including where I work. That is why I became so interested in this bill. Their problems include dozens of loans with triple- and quadruple-digit interest; payments that are greater than their monthly incomes; wage garnishment two, five or ten times the amount of the loan; threats of criminal prosecution and a never-ending cycle of debt. I hope the passage of A.B. 384 will create a more level and legitimate playing field for lenders, curb unscrupulous and egregious practices, provide remedies for those who have fallen victim to both licensed and unlicensed lenders and protect consumers from being trapped on a debt treadmill.

The debt treadmill begins when a customer takes out their first payday loan. A loan interest rate can range from 150 to 1,100 percent annually. It is not uncommon among those who seek assistance from credit-counseling agencies and legal-aid agencies to take out a second loan to pay the first and a third one to pay the second. I have met a dozen consumers who have taken out a dozen loans just to pay the interest on the other loans.

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It is not uncommon for consumers to eventually fall off the debt treadmill and into the wage-garnishment machine where their meager earnings are quickly siphoned off by judgments that can double and triple the amount of the loan and which completely ignore any and all payments made. Because of the volume of lawsuits in small claims courts and justice courts, many judgments are by default and are rubber-stamped by the courts which are unable to keep up regardless of the legality or amount sought. In Las Vegas, 55 percent of all the court cases involving small claims in justice court are payday loans or high-cost loans. The overall volume for 2004 was 68,000 cases. That estimate would be over 34,000 lawsuits in the year 2004 involving payday loans. The experience is borne out in Carson City and Sparks. In North Las Vegas, it is even higher where up to 75 percent of all the court cases involve high-cost loans.

ASSEMBLYWOMAN BUCKLEY:
I would like to talk about the common abuses seen in the payday-loan industry because many of these are what are addressed in the bill. First, collection of trebled damages pursuant to *Nevada Revised Statutes* (NRS) 41.620, the bad-check statute. The checks that are used in these transactions are not given

for merchandise. The checks are a security for a loan which makes the statute not applicable, but it is still being utilized anyway. Some lenders in Nevada still verbally threaten to have consumers arrested for writing the bad check that is issued in conjunction with the loan. In the deferred-deposit transaction, there is little doubt that the customer is attempting to defraud the lender. The lender knows there is no money backing the check; that is why they are loaning money on it. Despite the laws prohibiting this practice, an Attorney General's opinion and the commissioner of financial institutions, lenders continue to threaten criminal penalties and are usually awarded treble damages in all of these court cases you see in Exhibit E. A routine clause that is added to all of these cases usually states: "for maximum damages of $1,000 as provided by NRS 41.620."

Attempting to collect and collecting illegal fees is a common practice among many of the lenders in this industry. There is an example of a collection letter and a default judgment in Exhibit E.

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Another common abuse is the demand of more than one check for a single deferred-deposit loan. The payday loans require a check in conjunction with the loan transaction but some lenders will require a customer to write a post-dated check for each $100 loaned. They are able to collect more money illegally under the treble-damages statute and are able to collect $50 per check in returned-check fees. Our statute now allows $25 per returned check twice. They will get $50 for each $100 check as opposed to one set charge of $50.

Unfair loan terms are another common abuse referred to in Exhibit E. With Clark County having approximately 300 outlets, 50 pages in the telephone directory and stories in our newspapers and on television, the proliferation of payday lenders presents in our everyday life an impact on the community that cannot be ignored. Nevadans are especially vulnerable to unscrupulous tactics because so many are new to our State, and they lack the traditional safety nets in times of emergency. The industry now fills a void once filled by employers who would give payday advances. The practices this bill seeks to eliminate are hurting our communities, our senior citizens, our working poor, our military personnel and our middle-class service-industry employees.

I would like to talk about the specific provisions of A.B. 384. Because we are rewriting basically all of our high-cost payday loans, we are consolidating all of the laws into one chapter. Some of the provisions you will see in the mock-up

amendment (Exhibit F) have provisions that are currently in law but we are combining them all in one place. Sections 24, 35, 36, 43, 44, 45 and 82 are all existing provisions that are reprinted in the mock-up amendment.

In the new provisions, section 17 defines short-term loans charging more than 40 percent for less than 18 months in Exhibit F. There are three types of lenders that are captured in the bill. The first defines the deferred-deposit loan where a check is exchanged for the money. The second defines short-term lenders who may loan you money for 2 weeks or 30 days, but they do not take a check. The third defines title loans. This area of the bill defines exactly a short-term loan, because there are many installment loans and other loans governed under chapter 675 of the NRS. This just pulls out the high-cost, shorter-term loans. The other redefined provisions are in sections 23, 31, 33, 34, 35, 37, 39, 40, 42, 43, 44, 64 and 75 of the bill and are defined in Exhibit F. Section 44 sets forth the amounts the licensee may collect. This is the heart of the bill and along with the remedy section, licensees can collect principal minus payments made, pre-default finance charge, prime plus 10-percent interest after default and a returned-check fee of $25. With auto title loans, some of the provisions in the bill recognize the differences in this industry so the terms are different.

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ASSEMBLYWOMAN BUCKLEY:
My last comment is that I have worked for weeks with many in the industry who are just as anxious to clean up this industry as I am, because they see their industry name being smeared by the tactics of those who are bringing a bad name to all. I have worked with lenders, some of who do not sue people at all, have never threatened criminal prosecution and have never assessed these kinds of damages. These tactics are creating an un-level playing field for them. It is hurting their competitive position and it is hurting their efforts to try to clean up this industry. I have been working with these industry groups for about a year. In the past 3 weeks, I have spent about 50 hours with them. We have worked on words and meanings; we have drafted, we have redrafted and I have tried to accommodate every good-faith business concern with this bill. Some provisions and changes that I have made I did not like, but we were trying to get you a consensus product with the limited amount of time by working with those who are just as appalled by these abuses as I am. I have submitted a summary (Exhibit G) of the sections amended in the mock-up of A.B. 384.

SENATOR TIFFANY:
You made a comment about safety net in times of emergencies and our community does not have a safety net. How would you see that being developed in the industry?

ASSEMBLYWOMAN BUCKLEY:
I would like to see some of the more mainstream banks and credit unions going back into the micro-loan business. I would like to see more employers getting involved, perhaps through credit unions or with a bank with which they associate. Also, I want the field leveled for those who are right now in this industry who do not do any of these things that were mentioned today and who offer a good product.

SENATOR TIFFANY:
Do you want to see the banks develop some type of short-term loan?

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ASSEMBLYWOMAN BUCKLEY:
I would like to see more competition in the short-term loan industry on fair terms.

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SENATOR TIFFANY:
Do you realize this is a high-risk group with which you are dealing?

ASSEMBLYWOMAN BUCKLEY:
Yes. I would say this industry can and does use underwriting. You will hear from the good lenders today and they are doing underwriting. One of the anomalies being created in this market is because such a large segment of the population are using the courts to add on these illegal damages, they want people to default because they are making more money when someone defaults than when they pay their loans.

SENATOR TIFFANY:
Would you like to see the short-term loan business expand a little bit? The examples you gave in your presentation that I could see were both the bad-actor lenders and the bad actors who do not pay back their debts. I saw the extreme on both sides of the examples you presented.

ASSEMBLYWOMAN BUCKLEY:
The people we see want to pay back the debt, and they do not want to file for bankruptcy. They will say they borrowed $300 and paid back $1,200. They have three other loans pending and cannot make the payments to every single one of them with the add-on charges. That is what we are trying to get to here. If you can stop the abusive pile-on charges, then people will be able to pay their debts and will be able to avoid lawsuits.

SENATOR TIFFANY:
If this was a comfortable business to be in, the banks would be in it, but this is a high-risk business. What are the existing laws today that take into consideration some of your examples?

ASSEMBLYWOMAN BUCKLEY:
Deferred-deposit loans are governed by chapter 604 of the NRS and the protections were added to our statutes in A.B. No. 431 of the 70th Session. It has a prohibitive-practice section which says you cannot threaten criminal prosecution and you cannot charge any fees that a lender cannot generally collect. Also, upon default you get prime plus 10 percent. What is not in this bill is the fair debt-collection practice, military protections, more specific protections like making up imaginary fees or adding garnishment fees of $1,200, and there is no remedy section. There is no enforcement when a bad actor does these things. These are all in chapter 604 of the NRS. Chapter 675 of the NRS is the general installment-loan chapter so any lender falls under that and there are no specific protections for high-cost, short-turnaround loans at all. The title-pawn industry provisions on the last slide of Exhibit E are all new.

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SENATOR TIFFANY:
Section 44 states what a loan and default look like, the type of payback and what happens if it cannot be paid back. Is that not more like what you would want to have in the micro-loan business if it were expanded, as opposed to changing what is happening today with the deferred-deposit, short-term lenders and the title loans? Are you redefining an industry that you say is lacking?

ASSEMBLYWOMAN BUCKLEY:
Clearly, we are redefining an industry and the abuses have to stop. You can get your principal back. If you recall in the bill, there is no cap on interest rates. If someone wants to borrow $200 at a 1,000 percent interest that is still allowed, the licensee gets your principal and your agreed-upon contractual rate of

interest, but when that person defaults and cannot pay it back, that is when the licensee receives prime plus 10 percent. It is redefining the industry and the abuses will stop if the bill passes but all the folks in the room do this anyway. They want the customer to pay back the loan. They are not seeking to receive $3,900 on a $200 loan. They want to get their money back. They want to get back a reasonable rate of interest and their cost. They are not trying to get people on a debt treadmill. That is where I see the difference in the bill.

SENATOR TIFFANY:
Section 44 of A.B. 384 sets a limit at which you could have these kinds of contracts, but it also reidentifies those three categories we talked about. It looks like you are creating a micro-loan business the way you would like to see it happen.

ASSEMBLYWOMAN BUCKLEY:
We are regulating a micro-loan business that already exists.

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SENATOR TIFFANY:
What are the damages against licensees today that are different than the damages in sections 73 and 74 of the bill?

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ASSEMBLYWOMAN BUCKLEY:
The difference is the statutory damages of $1,000 per violation.

SENATOR TIFFANY:
What is it today?

ASSEMBLYWOMAN BUCKLEY:
There is not one.

SENATOR TIFFANY:
Does the industry agree that this is not a problem?

ASSEMBLYWOMAN BUCKLEY:
The industry would like the $1,000 more narrowly defined to certain violations. We already have laws in the book that are not working because there is no penalty for bad behavior. This amount is similar to what we utilize in other statutes. We use it in chapter 118A of the NRS, if the landlord shuts off your

power willfully, tenants are entitled to $1,000 in statutory damages. This is the statutory penalty that we usually utilize to stop egregious behavior.

SENATOR TIFFANY:
Where would you say the responsibility lies on the person who defaults on the loan?

ASSEMBLYWOMAN BUCKLEY:
The person who signs the contract is legally obligated to pay back the loan. If you do not pay it back, you may be sued.

SENATOR LEE:
Is there a cosigner provision for an 18-year-old to get a loan? Are pawn shops that now advertise non-collateral loans covered under this bill also?

ASSEMBLYWOMAN BUCKLEY:
There is no cosigner provision for an 18-year-old to get a loan. Pawn-shop activity and their loans are regulated by the pawn chapter that has a 10-percent interest cap. Pawn shops can get another license, either a payday-loan license or a license under chapter 675 of the NRS to do short-term 2-week or 30-day loans. There is no prohibition against a pawn shop from getting a dual license to offer both products.

SENATOR LEE:
How are these cases mediated for payoff in justice court?

ASSEMBLYWOMAN BUCKLEY:
A suit is filed, they are served and then a majority of the people will default. Most people who get sued acknowledge they owe the money so there is no point in contesting. They do not realize that the judgment is not going to be for $200 or $300. It will be at least quadruple the amount. They default then suffer the garnishment and it goes on to the examples you saw on the PowerPoint in Exhibit E. For those people who do show up in court, usually the judge tells the attorney there is a consumer present and together they should go out in the hallway and see if something can be worked out. The attorney will subtract about $200 from the amount owed, they will come up with a plan and go back into court and the judge will issue that amount.

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SENATOR LEE:
We talked about underwriting happening at these companies. If a person borrows from one organization and cannot make payments and then borrows from another organization to pay the previous organization, are there cases of this happening in keeping these treadmills going?

ASSEMBLYWOMAN BUCKLEY:
It depends on the lender. Mark Thomson with Moneytree and Jim Marchesi with Check City, who I have been working with the past year, will check. If they see that pattern, they will not loan the money. The lenders that want to go to the garnishment mill do not care. They see the borrower's paycheck and they see that they are working. Even if the person has three payday loans by the time they get to them, they will have to stand fourth in line. The court will put through whoever gets the garnishment first. If the person is working, the lender knows they will get 25 percent of that person's paycheck and they will definitely loan them the money. The lender makes most of their profit from the abusive add-on fees.

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SENATOR SCHNEIDER:
I heard the word micro-loan business but this is not. This is big business. These businesses are all over the place.

ASSEMBLYWOMAN BUCKLEY:
There are more payday-loan outlets in America than there are McDonald's.

SENATOR SCHNEIDER:
The consumers are saying that there is a demand for these payday-loan businesses. Have you heard from any attorneys that are going to court? The attorneys going to court representing these companies are manipulating the system.

ASSEMBLYWOMAN BUCKLEY:
The attorneys who do this are liable as debt collectors under the federal Fair Debt Collection Practices Act. The attorneys themselves could be liable for participating in these types of activities. I hope they will stop and if they do not stop, I hope they will be sued.

SENATOR SCHNEIDER:
I am on the board of a credit union and we are trying to do a check-cashing business. Our goal was to do the check cashing and then convert them to regular credit union members. We are not that good at the check-cashing business. You have to wear two different hats. If you are a banker or credit union, you cannot do a check-cashing business. It just does not fit under what banks and credit unions do. There is a big demand. I suggested to our board that this is a business we should start. For the Hispanic community, where they do not trust conventional-type banking institutions, we hired Hispanic clerks to speak with the people and we were just not very good at it. I do not know how we can change this industry. Your attempt is good. Do you have the support on these amendments from the good actors?

ASSEMBLYWOMAN BUCKLEY:
Yes, I do have their support on these amendments. I have been working with a lot of folks a long time as well as lobbyists who just started participating in this the past six days.

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CHAIR TOWNSEND:
My question has to do with the court system. On three of your pages, you identified interest rates signed by the consumer and signed by the lender that were inaccurate. Does the court have any authority to say that document is inaccurate therefore this contract is void. What is a reasonable rate?

ASSEMBLYWOMAN BUCKLEY:
If the interest rate is off by that much, there is a defense to that loan under the federal Truth in Lending Act (TILA). The courts react to what is before them. If you file a complaint to collect on a loan with the TILA violations, it is up to the consumer to answer that complaint and to allege that the sum should not be enforceable because of violations of the federal TILA. The consumer does not know there is a violation of the TILA. The average consumer has no way of identifying the TILA act violations. They do not know they even exist.

CHAIR TOWNSEND:
Unless they had a private attorney, which obviously they cannot afford or they would not be in this position, or unless they were educated enough to try to find one of the organizations in the State like yours, they would really be without that defense.

ASSEMBLYWOMAN BUCKLEY:
Unless they are lucky enough to qualify for legal services and the legal-services entity has the resources to help.

CHAIR TOWNSEND:
I am not saying the bill should not be passed because of my question. You know when you go to court or get into trouble, you want as many arrows in your quiver as you can get. When you are charging 1,000 percent interest and not putting the accurate number down, that is doubly egregious. Is there any way to get into these communities that are using these services to explain to them to think through that when they see 1,000 percent, that might not be in their best interest?

ASSEMBLYWOMAN BUCKLEY:
Michele Johnson with Consumer Credit Counseling and Gail Burks with Nevada Fair Housing and Lending Service in Las Vegas run classes on financial counseling. They are trying to help people. My own opinion is that it is tough. If a person's truck breaks down, it does not matter whether it is 500 or 1,000 percent interest rates. They choose more on location. They do not shop for terms. They are desperate. They have to get to work.

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SENATOR CARLTON:
If you would share the discussion that you had, I like the language provision that you have that if it is negotiated in Spanish, the contract would be in Spanish. If you would share that with me when the other people come up and talk about the Spanish documents, I can understand both sides.

ASSEMBLYWOMAN BUCKLEY:
We passed that last Session with regard to car contracts. It is a good consumer-protection measure. All the folks with whom I negotiated do it already.

GAIL BURKS (President and Chief Executive Officer, Nevada Fair Housing Center, Incorporated):
We are in support of A.B. 384. We conducted a study on high interest-rate loans in Nevada. A copy of the report (Exhibit H) has been given to the Committee. We looked at four basic areas: geographic distribution, market penetration, product base and collection practices.

The geographic distribution for these entities is centered in lower-income communities. Since 1998, the industry has grown from 16 branches to 381 branches in 2004. That is a 2,281-percent increase. There are 1.9 branches per 10,000 people in census tracts where people earn less than $25,000 per year. This is higher than five of our neighboring states: Arizona, California, Idaho, Oregon and Utah. It is also higher than Colorado, Illinois or Indiana. The stores are concentrated in census tracts where the minority population ranges from 40 to 49 percent.

In terms of market product, our research involved a direct survey of 105 locations; 39 percent fully answered our questions about their products, 22 percent responded partially and 34 percent refused to respond about the products that they offered to consumers. Only 10 percent of the respondents provided check-cashing services only. The finance charges per $100 borrowed ranged from 182.5 percent annual percentage rate (APR) upward to 1,303 percent APR. The median finance charge was 443.21 percent and all locations permitted rollovers.

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Collection practices were the most interesting. The method used to examine this and get specific research involved justice courts selected at random to pull files for us. They pulled files for eight lenders; four of those lenders offered short-term high-interest loans, and the other four offered the check-cashing services. We took a look at the original loan amount, what the lender was asking for in the lawsuit and the outcome of the case of each file. We examined 78 cases. We wanted to determine the cost to the borrower. We compared the original loan amount to what was actually collected by the lender. Typical collection was five times more than the original loan amount and the highest was six times the loan amount.

These companies are in this business because banks will not get into it. Under community reinvestment, banks have attempted to do more. Since bank modernization, they have gotten bigger and do less but they are trying. The bankers would tell you the working families and people served are not high-risk clients.

The second point is that while education is important, I think like other predatory lending issues, we cannot put this all on the victim. If you have a good con person, it does not matter how educated you are.