

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.

Electronically Filed
May 20 2020 10:42 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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 2
PAGES 251-500**

DANIEL F. POLSENBERG (SBN 2376)
JOEL D. HENRIOD (SBN 8492)
DALE KOTCHKA-ALANES (SBN 13,168)
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
(702) 949-8200
DPolsenberg@LRRC.com
JHenriod@LRRC.com
MKotchkaAlanes@LRRC.com

Attorneys for Respondent

TABLE OF CONTENTS TO RULE 28(f) PAMPHLET

Tab	Document	Date	Vol.	Pages
1	Legislative History for Assembly Bill 384, with Full Assembly Committee Minutes from the April 6, 2005, Meeting Discussing Related Assembly Bill 340	2005	1 2 3	1–250 251–500 501–688
2	Legislative History for Assembly Bills 163, 222, and 515, and Senate Bill 17	2017	3 4 5	689–750 751–1000 1001–1098

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:

Aaron D. Ford
Attorney General
David J. Pope
Sr. Deputy Attorney General
Vivienne Rakowsky
Deputy Attorney General
555 E. Washington Ave., Suite 3900
Las Vegas, Nevada 89101
DPope@AG.NV.gov
VRakowsky@AG.NV.gov

Attorneys for Appellant

/s/ Jessie M. Helm
An Employee of Lewis Roca Rothgerber Christie LLP

Senate Committee on Commerce and Labor
May 6, 2005
Page 18

MICHELE JOHNSON (President and Chief Executive Officer, Consumer Credit Counseling Service):
I have written testimony (Exhibit I).

CHAIR TOWNSEND:

The real-life examples and the effort you are making to help people is something that needs to be shared with young people before they leave high school.

MARK THOMSON (Director of Government Relations, Community Financial Services Association; Moneytree Incorporated):

We support much of what is in the bill today. I have conceptual agreement on many of the issues. Many of the changes to Nevada law will bring it in line with laws in many other states. The current version of Exhibit F that you have before you we have had very little time to review. We would need some time to review the new language and we may still have one or two small issues but we are committed to working with everyone to move this bill forward. Community Financial Services Association (CFSA) recognizes this product is in a process of evolution. Hearings and processes such as this are part of that evolutionary process.

I am a former regulator for the state of Washington. I spent 14 years regulating non-depository lenders at work throughout the 1990s with the legislature in the state of Washington to address many of these types of issues. I would get calls from the media throughout the 1990s about the rapid growth of this industry in our state. I could not figure out where the demand was coming from for this product. The demand had always been there and this size of loan had historically been made by consumer finance companies. These companies would take a lien on property or furniture in the house. Throughout the 1960s and 1970s, if someone needed this kind of a loan, that is where they would go. What happened through time as these companies' cost rose, it became more and more difficult for them to make those loans and still make a profit. By the end of 1970s and early 1980s when inflation had risen and interest rates had risen, they could no longer make a \$300 loan under the interest-rate caps they operated under in most states and still make a profit.

These companies in large part turned to making home-equity loans, refinances and they entered the real estate market. Therefore, there was a market niche left open. It is a market niche where you are making a very small loan and where the cost of making that loan is very high relative to the amount of the

Senate Committee on Commerce and Labor
May 6, 2005
Page 19

loan. Everything about this industry evolves from the economics of that equation. The facts are that you are making a small loan and you need to limit the cost associated with each loan and the fee has to be high enough to cover those cost to make it economically viable.

In most of the states where we operate, credit unions are trying to get into this business. They find it very difficult to make it economically viable. The more underwriting, the more disclosure and the more process there is in making the loan, the higher the cost. Banks and credit unions are in this product. Their product is called overdraft protection. It is a very different animal, legally. Under truth and lending, it is not an extension of credit and does not need to be disclosed as such. The product would not work if it was treated as an extension of credit under truth and lending. If you calculated an APR on an overdraft protection, it would be very similar to what a deferred-deposit lender charges. It is very costly to provide that credit relative to the size of the loan.

CHAIR TOWNSEND:

The only issue there is that you need to have a checking account before you need overdraft protection.

MR. THOMSON:

That is correct, and in order to get a deferred deposit loan you have to have a checking account. It is a very similar product, economically.

CHAIR TOWNSEND:

Are you trying to tell me that you have not seen the bill and you cannot comment on it? If so, how long will it take you to look at the bill?

MR. THOMSON:

We support most of the bill but need to look at certain provisions. We can look over the bill this weekend. In section 74 of the bill, it allows consumers to bring action against us and get statutory and punitive damages. Our main concern with statutory and punitive damages is that they do not become a magnet for class actions for technical violations of the statute that do not cause actual damages to the consumers. The more we can narrow that down to violations of licensing provisions and violations of the new section 44, limitations on the interest that can be collected on the back end, the better.

Senate Committee on Commerce and Labor
May 6, 2005
Page 20

SENATOR TIFFANY:

In section 44 of the bill, it is reshaping the way you can collect the debt, the interest on the debt and the time on the debt and we do that statutorily. You made the comment that this is a very short-term loan with a high cost and a high-risk pool to whom you are loaning. Does section 44 regulate satisfactorily so you can stay in business and make a profit and still offer this service?

MR. THOMSON:

Moneytree is one of the companies that does not sue and it states in our loan agreement that we will not take civil action. It will not impact us but there are other good actors that have used that authority and I will pass your question to Jim Marchesi.

JIM MARCHESI (President/Chief Executive Officer, Nevada Financial Service Association; President/Chief Executive Officer, Check City):

As the bill is proposed, we have a conceptual agreement on what we could and could not live with going into it. Section 44, without having had time to look through it, I think is okay. We still have some very legitimate concerns about sections 42 and 74 of the bill, but we can continue through and work on it and work it out. I hope I answered your question.

SENATOR TIFFANY:

In order for me to vote on the bill, I would have to make sure the good actors can still stay in business. If that cuts out the bad guys the better it is, so that is what I wanted to hear from you. It sounds like you want sections 74 and 75, the penalty part, to be better defined.

MR. MARCHESI:

Yes, and some additional work on section 42 of the bill.

SENATOR TIFFANY:

What is section 42 of the bill?

MR. MARCHESI:

Section 42 of A.B. 384 is a repayment plan. When a customer now goes into default, we will work with that customer for a long time to try to get them to make the payment. For 30 to 60 days, we find operators will try to encourage the customer to repay their note. At that point you make a decision. Some

Senate Committee on Commerce and Labor
May 6, 2005
Page 21

companies will continue to try to collect and others will use the court system to recoup the money.

The examples you saw today are from the bad actors. When you sit back and look at the industry, there are a few companies that have a very large portion of the market who operate 100 percent within the statute. You also have the small segment of the industry that is shared among a bunch of other players and in that bunch inevitably there will be somebody who does not live by the existing statute or is going to find the gray areas and work down the gray areas. Those practices have to stop.

SENATOR TIFFANY:

Would you like to see further movement on section 42 of the bill?

MR. MARCHESI:

Absolutely

SENATOR LEE:

I would like to ask about the underwriting process for mainstream lenders.

MR. MARCHESI:

Underwriting in the industry is very broad and different companies conduct underwriting in vastly different ways. The high underwriting company can do things from pulling credit reports to pulling tele-track. This gives you a read on the customer's repayment behavior. Those who use this service will take the information they get and use it in the decision about whether they should or should not loan.

The other end of the spectrum is that you look to see if a person has a bank account and a job and then do your underwriting through confirming other items that are on their application. The breadth of underwriting can really go quite some way. In the free market system, each operator makes that decision on their own. If you say the limited underwriter is doing the limited underwriting so he can use the back end as an income source, A.B. 384 takes care of that.

You brought up the consumer with 16 loans. The consumer has responsibility in determining what credit they use and where they use it. Our task force became an education to both sides. We helped the people who were on the task force and taught them about the business; likewise, they taught us a lot about their

Senate Committee on Commerce and Labor
May 6, 2005
Page 22

concerns. Overall, the matrix of people who use the product use it responsibly. I understand the people who Assemblywoman Buckley sees in her real-world job. We want to encourage consumer responsibility. A lot of this bill is to try to get these best practices in the statute.

SENATOR LEE:

I would agree that your demographics are typically a guy in his mid-30s with a wife and child.

MR. MARCHESI:

Our customers are middle income, well educated and homeowners who are hard-working Americans. It is not the other extreme who get painted in the media a lot, the poorest of the poor, who are using the product. Looking at it from a business standpoint, would it make sense for us to loan money to people who could not legitimately have a chance to pay us back? The answer is no.

NATASHA FOOMAN (Advance America):

I want to state for the record that we really appreciate all the effort and time Assemblywoman Buckley and her staff have put into this bill in bringing the industry and consumer groups together. My colleagues and I believe in responsible lending and that is why we are here at the table today in support of this bill conceptually.

SENATOR TIFFANY:

Are you aware of anybody in the industry who provides training to high school or college students?

MR. THOMSON:

Community Financial Services Association (CFSA) has a financial literacy program called CFSA-access that is made available to whomever would like it.

SENATOR TIFFANY:

Do you reach out to do some education?

MR. THOMSON:

Yes

Senate Committee on Commerce and Labor
May 6, 2005
Page 23

SENATOR TIFFANY:

I believe Wells Fargo Bank offers education, too. I know we had addressed this, Mr. Chair, because you were concerned whether there was curriculum available.

CHAIR TOWNSEND:

Maybe we need a coordination of those efforts or a real focused opportunity we can work on over the next few years to make this education available. I used to teach a Junior Achievement class in junior high school. It was one of the most enjoyable things I did. I would leave the class after teaching so excited because the kids just soak up this information. I was thinking if the students are so excited about the class, why is Junior Achievement teaching these classes instead of the school system.

MIKE REED (Vice President, General Counsel, Loan Max):

We did not know about A.B. 384 until a few days before it was scheduled for a floor vote in the Assembly. We are appreciative of the Assembly majority leader's willingness to work with us to address some of our concerns. Our company strongly supports reasonable regulation. Some concepts related to title loans were worked out between some members of the title-loan industry and the Assembly majority leader's staff. I have not had an opportunity to review that language yet but my company fully supports the concepts as they were presented to me. We look forward to working with this Committee and the Assembly majority leader to finalize A.B. 384, and we will be back on Monday.

ROBERT REICH (Director, Consumer Lending Alliance National Organization of Affiliated Title Lenders):

Our association and member companies deeply respect, want and need regulated environments. This bill goes a long way in providing a structure that really promotes a set of best practices which most title lenders in the State follow. All title lenders in the State would have a good road map and not have some of the fringe, fly-by-night operators. We agree conceptually with A.B. 384 as well.

Unlike payday loans, there can be no concept of multiple loans to a title-loan customer. There can be only one lien on a vehicle so someone cannot take that vehicle around to multiple lenders and have 18 to 20 different loans in those extreme cases.

Senate Committee on Commerce and Labor
May 6, 2005
Page 24

We have just seen the language when it was handed out to Committee. We need some time to review it over the weekend. The last set of discussion happened yesterday. We just want to make sure that there are no unintended consequences in the language, and we will be studying the bill over the weekend to ensure that such is not the case.

CHAIR TOWNSEND:

Assemblywoman Smith asked me to put written testimony from Robbin Novello (Exhibit J) in the record. I will read from Exhibit J: "After some time, I received notice I was being taken to court, but even though the loan was obtained at a Sun Valley Loan store, I was taken to court in Las Vegas. Naturally, I could not take time off of work to go in the middle of the week, so of course, was 'defaulted'." Assemblywoman Buckley, is there a section in the bill that I possibly missed that deals with this type of situation?

ASSEMBLYWOMAN BUCKLEY:

I do not think that is in the bill. It would be in the prohibitive-practices section if it was and we can certainly add that.

CHAIR TOWNSEND:

I am not trying to put an amendment on this bill but I want it to be considered for Assemblywoman Smith's constituent.

MR. UFFELMAN:

I want to answer a couple of questions that you had asked unrelated to the bill. Senate Bill (S.B.) 459, which the Senate passed on April 25, 2005, and is now over in the Assembly Committee on Education, specifically deals with financial education in the school system in Nevada. The Nevada Bankers Association provides free of charge to all Nevada teachers who request it a program called "Banking Is." As mentioned, Wells Fargo Bank has a program and several organizations have free curriculum on financial responsibility. The month of April was financial literacy month and April 26 was teach children to save day. There is a wide variety of programs available to educators to teach the young about finance.

SENATE BILL 459 (1st Reprint): Requires instruction in financial responsibility in public high schools. (BDR 34-1093)

Senate Committee on Commerce and Labor
May 6, 2005
Page 25

The Nevada Bankers Association appreciates Assemblywoman Buckley's actions on this bill. We are 99.99 percent ready with the bill. We have one little addition that we just presented to her in the last couple of minutes because we saw the change this morning. I have sent to Kevin Powers and Scott Young a URL for the Federal Deposit Insurance Corporation (FDIC) Financial Institution Letter 1405A issued on March 1, 2005. It gives you all the details if a bank is going to do payday lending with restrictions and requirements related to it. This also applies to the credit unions. It is a tough business; it is sub-prime lending. It is an endless treadmill from the bank's side. Some of the banks that have direct deposit with customers do allow advances against the direct deposit because they know the money is coming.

JOSEPH W. BROWN (Security Finance Company):

We are regulated by chapter 675 of the NRS as an installment-loan lender. We support the bill as amended. It needs a little bit of fine-tuning and I will allow Mr. Holt to explain that.

PHILLIP HOLT (Vice President of Government Relations, Security Financial of Spartanburg, South Carolina):

Our business practice is very similar to those that have been outlined. However, as an installment lender, we do not do payday loans so we do not take post-dated checks. Some of the issues we have regarding the simple payback process and the way it is being lumped into one sum as some of the examples were laid out on the overhead today. The information (Exhibit K) I will be handing out to you today shows we are members of the American Financial Services Association which is one of the largest trade groups for lenders in the State. We are large supporters of financial literacy but the difficulty is you can only do so much. The school districts have to be willing to find time in their curriculum to do these free educational programs for the junior high and high school levels. As Mr. Brown indicated, we are very close to reaching a complete agreement with the bill and look forward to working with you.

SANDRA J. PERRY (Cash Express/Money Express Catalog Sales, Incorporated):

I am not here today to address some of the concerns that the major players within the industry have already adequately addressed. I just want to address concerns that I have as a small-business owner. I have concerns (Exhibit L) on the bill. Section 8; section 23; section 42, subsection 2, paragraph (a) and section 42, subsection 3, paragraph (a) of A.B. 384 concern default. I know the Legislators are trying to help the consumer and make it easier for all of us to

Senate Committee on Commerce and Labor
May 6, 2005
Page 26

operate within the framework of the law. I do see a problem with this. The problem is addressed in Exhibit L. I have a question, how are we supposed to operate within this framework and still make a profit? We now work with our customers on an individual basis. We try to do whatever they want to do and make it work for both parties.

In the example I have given in Exhibit L, under the proposed bill as written, we would be forced to deposit the borrower's check on Saturday. This would be in the hopes of avoiding having our money out for a term of over 18 weeks. The 18 weeks would include 4 months and 15 days from date of notice of default. There is a strong possibility that by depositing that person's check on Saturday as A.B. 384 proposes, our check or others that this person has written will be returned because of non-sufficient funds (NSF). In the event our check is returned, an additional \$25 will be added to their fees. At this point the borrower may be faced with numerous returned bank charges that could possibly add up to \$175 or more for a small \$100 loan. On a \$100 loan, it would cost them 4 cents a day for 8 weeks if we charged interest. I ask you as a business owner trying to make a profit, what would you do?

I do have a suggestion for a solution. I think the period of default should not be on the day that it is due. There should be a period of at least 15 days in which to allow us to confer with our customer to possibly make an extension or work something out. We should be allowed to charge interest during this period of time. This is my request in regard to that portion of the bill.

CHAIR TOWNSEND:

Are you looking at the printed bill or do you have a copy of the changes to the bill that we faxed or e-mailed to you?

MS. PERRY:

I pulled the amended bill off the Internet.

CHAIR TOWNSEND:

There is a mock-up amended version. When I look at your section 8, it may not be the same one. What is the next section you are on?

Senate Committee on Commerce and Labor
May 6, 2005
Page 27

MS. PERRY:

The next section I would like to address is section 39. My question and solution are discussed in Exhibit L.

CHAIR TOWNSEND:

You were making reference to section 39 of the bill?

MS. PERRY:

Yes.

CHAIR TOWNSEND:

I have written testimony (Exhibit M) from D.C. Younger who could not be present today.

I will close the hearing on A.B. 384 and I will open the hearing on A.B. 340.

ASSEMBLY BILL 340 (1st Reprint): Revises provisions relating to certain short-term, high interest loans. (BDR 52-126)

ASSEMBLYWOMAN CHRIS GIUNCHIGLIANI (Assembly District No. 9):

My student intern, Chris Dorman, has been working on this legislation and has worked through the changes as well as the original presentation.

CHRIS DORMAN (Intern to Assemblywoman Giunchigliani):

The bill has been reduced significantly from its original form. It addresses only two issues regarding the marginal-lending industry. It would require counties, cities and the like to set up zoning laws regarding payday-loan places and title-loan businesses. I have a proposed amendment to A.B. 340 (Exhibit N). These restrictions would not apply ideally to counties with populations under 100,000 people. If local government has already adopted regulations regarding the zoning for payday-loan businesses or title-loan businesses, it would not apply either. The city of Las Vegas, North Las Vegas and Clark County have already adopted zoning laws specifically regarding the payday-loan industry.

The second issue of the act deals with refund anticipation loans (RALs). I have handed out some articles (Exhibit O) regarding this issue. This is just a first step in what the State should do to regulate this industry. The RALs are tax preparation services like H&R Block that are willing to provide an advance to a consumer on what they believe their tax refund will be based on the work they

Senate Committee on Commerce and Labor
May 6, 2005
Page 31

provisions of the chapter within that common, standard dictionary definition.

SENATOR HECK:

If we are going to use the common, customary definition, what was your intent? Is this like an automated teller machine (ATM) type device?

ASSEMBLYWOMAN GIUNCHIGLIANI:

Yes.

CHAIR TOWNSEND:

When I first read this, I thought about a kiosk being a small structure in which a salesperson stands similar to the ones they put in center of malls down the walkways.

ASSEMBLYWOMAN GIUNCHIGLIANI:

There may be a different term that we would prefer to use.

MR. POWERS:

Mr. Chairman, I might add as well that ... A.B. 340 prohibits the Commissioner from issuing a license for a person to do business at a kiosk, whereas A.B. 384 does not have that prohibition. In fact, A.B. 384 permits that activity as long as it falls under that new regulatory chapter. So, there is a conflict between the two bills.

MS. PERRY:

I was a little unsure of what the meaning of kiosk was referring to within our industry. In an effort to try to protect my branch stores and the income I receive from those stores, I might mention my branch in Henderson is inside a Smith's store and it is with a PostNet Express. All of our business is handled through our main branch where we do all the contracts and approvals and do all the contacts with the customer so the store is utilized as simply a means to give out money and take in money. Everything else is provided from the main store by either fax or e-mail. My written concerns are stated in my handout (Exhibit P).

CHAIR TOWNSEND:

What does your store look like?

Senate Committee on Commerce and Labor
May 6, 2005
Page 32

MS. PERRY:

The store is as you would see PostNet Express within a Smith's grocery. There is a counter and it is a space that is utilized for two different services. That would be express mailing and also the service of my business.

CHAIR TOWNSEND:

We would have to ask the sponsor of the bill if that is the type of thing she was including.

ASSEMBLYWOMAN GIUNCHIGLIANI:

No, it would not be.

SENATOR HARDY:

We could probably statutorily define that because I know some of the small stores like Sprint and AT&T in the malls, if you look them up in the Internet, are called kiosk stores. If we contemplate it being something other than that, we ought to define it.

CHAIR TOWNSEND:

I believe Assemblywoman Giunchigliani is trying to establish someone with substance, someone who is going to be there tomorrow, a month from now or a year from now. Longevity is what you are looking for so if a customer has a problem they have an appropriate place to go.

I have written testimony from people who could not attend today's meeting. The written testimony is from Ronald L. Barrett (Exhibit Q), Julie Cairns (Exhibit R) and Ken Indra (Exhibit S). There are also concerns from D.C. Younger on this bill in Exhibit M.

MR. MARCHESI:

The bill has three primary sections. The first is the 800 number; the industry is in support of the 800 number. The second issue is the requirement for the municipalities to form some restrictions or guidelines on how the industry ought to behave. We have worked very closely with Assemblywoman Giunchigliani on the bill we believe that should be left in the hands of the municipalities and not be dictated by the state government. Our view is that it would be an unnecessary provision at this point and allow them to do that. The third issue I want to talk about is the RALs. There are a tremendous number of federal regulations that are required anytime that you do one of those loans. In the

Senate Committee on Commerce and Labor
May 6, 2005
Page 33

issue of posting the rates, there are a vast number of different ways that those products are done and I do not think there would be any objections.

I will not go into a defense of H&R Block, because I do not know anything about their lawsuits. In general, there are already a lot of federal regulations in the area of RALs.

CHAIR TOWNSEND:

I never thought about RALs in terms of what we talked about in the previous bill.

MR. MARCHESI:

It is a completely different product. My company does tax preparation; we do not do RALs. One of the things done at the end is to offer the customer an option. Do you want us to submit your return by mail, electronically, or do you want to take an advance on the return. It is not a product that we do because it is a federal product. We are just an agent of a company, Bank One, that does RALs.

CHAIR TOWNSEND:

Are you going to start offering credit cards, too?

MR. MARCHESI:

Yes, I think with the brick and mortar stores there are a lot of financial services that really make sense for those of us who have brick and mortar stores. An answer to your Internet question, yes, there are people who provide RALs via the Internet. I know they are offered because at the end of the Turbo Tax program there are options that you can select.

MR. UFFELMAN:

A kiosk is defined as a small area set off by walls for a special use.

You have recognized the need to integrate A.B. 340 with A.B. 384. We would like to urge at the minimum that the Division of Financial Institutions, Department of Business and Industry, look for guidance in the words of A.B. 384 when it comes to the definition of payday loans.

Senate Committee on Commerce and Labor
May 6, 2005
Page 34

MR. POWERS:

Mr. Chairman, to follow up on that, there are several sections in A.B. 340 that would need to be altered or incorporated in the A.B. 384 if we are going to process this bill. The reason being is that A.B. 384 eliminates chapter 604 of NRS and then payday loans are all put in the new chapter in A.B. 384; so are the provisions in 675 dealing with payday loans in A.B. 340.

CHAIR TOWNSEND:

If the Committee is interested in any provisions of A.B. 340, maybe, they should go appropriately into the other one just because it has been restructured.

MR. POWERS:

Yes, Mr. Chairman, in my review of A.B. 340 is that sections 3 and 4 of the bill dealing with zoning could stand on their own and be unconnected completely with A.B. 384. They refer to check-cashing services or deferred-deposit services pursuant to chapter 604 of NRS but that sort of conflict can be resolved at the end of the Session. Then, section 7 dealing with the tax-refund anticipation loans, that could stand on its own in chapter 675 of NRS.

MR. MARCHESI:

One other thing for the Committee to consider is S.B. 431, which is Commissioner Tidd's bill, which also will require some integration into these other two bills.

SENATE BILL 431 (1st Reprint): Makes various changes to provisions governing financial institutions and related business entities. (BDR 55-361)

MR. POWERS:

That is correct, Mr. Chairman. That bill also contains provisions dealing with chapters 604 and 675 of NRS. That is in the Assembly side so they would have to consider that either during their deliberations in commerce and labor or when the bills are enrolled resolving them at the end of Session.

Senate Committee on Commerce and Labor
May 6, 2005
Page 35

CHAIRMAN TOWNSEND:

I will leave that up to you in terms of your workload, if you just want to leave it for reconciliation or at the end, rather than trying to fix them all at once.

MR. POWERS:

"That may be one approach. I think with A.B. 340 and A.B. 384 that can be done in this Committee as we send them out."

CHAIR TOWNSEND:

I will close the hearing on A.B. 340 and open the hearing on A.B. 437.

ASSEMBLY BILL 437 (1st Reprint): Revises provisions governing manufactured home parks. (BDR 10-1027)

JOSEPH GUILD (Manufactured Home Community Owners):

Assemblywoman Buckley was going to join me here and there is an amendment in my handwriting (Exhibit T). Assemblywoman Buckley's executive assistant is typing a version of this as we speak. For Mr. Young's purposes and for the permanent record of the Committee, you will have a typed version of the amendment (Exhibit U).

Assembly Bill 437 is a product of a collaboration between various groups of people interested in mobile home parks, tenants and landlords. Years ago, the then majority leader, Assemblyman Perkins, asked the groups to get together during the interim if there were necessary revisions to chapter 118B of the NRS, which is the mobile-home-landlord-tenant law in the State, bringing to the Legislature the consensus bill so we would not have to battle the bills, which was the occurrence for many Sessions prior to that. You have the collaborative effort before you. This is really a clean-up bill; there are no big changes here.

I will start with section 1 of the bill. If a landlord bills individually for utility charges, they must post or provide each tenant who is affected a copy of the utility bill for the park. The tenants then know what the park is paying in addition to what they are paying.

Section 3 of the bill states that when, as is required after 25 percent of the persons in a mobile home park or manufactured-home community ask for a meeting with the owner of the park, that somebody with some authority to make decisions and with an understanding of the operations of that park, meet

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.

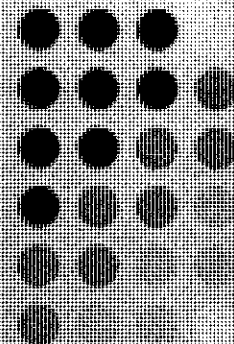
Original exhibits are on file at the Legislative Counsel Bureau Research Library in Carson City.

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

Assembly Bill 384

Assembly Majority Leader
Barbara Buckley

Testimony before the Senate
Committee on Commerce and Labor

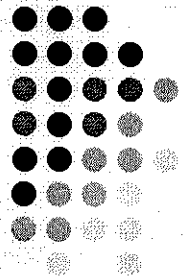


With no interest rate cap and lax customer protections, Nevada has quickly become home to some of the nation's most predatory lenders.



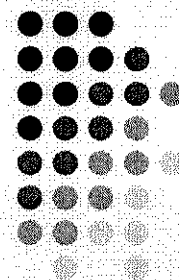
Las Vegas Review Journal April 28, 2005

Goals of A.B. 384



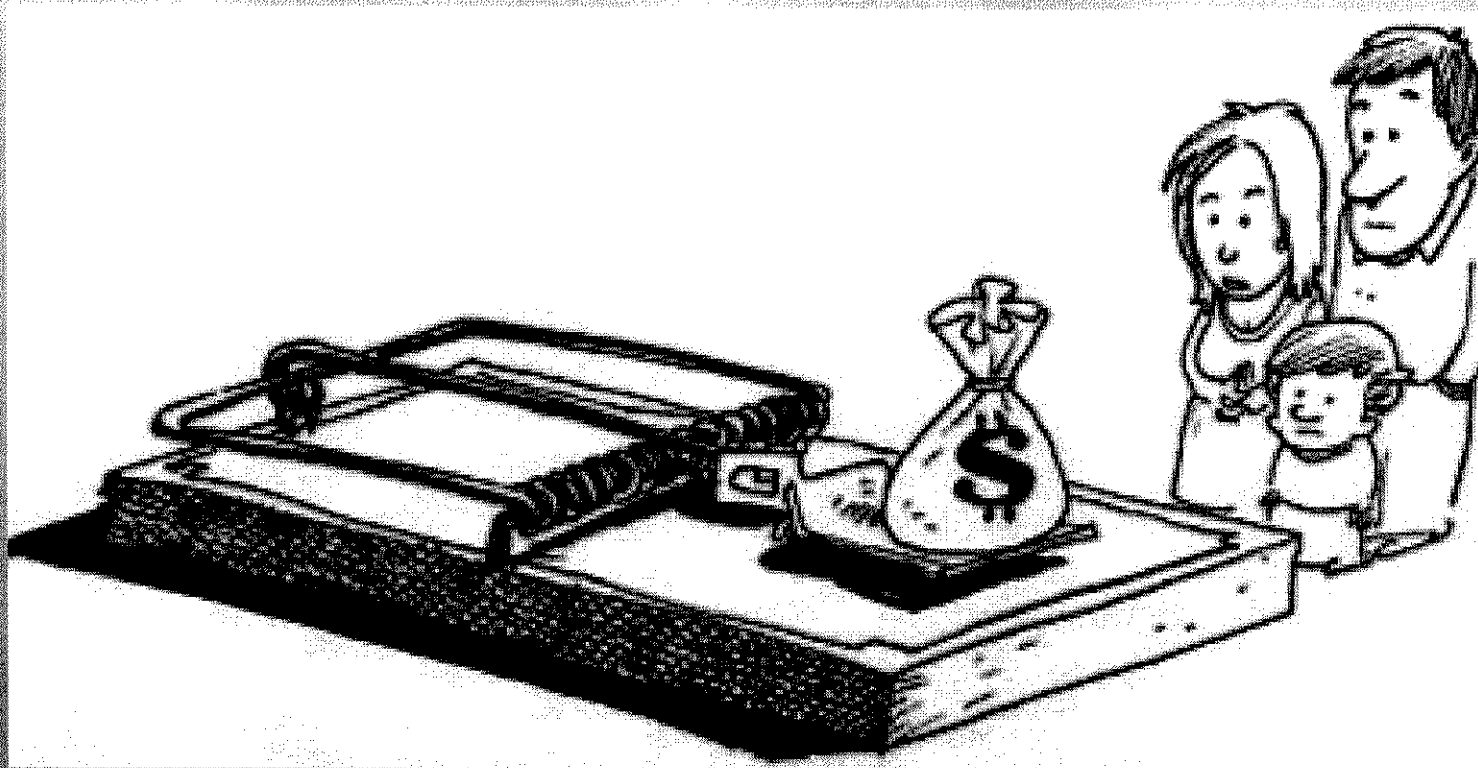
- Create a level playing field for deferred deposit lenders, short term lenders and auto title lenders.
- Curb unscrupulous and egregious lending and collection practices.
- Provide remedies for those who have fallen victim to unlicensed lenders and illegal practices.
- Protect consumers from becoming trapped on the “debt treadmill” and in the “garnishment machine.”





The Debt Trap:

From Debt Treadmill to Garnishment Machine



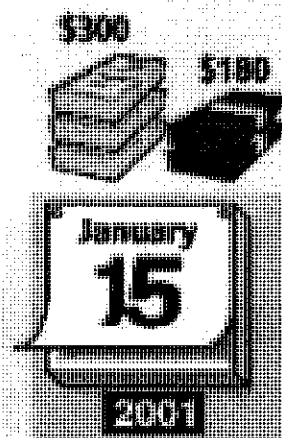
Getting buried in debt

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.

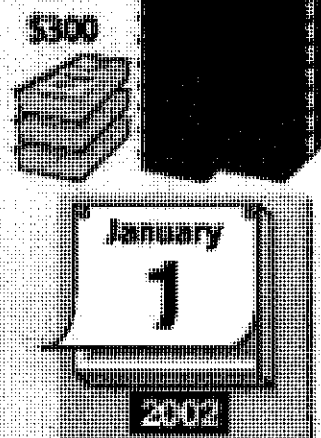


A borrower goes to a payday firm to get a loan for \$300 and agrees to pay it back in two weeks plus \$90 for interest.

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



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.



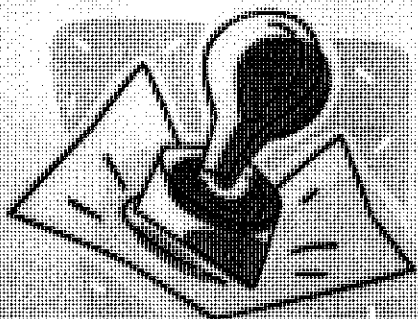
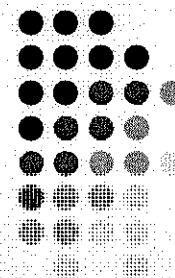
If the borrower pays only the \$90 in interest every two weeks, a total of \$2,340 will be paid in a year — or nearly 800 percent in interest. The original \$300 principal is still owed.

SOURCE: Compiled from AP wire reports.

THE ASSOCIATED PRESS

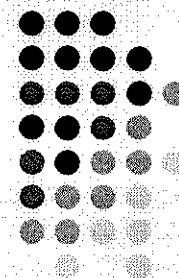
Debt Treadmill

Garnishment Machine – Small Claims Court Cases CY 2004:

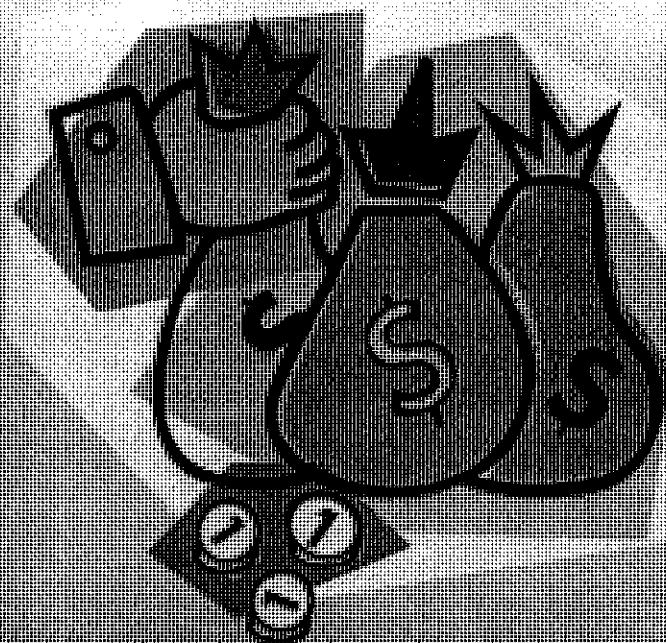


	High-Interest Loan Cases	%	To Garnishment	%
Carson City	226 of 563	40%	89	39%
Sparks	377 of 1,087	35%	126	33%
N. Las Vegas	Estimated	75%	Estimated	35%
Henderson	407 of 992	41%	Unknown	
Las Vegas	55 of 100 random files	55%	29	29%

Common Abuses:



**Collection of
treble damages
pursuant to
NRS 41.620**



RECEIVED
FEB 18 2005

FILED

FEB 9 7 40 AM '05

Plaintiff

JULIAN ROSE
LAS VEGAS, NEVADA KS

BY CASE NO. [REDACTED]

WRIT OF EXECUTION

☒ EARNINGS ☐ OTHER PROPERTY
☐ EARNINGS, ORDER OF SUPPORT

Defendant

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

On JANUARY 4, 2005, by _____ 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 _____ 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.

AMOUNTS TO BE COLLECTED BY LEVY

NET BALANCE	\$1,589.00
Fee This Writ	\$ 6.00
Garnishment Fee	\$ 5.00
Mileage	20.00
Levy Fee	18.00
Advertising	
Storage	
Interest From	
Date of Issuance	
SUB-TOTAL	1638.00
Commission	33.76
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:

000274

ENCLOSUREMENT OF THIS CHECK ACKNOWLEDGES PAYMENT AS FOLLOWS:

MANAGEMENT SERVICES 213869

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

usbank.
SUNBELT BANKING
1-800-479-3838
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⑈

ENCLOSUREMENT OF THIS CHECK ACKNOWLEDGES PAYMENT AS FOLLOWS:

MANAGEMENT SERVICES 215145

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

usbank.
SUNBELT BANKING
1-800-479-3838
94-169
1212

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

Three hundred Fourteen and 42 cents

DATE 09/02/2004 \$ 314.42

NOT VALID AFTER 60 DAYS
TRUST ACCOUNT

NON NEGOTIABLE

⑈215145⑈ ⑆121201694⑆153790075060⑈

1 1. For the first cause of action.

- 2 a. For a judgment against defendant in the amount of \$410.00, plus interest at
3 14.25% per annum plus any other late fees accrued to date.
4 b. For maximum damages of \$1,000.00 as provided for by NRS 41.620.
5 c. For reasonable attorney's fees and cost of suit incurred herein.
6 d. For any other judgment this court may deem proper in the premises.

7 2. For the second cause of action.

- 8 a. For a judgment against defendant in the amount of \$410.00 plus interest at
9 14.25% per annum plus any other late fees accrued to date.
10 b. For reasonable attorney's fees and costs of suit herein; and
11 c. For any other judgment this court may deem proper in the premises.

12
13
14 Dated this 14 day of September, 2004.
15

16 Respectfully Submitted

17 By: 

18 Sean P. Hillier Esq.
19 Nevada Bar No: 5368
20 1800 East Sahara Avenue, Suite 102
21 Las Vegas, NV 89104
22 (702) 737-3939

Attorney for Gorman's Star Enterprises

[REDACTED]

Return Check No. [REDACTED] Amount of Check:\$300.00
Drawn On [REDACTED] Fees Due:\$25.00
Customer: [REDACTED] Payments Applied:\$.00
Current Amount Due:\$325.00

REQUEST FOR PAYMENT
NSF or Account Closed

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 against you, you will be required to pay the full~~

if a judgment is recorded against 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.

Sincerely,

Alycia

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.

000277

CUSTOMER DISCLOSURE

NAME	NO	ACCT NO
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

Borrower's Initials: _____ Teller's Initials: _____

I authorize Refugee Holdings, Inc. d/b/a 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 _____ day of _____, 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 that 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

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.

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.

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: 12/23/2003		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 deferred 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 credit 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 12/28/2003

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.

- Actual annual rate of interest is 1,217.00%
- Post default interest of 17.75% the statutory limit then was 14.00%

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

2 For the first cause of action.

- 3 a. For a judgment against defendant in the amount of \$220.00, plus interest at
4 14.00% per annum plus any other late fees accrued to date.
5 b. For maximum damages of \$500.00 as provided for by NRS 41.620.
6 c. For reasonable attorney's fees and cost of suit incurred herein.
7 d. For any other judgment this court may deem proper in the premises.

8 For the second cause of action.

- 9 a. For a judgment against defendant in the amount of \$220.00 plus interest at
10 14.00% per annum plus any other late fees accrued to date.
11 b. For reasonable attorney's fees and costs of suit herein; and
12 c. For any other judgment this court may deem proper in the premises.

13
14
15 Dated this 19 day of February, 2004

16
17
18
19
20
21 Respectfully Submitted

22 By: _____

23 Sean P. Hillin Esq.
24 Nevada Bar No. 5368
25 1800 East Sahara Avenue, Suite 102
26 Las Vegas, NV 89104
27 (702) 737-3939

 Attorney for ACT Investments, Inc. dba Cash Out

Justice Court, Las Vegas Township

CLARK COUNTY, NEVADA

FILED

FILED

Name: ACT Investment Inc, dba Cash Out
 Address: 4821 Alta Drive
 Las Vegas, NV 89107

2004 APR 16 P 12:19

CASE NO 0004

Plaintiff JUSTICE COURT
LAS VEGAS, NEVADA

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

Principal	\$ 720.00
Pre-Judgment	\$
Attorney's Fee	\$ 55.00
Costs	\$ 100.00
JUDGMENT TOTAL	\$ 875.00
Accrued Costs	
Accrued Interest	
Less Satisfaction	
NET BALANCE	\$ 875.00

AMOUNTS TO BE COLLECTED BY LEVY

NET BALANCE	\$ 875.00
Fee this Writ	\$ 6.00
Garnishment Fee	\$ 5.00
Mileage	20-
Levy Fee	18-
Advertising	
Storage	
Interest from Date of Issuance	
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:

1
2
3 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff recover of and
4 from Defendant, [REDACTED] as follows: the principal amount of \$280.00, together with interest
5 accruing at the rate of 14.00% per annum from July 23rd, 2003 until paid in full, plus damages
6 pursuant to NRS 41.620 in the amount of \$790.00 plus the amount \$146.00 in cost of suit, and
7 reasonable attorney's fees in the amount of \$ 70 -.

8
9 IT IS ORDERED.

10 DATED this 21 day of, August, 2003

11
12 William D. Jones
13 Honorable

14 Respectfully Submitted:

Example of a default judgment on a \$130.00 loan

Total judgment for \$1,305 plus 14% interest after default

1 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff recover of and
2 from Defendant, [REDACTED] as follows: the principal amount of \$510.00, along with late
3 fees in the amount of \$0.00, together with interest accruing at the rate of 14.00% per annum from
4 July 2nd, 2003 until paid in full, plus damages pursuant to NRS 41.620 in the amount of
5 \$1,000.00 plus the amount \$76.00 in cost of suit, and reasonable attorney's fees in the amount of
6 \$ 128.00.

7 IT IS ORDERED.

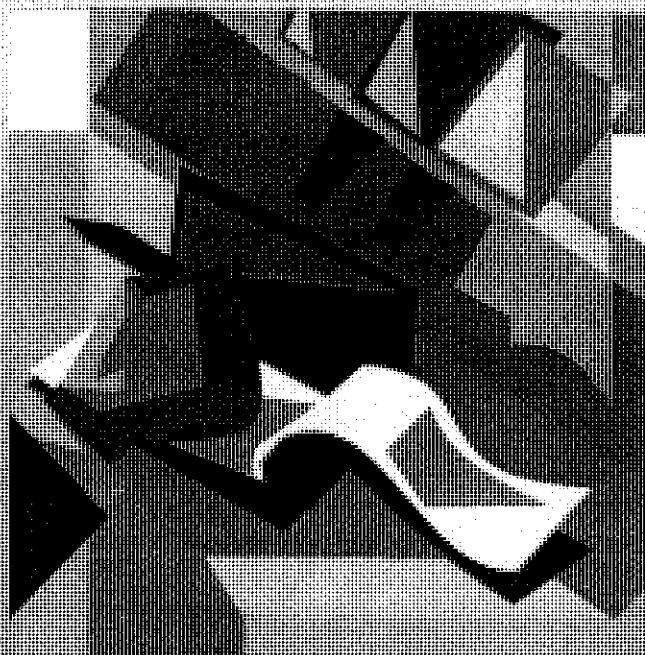
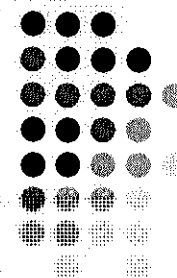
8
9
10 DATED this 28 day of July, 2003

11
12
13 William D. Jansen
14 Honorable Jr JAMES M. BIXLER
15

Respectfully Submitted:

Example of a default judgment on a \$400.00 loan
Total judgment for \$1,716 plus 14% interest after default

Common Abuses:



**Demanding more
than one check for
a single deferred
deposit loan**

CONTRACT # [REDACTED]

CLIENT ID [REDACTED]

HANDY CASH
LOAN CENTERS
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 YOUR 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 AFTER YOU HAVE MADE ALL PAYMENTS AS SCHEDULED
714.560%	\$344.00	\$200.00	\$344.00

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.

• Interest rate
disclosed as
714.56% -
actually
836.58%

• Undisclosed
\$15.00
“computer
online account
setup fee”

I HAVE READ AND UNDERSTAND THE TERMS OF MY SECURITY AGREEMENT. I 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

- * 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

SIGN

DEBTOR SIGNATURE AS TO ACKNOWLEDGEMENT TO CHARGE

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 has been paid in full and on the due date required by Lender.

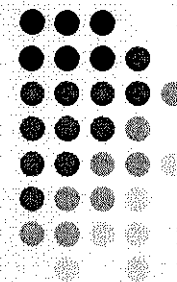
* 3 checks taken as security

* "handling and processing" charge of \$15.00 in addition to return check charge

* late fee of \$5.00 per day, including weekends and holidays

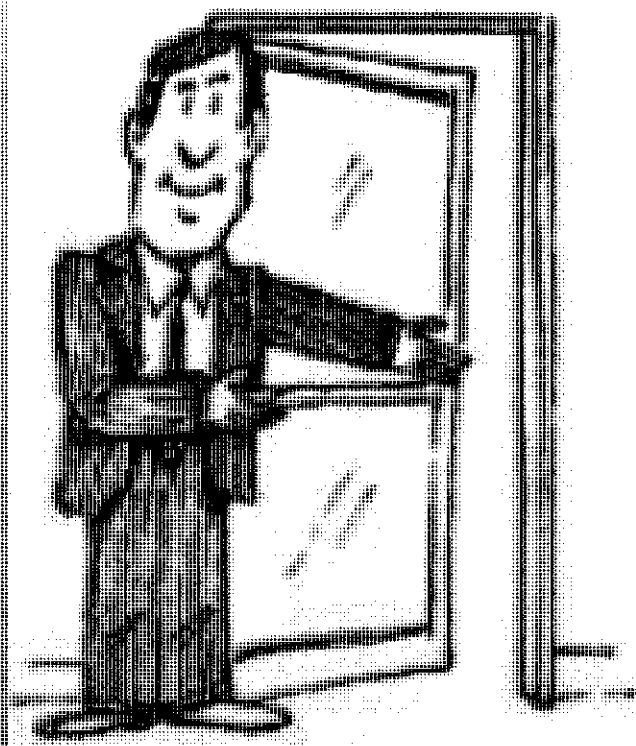
* No partial payments accepted

* non-refundable interest



Common Abuses:

LOANS



**Unfair loan
terms**

LUCKY CREDIT COMPANY, LLC

LENDER:

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

BORROWER:

[REDACTED]

LOCATIONS THROUGHOUT 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.

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:

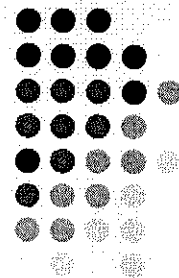
1. Demand full payment of the defaulted loan which includes the following : the total of remaining payments, check processing charges, all late fees, loss of interest and the reimbursement of reasonable fees of repossession and enforcement of Lender's rights and remedies including but not limited to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

INITIALS

PAGE 1 OF 3

Terms include:

- Waive presentment, notice of non-payment, protest and notice of protest, and agree to remain fully bound
- Right to place loan in default in borrower's telephone number is disconnected or changed
- Right to demand remaining payments, loss of interest, check processing charges, late fees, attorney's fees and costs
- Right to obtain a judgment, garnish wages and report to credit bureaus



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.

SL 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 DISCRETION.

SL 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.

SL 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.

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

SL BORROWER IS NOT IN BANKRUPTCY, ^{NOT} OR HAS SPOKE^N TO OR IS PLANNING TO MEET WITH A BANKRUPTCY ATTORNEY.

SL 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.

SL 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.

- Late fees of 2% per day
- Penalty fee of \$1,250.00 for wage garnishment
- After two late payments, annual percentage rate increases to by 120%
- Arbitration agreement and a waiver of right to private lawsuit
- Threat of criminal prosecution

DISCLOSURE MADE IN COMPLIANCE WITH FEDERAL TRUTH
IN LENDING ACT

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	AMOUNT FINANCED	TOTAL OF PAYMENTS
521 %	\$ 15.00	\$ 150.00	\$ 165.00
<u>del</u> borrower(s) initials	<u>del</u> borrower(s) initials	<u>del</u> borrower(s) initials	<u>del</u> borrower(s) initials

PAYMENT PLAN
 Payment: One Payment of \$ 165.00 Due on December 5, 2003
 MATURITY DATE: 12/05/2003
del
 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 AND
 LENDER, SUBJECT TO LENDERS SOLE APPROVAL AND SUBJECT TO ALL
 THE SAME TERMS, CONDITION AND COVENANTS AS CONTAINED IN
 THIS AGREEMENT
del
 BORROWERS INITIALS

THIS AGREEMENT CONSTITUTES 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.
del
 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

BORROWER
SSN: [REDACTED]

DATE: 11/1/03

LENDER
LUCKY CREDIT COMPANY, LLC.

CO-BORROWER
SSN: [REDACTED]

DATE

PAGE 3 OF 3

• Truth in Lending Act
Violation

• APR disclosed as 521%

• Actual APR 912.5%

LOAN DEPOT COVER SHEET

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: \$ 113.00Sue 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

• Late fee of \$39.97
per day

COPY

Justice Court, Las Vegas Township
CLARK COUNTY, NEVADA

The Loan Depot, Inc.
 4813 W. Russell Rd. # 11-K
 Las Vegas, Nevada 89118

Plaintiff

Defendant

CASE NO. [REDACTED]

FILED

WRIT OF EXECUTION

NOV AUS -5 A 9 13

☒ EARNINGS ☐ OTHER PROPERTY

☐ EARNINGS, ORDER OF SUPPORT

CLERK
 CLARK COUNTY, NEVADA
 DEPUTY [Signature]

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 of The Loan Depot, Inc. 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 now bears interest at 14 1/2% per annum, \$4.51 per day from issuance of this Writ to date of levy and in which sum must be added all commissions and costs of executing this Writ.

JUDGMENT BALANCE

Principal	<u>1149.00</u>
Pre Judgment Interest	<u>16.34</u>
Attorney's Fee	<u>285.09</u>
Costs	<u>98.00</u>
JUDGMENT TOTAL	<u>1538.34</u>
Accrued Costs	<u> </u>
Accrued Interest	<u> </u>
Less Satisfaction	<u> </u>
NET BALANCE	<u>1538.34</u>

AMOUNTS TO BE COLLECTED BY LEVY

NET BALANCE	<u>1538.34</u>
Fee this Writ	<u>6.00</u>
Garnishment Fee	<u>5.00</u>
Mileage	<u>12-</u>
Levy Fee	<u>18-</u>
Advertising	<u> </u>
Storage	<u> </u>
Interest from Date of Issuance	<u> </u>
SUB-TOTAL	<u>1580.34</u>
Commission	<u>21.61</u>
TOTAL LEVY	<u>1611.95</u>

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 personal property:

[REDACTED]

(SEE REVERSE SIDE FOR EXEMPTIONS THAT MAY APPLY)

• Contract for a
\$300.00 loan

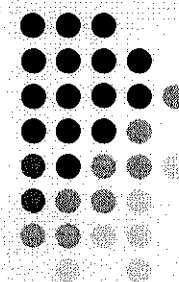
• Almost
\$1,400.00 was
 paid before
 default

• Additional
\$1,611.95 was
 garnished

Payday Loan Companies Raise Questions

WorldNow and KLAS 2000-2005

Local
Presence



Editorial: Preying on borrowers

Payday lenders use law to seek more damages

Las Vegas Sun 2005

Las Vegas
Sun 2005

State Warns People of 'Pay-Day' Loans

WorldNow and KLAS 2000-2005

Borrowers beware

Las Vegas Sun 2005

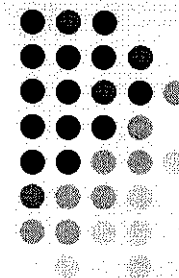
Payday loans are criticized, lauded in how they affect Nevadans

Consumer Advocates Warn Some Loan Sharks Swim on the Web

WorldNow and KLAS 2000-2005



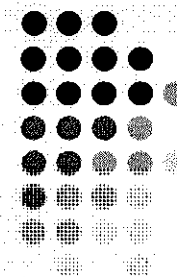
WorldNow and KLAS 2000-2005



Specific Provisions of A.B. 384



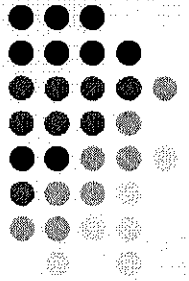
Provisions similar to those currently in N.R.S. 604



- Section 24 provides that the provisions of this chapter must be interpreted so as to effectuate their general purpose to provide for the uniform regulation of check cashers, deferred deposit lenders, short term lenders and auto title lenders.
- Section 35 prohibits licensee from accepting certain types of security, failing disclosure information about the terms of the loan, accepting instruments with blanks, requiring the purchase of insurance, goods or services, and charging a fee to cash a check which represents the proceeds of the loan.
- Section 36 prohibits a licensee from using or threatening to use the criminal process, commencing a civil action before default, taking a confession of judgment or power of attorney to confess judgment, include any written waivers and assignments, engage in a deceptive trade practice, using an agent of subsidiary to avoid compliance.

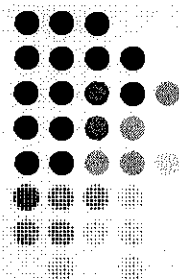
29

Provisions similar to those currently in N.R.S. 604



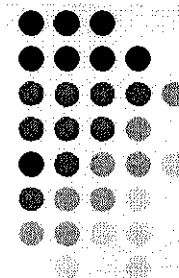
- Section 43 prohibits deferred deposit lenders and short term lenders from extending the loan beyond 8 weeks, 2 weeks less than the statute currently states.
- Section 44 limits the amount of interest that can be charged after default to prime plus ten percent.
- Section 45 authorizes licensees to collect a return check fee of not more than \$25.00.
- Section 82 repeals provisions governing check cashing services and deferred deposit loans in chapter 604.

New provisions in A.B. 384



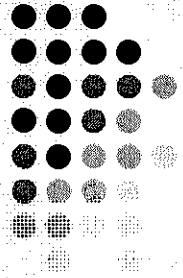
- **Section 17 defines a short term loan as one with an interest rate greater than 40% and for a term of less than 18 months.**
- **Section 22 states that the provisions of the chapter apply to any person who provides services that come within the provisions of the chapter even if the person tries to avoid compliance by any subterfuge.**
- **Section 23 states that no fee or interest may be charged during a grace period.**
- **Section 29 requires any person operating a loan service under the chapter to be licensed, regardless of the location or method - through the Internet or kiosks, for example.**

New provisions in A.B. 384

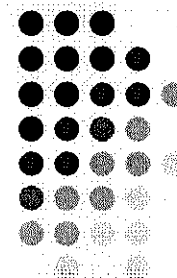


- Section 31 states that the loan agreement must be in Spanish if the transaction was in Spanish. It also requires certain disclosures to be in the contract.
- Section 32 states that the licensee may only collect the debt in a profession, fair and lawful manner and in accordance with the relevant provisions of the federal Fair Debt Collections Practices Act.
- Section 33 provides certain protections for customers called to active duty in the military such as deferring collection activity and garnishment and prohibiting licensees from contacting the customer's military chain of command.

New provisions in A.B. 384



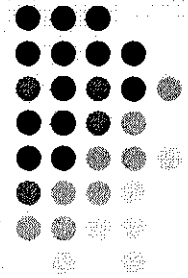
- Section 34 prohibits a licensee from making a loan in which the payment or payments exceed 25% of the expected monthly gross income. It also prohibits making more than one loan to a customer.
- Section 39 allows a customer to rescind a loan within one business day.
- Section 40 allows a customer to pay a loan in full at any time and receive a receipt of payment.
- Section 41 allows a customer to make a partial payment of any amount and receive a receipt of payment.



New provisions in A.B. 384

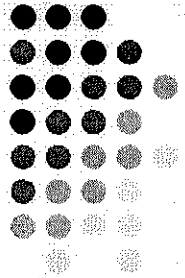
- **Section 42, as amended, will prohibit a licensee from commencing civil action without offering the customer the opportunity to enter into a repayment plan.**
- **Section 44 sets forth the amounts the licensee may collect if the customer defaults: principal minus payments made, pre-default finance charge, prime plus ten percent interest after default, and a return check fee of \$25.00.**
- **Section 45 states that customers are not liable for damages pursuant to N.R.S. 41.620 or for criminal prosecution for a violation of N.R.S. 205.**
- **Section 46 requires that a licensee provide a receipt to the customer for each payment made.**

New provisions in A.B. 384

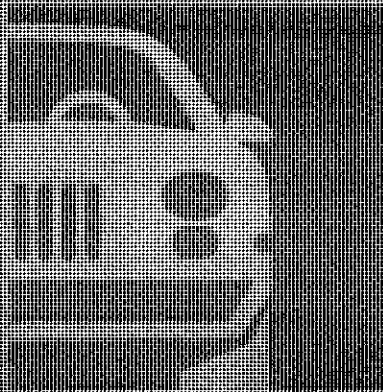


- Section 73 imposes a penalty on any licensee who: enters into a loan agreement for any amount of interest or other charge or fee that violates the provisions of this chapter or demands, collects or receives any amount of interest or other charge or fee that violates the provisions of this chapter. If such a violation is committed, the loan is void and the licensee may not collect, receive or retain any principal, interest or other charge or fee.
- Section 74 authorizes a customer to bring a civil action against a licensee for certain violations of this chapter for actual damages, consequential damages, statutory damages of \$1,000.00 per violation, punitive damages, attorney's fees and court costs.

Auto Title Loans



- Loan term of 30 days
- May extend or rollover loan for 6 months
- Upon default, may only charge prime plus ten percent interest
- Must enter into a repayment plan before repossession



- May repossess vehicle without court order
- Cannot sue for any deficiency after repossession

MOCK-UP

PROPOSED AMENDMENT TO ASSEMBLY BILL NO. 384 FIRST REPRINT

PREPARED FOR ASSEMBLYWOMAN BARBARA E. BUCKLEY
MAY 6, 2005

PREPARED BY THE RESEARCH 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:

- 1 **Section 1.** Title 52 of NRS is hereby amended by adding thereto a
- 2 new chapter to consist of the provisions set forth as sections 2 to 74,
- 3 inclusive, of this act.
- 4 **Sec. 2.** *As used in this chapter, unless the context otherwise*
- 5 *requires, the words and terms defined in sections 3 to 21, inclusive, of*
- 6 *this act have the meanings ascribed to them in those sections.*
- 7 **Sec. 3.** "Cashing" means providing currency or a negotiable
- 8 instrument in exchange for a check.
- 9 **Sec. 4.** 1. "Check" means:
- 10 (a) A draft, other than a documentary draft, payable on demand and
- 11 drawn on a bank; or
- 12 (b) A cashier's check or teller's check.
- 13 2. An instrument may be a check even though it is described on its
- 14 face by another term, such as "money order."
- 15 **Sec. 5.** "Check-cashing service" means any person engaged in the
- 16 business of cashing checks for a fee, service charge or other
- 17 consideration.

PROPOSED AMENDMENT TO AB384 R1

EXHIBIT F Senate Committee on Commerce/Labor
Date: 5-6-05 Page 1 of 34

1 Sec. 6. "Commissioner" means the Commissioner of Financial
2 Institutions.

3 Sec. 7. "Customer" means any person who receives or attempts to
4 receive check-cashing services, deferred deposit loan services, short-term
5 loan services or title loan services from another person.

6 Sec. 8. 1. "Default" means the failure of a customer to:

7 (a) Make a scheduled payment on a loan on or before the due date
8 for the payment under the terms of a lawful loan agreement and any
9 grace period that complies with the provisions of section 23 of this act or
10 under the terms of any lawful extension ~~or repayment plan~~ relating to
11 the loan and any grace period that complies with the provisions of
12 section 23 of this act; or

13 (b) Pay a loan in full on or before:

14 (1) The expiration of the initial loan period as set forth in a lawful
15 loan agreement and any grace period that complies with the provisions
16 of section 23 of this act; or

17 (2) The due date of any lawful extension or repayment plan
18 relating to the loan and any grace period that complies with the
19 provisions of section 23 of this act, provided that the due date of the
20 extension or repayment plan is not later than 8 weeks after the expiration
21 of the initial loan period.

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

24 Sec. 9. "Deferred deposit loan" means a transaction in which,
25 pursuant to a written agreement:

26 1. A customer tenders to another person:

27 (a) A personal check drawn upon the account of the customer; or

28 (b) Written authorization for an electronic transfer of money for a
29 specified amount from the account of the customer; and

30 2. The other person:

31 (a) Provides to the customer an amount of money that is equal to the
32 face value of the check or the amount specified in the written
33 authorization for an electronic transfer of money, less any fee charged
34 for the transaction; and

35 (b) Agrees, for a specified period, not to cash the check or execute
36 the electronic transfer of money for the amount specified in the written
37 authorization.

38 Sec. 10. "Deferred deposit loan service" means any person engaged
39 in the business of making deferred deposit loans for a fee, service charge
40 or other consideration.

41 Sec. 11. "Electronic transfer of money" means any transfer of
42 money, other than a transaction initiated by a check or other similar
43 instrument, that is initiated through an electronic terminal, telephone,
44 computer or magnetic tape for the purpose of ordering, instructing or
45 authorizing a financial institution to debit or credit an account.

Delete reference to
"repayment plan." Same
change is made in Section 44.

1 **Sec. 12. 1. "Extension"** means any extension or rollover of a loan
 2 *beyond the date on which the loan is required to be paid in full under the*
 3 *original terms of the loan agreement, regardless of the name given to the*
 4 *extension or rollover.*

5 2. *The term does not include a grace period.*

6 **Sec. 13. "Grace period"** means any period of deferment offered
 7 *gratuitously by a licensee to a customer if the licensee complies with the*
 8 *provisions of section 23 of this act.*

9 **Sec. 14. "Licensee"** means any person who has been issued one or
 10 *more licenses to operate a check-cashing service, deferred deposit loan*
 11 *service, short-term loan service or title loan service pursuant to the*
 12 *provisions of this chapter.*

13 **Sec. 15. "Loan"** means any deferred deposit loan, short-term loan
 14 *or title loan, or any extension or repayment plan relating to such a loan,*
 15 *made at any location or through any method, including, without*
 16 *limitation, at a kiosk, through the Internet, through any telephone,*
 17 *facsimile machine or other telecommunication device or through any*
 18 *other machine, network, system, device or means.*

19 **Sec. 16. "Motor vehicle"** has the meaning ascribed to it by the
 20 *Commissioner pursuant to section 28 of this act.*

21 **Sec. 17. 1. "Short-term loan"** means a loan made to a customer
 22 *pursuant to a loan agreement which, under its original terms:*

23 *(a) Charges fees or a rate of interest, or any combination thereof,*
 24 *that when calculated as an annualized percentage rate is an annual*
 25 *percentage rate of more than 40 percent; and*

26 *(b) Requires the loan to be paid in full in less than 1 year 18 months.*

27 2. *The term does not include:*

28 *(a) A deferred deposit loan; or*

29 *(b) A title loan.*

30 **Sec. 18. "Short-term loan service"** means any person engaged in
 31 *the business of providing short-term loans for a fee, service charge or*
 32 *other consideration.*

33 **Sec. 19. 1. "Title loan"** means a loan made to a customer who
 34 *secures the loan with the title to a motor vehicle and who gives*
 35 *possession of the title to the person making the loan or to any agent,*
 36 *affiliate or subsidiary of the person.*

37 2. *The term does not include a loan which creates a purchase*
 38 *money security interest in a motor vehicle or the refinance of any such*
 39 *loan. The term does not include a loan which is secured by a lien or*
 40 *other security interest that attaches to a motor vehicle or appears on its*
 41 *title, including, without limitation, a loan to finance the purchase of the*
 42 *motor vehicle, if the person making the loan, or any agent, affiliate or*
 43 *subsidiary of the person, does not take possession of the title.*

Revise the definition of
a "short-term loan."

Revise the definition of a
"title loan."

1 **Sec. 20.** "Title loan service" means any person engaged in the
2 business of providing title loans for a fee, service charge or other
3 consideration.

4 **Sec. 21.** "Title to a motor vehicle" or "title" means a certificate of
5 title issued by the Department of Motor Vehicles that identifies the legal
6 owner of a motor vehicle or any similar document issued pursuant to the
7 laws of another jurisdiction.

8
9 **NEW SECTION**

10 *Unless otherwise specifically provided herein, the terms "annual*
11 *percentage rate," "finance charge," "amount financed," "total of*
12 *payments," and "payment schedule" have the meanings given to the*
13 *under the federal Truth in Lending Act, 15 U.S.C. §§1601 et seq., and*
14 *Regulation Z, 12 C.F.R. 226, and proper calculation of the annual*
15 *percentage rate, finance charge, and amount financed shall be in*
16 *accordance therewith.*

Add a new section to clarify
the meaning of certain
terms under the act.

17
18 **Sec. 22.** The provisions of this chapter apply to any person who
19 seeks to evade its application by any device, subterfuge or pretense,
20 including, without limitation, calling a loan by any other name or using
21 any agents, affiliates or subsidiaries in an attempt to avoid the
22 application of the provisions of this chapter.

23 **Sec. 23.** The provisions of this chapter do not prohibit a licensee
24 from offering a customer a grace period on the repayment of a loan,
25 except that the licensee shall not charge the customer:

- 26 1. Any fees for granting such a grace period; or
- 27 2. Any additional fees or additional interest on the outstanding loan

Clarification of reference to
fees or interest.

28 **Sec. 24.** 1. The provisions of this chapter must be interpreted so
29 as to effectuate their general purpose to provide for, to the extent
30 practicable, uniform regulation of the loans and transactions that are
31 subject to the provisions of this chapter.

32 2. If there is a conflict between the provisions of this chapter and
33 the provisions of any other general law regulating loans and similar
34 transactions, the provisions of this chapter control.

35 **Sec. 25.** This chapter or any part thereof may be modified,
36 amended or repealed by the Legislature so as to effect a cancellation or
37 alteration of any license or right of a licensee under this chapter,
38 provided that such cancellation or alteration shall not impair or affect
39 the obligation of any preexisting lawful loan agreement between any
40 licensee and any customer.

41 **Sec. 26.** Any loan lawfully made outside this State as permitted by
42 the laws of the state in which the loan was made may be collected or
43 otherwise enforced in this State in accordance with its terms.

44 **Sec. 27.** The provisions of this chapter do not apply to:
45

1 1. A person doing business pursuant to the authority of any law of
2 this State or of the United States relating to banks, savings banks, trust
3 companies, savings and loan associations, credit unions, development
4 corporations, mortgage brokers, mortgage bankers, thrift companies or
5 insurance companies.

6 2. A person who is primarily engaged in the retail sale of goods or
7 services who:

8 (a) As an incident to or independently of a retail sale or service, from
9 time to time cashes checks for a fee or other consideration of not more
10 than \$2; and

11 (b) Does not hold himself out as a check-cashing service.

12 3. A person while performing any act authorized by a license issued
13 pursuant to chapter 671 of NRS.

14 4. A person who holds a nonrestricted gaming license issued
15 pursuant to chapter 463 of NRS while performing any act in the course
16 of that licensed operation.

17 5. A person who is exclusively engaged in a check-cashing service
18 relating to out-of-state checks.

19 6. A corporation organized pursuant to the laws of this State that
20 has been continuously and exclusively engaged in a check-cashing
21 service in this State since July 1, 1973.

22 7. A pawnbroker, unless the pawnbroker operates a check-cashing
23 service, deferred deposit loan service, short-term loan service or title loan
24 service.

25 8. A real estate investment trust, as defined in 26 U.S.C. § 856.

26 9. An employee benefit plan, as defined in 29 U.S.C. § 1002(3), if
27 the loan is made directly from money in the plan by the plan's trustee.

28 10. An attorney at law rendering services in the performance of his
29 duties as an attorney at law if the loan is secured by real property.

30 11. A real estate broker rendering services in the performance of his
31 duties as a real estate broker if the loan is secured by real property.

32 12. Any firm or corporation:

33 (a) Whose principal purpose or activity is lending money on real
34 property which is secured by a mortgage;

35 (b) Approved by the Federal National Mortgage Association as a
36 seller or servicer; and

37 (c) Approved by the Department of Housing and Urban Development
38 and the Department of Veterans Affairs.

39 13. A person who provides money for investment in loans secured
40 by a lien on real property, on his own account.

41 14. A seller of real property who offers credit secured by a mortgage
42 of the property sold.

43 Sec. 28. 1. The Commissioner shall adopt by regulation a
44 definition of the term "motor vehicle" as that term is used in the
45 definition of "title loan" for the purposes of this chapter.

1 2. The Commissioner may establish by regulation the fees that a
2 licensee who provides check-cashing services may impose for cashing
3 checks.

4 3. The Commissioner shall adopt any other regulations as are
5 necessary to carry out the provisions of this chapter.

6 Sec. 29. 1. A person, including, without limitation, a person
7 licensed pursuant to chapter 675 of NRS, shall not operate a check-
8 cashing service, deferred deposit loan service, short-term loan service or
9 title loan service unless the person is licensed with the Commissioner
10 pursuant to the provisions of this chapter.

11 2. A person must have a license regardless of the location or method
12 that the person uses to operate such a service, including, without
13 limitation, at a kiosk, through the Internet, through any telephone,
14 facsimile machine or other telecommunication device or through any
15 other machine, network, system, device or means.

16 Sec. 30. 1. A licensee shall post in a conspicuous place in every
17 location at which he conducts business under his license, a notice that
18 states the fees he charges for providing check-cashing services, deferred
19 deposit loan services, short-term loan services or title loan services.

20 2. If a licensee offers loans to customers at a kiosk, through the
21 Internet, through any telephone, facsimile machine or other
22 telecommunication device or through any other machine, network,
23 system, device or means, the licensee shall, as appropriate to the location
24 or method for making the loan, post in a conspicuous place where
25 customers will see it before they enter into a loan, or disclose in an open
26 and obvious manner to customers before they enter into a loan, a notice
27 that states:

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

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

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

37 Sec. 31. 1. Before making any loan to a customer, a licensee shall
38 provide to the customer a written loan agreement which may be kept by
39 the customer and which must be written in:

40 (a) English, if the transaction is conducted in English; or

41 (b) Spanish, if the transaction is conducted in Spanish.

42 2. The loan agreement must include, without limitation, the
43 following information:

44 (a) The name and address of the licensee and the customer;

45 (b) The date of the loan;

- 7 -

1 (c) The nature of the security for the loan, if any;

2 (d) The amount of the loan obligation, including, without limitation,
3 an itemization of the interest, charges and fees the customer must pay if
4 the licensee makes a loan to the customer;

5 (e) The description or schedule of payments on the loan;

6 (f) A disclosure of the right of the customer to rescind a loan
7 pursuant to the provisions of this chapter;

8 (g) A disclosure of the right of the customer to pay his loan in full or
9 in part with no additional charge pursuant to the provisions of this
10 chapter;

11 (h) Disclosures required for a similar transaction by the federal
12 Truth in Lending Act, 15 U.S.C. §§ 1601 et seq.; and

13 (i) Disclosures required under any other applicable state statute or
14 regulation.

15 (j) A disclosure that the customer has the opportunity to enter into a
16 repayment plan of at least four (4) equal monthly installments within 30
17 days of defaulting before any civil action or alternative dispute resolution
18 process may be commenced.

Adds an additional disclosure
requirement to be included in the
loan agreement.

19 **Sec. 32. 1.** If a customer defaults on a loan, the licensee may
20 collect the debt owed to the licensee only in a professional, fair and
21 lawful manner. When collecting such a debt, the licensee must act in
22 accordance with and must not violate sections 803 to 812, inclusive, of
23 the federal Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692a to
24 1692j, inclusive, even if the licensee is not otherwise subject to the
25 provisions of that Act.

26 **2.** If a licensee initiates a civil action against a customer to collect a
27 debt, the court may award:

28 (a) Court costs;

29 (b) Costs of service of process, except that the costs must not exceed
30 the amount of the fees charged by the sheriff or constable for service of
31 process in the county where the action was brought or, if the customer is
32 not served in that county, in the county where the customer was served;
33 and

34 (c) Reasonable attorney's fees. In determining the amount of the
35 attorney's fees and whether they are reasonable, the court shall consider
36 the complexity of the case, the amount of the debt and whether the
37 licensee could have used less costly means to collect the debt.

38 **Sec. 33. 1.** If a customer is called to active duty in the military, a
39 licensee shall:

40 (a) Defer for the duration of the active duty all collection activity
41 against the customer and his property, including, without limitation, any
42 community property in which the customer has an interest; and

43 (b) Honor the terms of any repayment plan between the licensee and
44 customer, including, without limitation, any repayment plan negotiated
45 through military counselors or third-party credit counselors.

2. When collecting any defaulted loan, a licensee shall not:

(a) Garnish ~~or threaten to garnish~~ any wages or salary paid to a customer for active service in the military; or

(b) ~~Contact or threaten to contact~~ the military chain of command of a customer in an effort to collect the defaulted loan.

Includes threats under the prohibited acts.

3. As used in this section, "military" means the Armed Forces of the United States, a reserve component thereof or the National Guard.

Sec. 34. A licensee shall not:

1. ~~Make a deferred deposit or short term loan in which the terms of repayment require a payment or payments that exceeds~~ exceed 25 percent of the expected gross monthly income of the customer ~~when the loan is made, 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 gross monthly income to the licensee and represents to the licensee in writing that the ~~repayment terms do~~ loan does not exceed 25 percent of the expected gross monthly income of the customer ~~during the term of the loan.~~

Revises Section 34 to limit its application to deferred deposit or short term loans (not title loans), and to provide that the monthly payment, rather than the loan amount, cannot exceed 25 percent of the borrower's expected gross monthly income when the loan is taken out.

2. Make more than one ~~deferred deposit or short term loan to the same customer at one time or before any outstanding balance is paid in full on an existing loan made by that licensee to the customer unless:~~

(a) The customer is seeking multiple loans in which repayment terms together ~~that~~ do not exceed the limit set forth in subsection 1;

(b) The licensee charges the same rate or a lower annual percentage rate of interest for any additional loans as he charged for the initial loan;

(c) Except for the interest charged pursuant to paragraph (b), the licensee does not impose any other charge or fee to initiate any additional loans; and

(d) If the additional loans are deferred deposit loans and the customer provides one or more additional checks that are not paid upon presentment, the licensee does not charge any fees to the customer pursuant to section 45 of this act, except for the fees allowed pursuant to that section for the first check that is not paid upon presentment.

Sec. 35. A licensee shall not:

1. Accept:

(a) Collateral as security for a loan, 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.

(c) A check as security for a 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

1 amount of total payments set forth in the disclosure statement required
2 by the federal Truth in Lending Act, 15 U.S.C. §§ 1601 et seq., that is
3 provided to the customer.

4 2. Take any note or promise to pay which does not disclose the date
5 and amount of the loan, an annual percentage rate, a finance charge, an
6 amount finance, a total of payments, a payment schedule, late fees, and
7 any other fee not required to be included in the finance charge under the
8 ~~a schedule or description of the payments to be made thereon and the~~
9 ~~rate or aggregate amount of the interest, charges and fees negotiated and~~
10 ~~agreed to by the licensee and customer. Compliance with the federal~~
11 ~~Truth in Lending Act, 15 U.S.C. §§ 1601 et seq., and Regulation Z,~~
12 ~~12 C.F.R. 226. Compliance with the federal Truth in Lending Act,~~
13 ~~15 U.S.C. §§1601 et seq., and Regulation Z, 12 C.F.R. 226, constitutes~~
14 compliance with this subsection.

Clarifying language with
regard to disclosures.

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

18 4. Make any transaction contingent on the purchase of insurance or
19 any other goods or services or sell any insurance to the customer with
20 the loan.

21 5. Fail to comply with a payment plan which is negotiated and
22 agreed to by the licensee and customer.

23 6. Charge any fee to cash a check representing the proceeds of a
24 loan made by the licensee or any agent, affiliate or subsidiary of the
25 licensee.

26 7. Charge a pre-default late fee which is void as a penalty under
27 common law.

Prohibits the licensee from
charging a pre-default late fee
that is void as a penalty under
common law.

28 **Sec. 36. A licensee shall not:**

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

32 2. Commence a civil action before the expiration of the original
33 term of a loan agreement or before the expiration of any repayment plan,
34 extension or grace period negotiated and agreed to by the licensee and
35 customer, unless otherwise authorized pursuant to this chapter.

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

39 4. Include in any written agreement:

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

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

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

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

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

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

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

NEW SECTION (Relates only to title loans)

1. The original term of a title loan shall not exceed the greater of either 30 days or one month. The title loan can be renewed for up to, but not exceeding, six (6) additional such periods provided that:

(a) No interest or charges from prior loan or renewal periods are capitalized or added to the principal amount in any renewal;

(b) The annual percentage rate of interest associated with the title loan is not increased from that charged in previous periods; and

(c) No additional origination fees, set-up fees, collection fees, transaction fees, negotiation fees, handling fees, processing fees, late fees, default fees, or any other fees, regardless of the name given to the fee, are charged in connection with any renewal.

New section regarding the terms of title loans.

Sec. 37. 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 customer has provided the licensee with true and correct information concerning the customer's income, obligations, ~~and~~ employment, and vehicle ownership; and

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

Adds "vehicle ownership" to the list of items concerning which the customer must sign an affidavit stating he has provided true and correct information.

Sec. 38. 1. Except where in conflict with the provisions of this chapter, the provisions of chapter 104 of NRS apply to any title loan between a licensee and a customer.

2. Except as otherwise provided in this section, if a customer defaults on a title loan, or on any extension or repayment plan relating to the 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:

Language regarding commencing a legal action is deleted.

1 (a) Payment of the loan, unless the licensee proves the customer
2 prevented the repossession and sale of the motor vehicle by any means,
3 including, without limitation, hiding the motor vehicle; or

4 (b) Any deficiency after repossession and sale of the motor vehicle
5 which the customer used to secure the title loan, unless the licensee
6 proves the customer damaged or otherwise committed or permitted waste
7 on the motor vehicle. For the purposes of this paragraph, it shall not be
8 deemed waste for the customer to continue to use the motor vehicle in
9 the same manner it was used before he entered into the title loan ~~or to~~
10 ~~make necessary repairs to the motor vehicle.~~

Language providing that making necessary repairs to the motor vehicles is not "deemed waste" is deleted.

11 3. A licensee shall make available to a customer any personal
12 property contained in a motor vehicle that is repossessed by the licensee
13 upon default of the borrower on a title loan. In the event a licensee uses
14 a third party repossession company to effect repossession, the licensee
15 shall instruct such repossession company to make the customer's
16 personal property reasonably available to the customer. After
17 repossession and sale of the motor vehicle securing the title loan, the
18 licensee shall return to the customer any proceeds from the sale of the
19 motor vehicle which exceed the amount owed on the title loan.

Revised procedure for making available to the customer his personal property contained in a repossessed motor vehicle.

20 4. If a customer uses fraud to secure a title loan, of if the customer
21 wrongfully transfers any interest in the motor vehicle to a third party
22 before the loan is repaid, the licensee may bring a civil action against the
23 customer for any or all of the following relief:

Language to clarify actions involving customer fraud.

24 (a) The amount of the loan obligation, including, without limitation,
25 the aggregate amount of the interest, charges and fees negotiated and
26 agreed to by the licensee and customer which are permitted by this Act,
27 less any repayments;

28 (b) Reasonable attorney's fees and costs; and

29 (c) Any other legal or equitable relief that the court deems
30 appropriate.

31 5. As used in this section, "fraud" means an intentional
32 misrepresentation, deception or concealment of a material fact known to
33 the customer with the intent to deprive the licensee of his rights or
34 property or to otherwise injure the licensee. The term includes, without
35 limitation, giving to a licensee as security for a title loan the title to a
36 motor vehicle which does not belong to the customer.

37 Sec. 39. 1. A customer may rescind a loan on or before the close
38 of business on the next day of business at the location where the loan
39 was initiated. To rescind the loan, the customer must deliver to the
40 licensee:

41 (a) A sum of money equal to the face value of the loan, less any fee
42 charged to the customer to initiate the loan; or

43 (b) The original check, if any, which the licensee gave to the
44 customer pursuant to the loan. Upon receipt of the original check, the
45 licensee shall refund any fee charged to the customer to initiate the loan.

1 2. If a customer rescinds a loan pursuant to this section, the
2 licensee:

3 (a) Shall not charge the customer any fee for rescinding the loan;
4 and

5 (b) Upon receipt of the sum of money or check pursuant to
6 subsection 1, shall give to the customer a receipt showing the account
7 paid in full and:

8 (1) If the customer gave to the licensee a check or a written
9 authorization for an electronic transfer of money to initiate a deferred
10 deposit loan, the check or written authorization stamped "void";

11 (2) If the customer gave to the licensee a promissory note to
12 initiate a short-term loan, a copy of the promissory note stamped "void"
13 or the receipt stamped "paid in full"; or

14 (3) If the customer gave to the licensee a title to a motor vehicle to
15 initiate the title loan, the title.

16 Sec. 40. 1. A customer may pay a loan, or any extension thereof,
17 in full at any time, without an additional charge or fee, before the date
18 his final payment on the loan, or any extension thereof, is due.

19 2. If a customer pays the loan in full, including all interest, charges
20 and fees negotiated and agreed to by the licensee and customer as
21 permitted under this Act, the licensee shall:

22 (a) Give to the customer:

23 (1) If the customer gave to the licensee a check or a written
24 authorization for an electronic transfer of money to initiate a deferred
25 deposit loan, the check or the written authorization stamped "void";

26 (2) If the customer gave to the licensee a promissory note to
27 initiate a short-term loan, the promissory note stamped "void" or a
28 receipt stamped "paid in full"; or

29 (3) If the customer gave to the licensee a title to a motor vehicle to
30 initiate a title loan, the title; and

31 (b) Give to the customer a receipt with the following information:

32 (1) The name and address of the licensee;

33 (2) The identification number assigned to the loan agreement or
34 other information that identifies the loan;

35 (3) The date of the payment;

36 (4) The amount paid;

37 (5) An itemization of interest, charges and fees;

38 (6) A statement that the loan is paid in full; and

39 (7) If more than one loan made by the licensee to the customer
40 was outstanding at the time the payment was made, a statement
41 indicating to which loan the payment was applied.

42 Sec. 41. 1. A customer may make a partial payment on a loan, or
43 any extension thereof, at any time without an additional charge or fee.

44 2. If a customer makes such a partial payment, the licensee shall
45 give to the customer a receipt with the following information:

Clarifies the charges and
fees that may be negotiated
and agreed to.

- 1 (a) The name and address of the licensee;
- 2 (b) The identification number assigned to the loan agreement or
- 3 other information that identifies the loan;
- 4 (c) The date of the payment;
- 5 (d) The amount paid;
- 6 (e) An itemization of interest, charges and fees;
- 7 (f) The balance due on the loan; and
- 8 (g) If more than one loan made by the licensee to the customer was
- 9 outstanding at the time the payment was made, a statement indicating to
- 10 which loan the payment was applied.

11 **Sec. 42. 1.** Prior to commencing civil action or any alternative
 12 dispute resolution process to collect a loan, the licensee shall

13 (a) Offer the customer the opportunity to enter into a repayment plan
 14 within 30 days of default or the end of any grace period, whichever
 15 occurs later, that is at least four (4) equal monthly installments.

16 (b) Provide the customer with written notice of the opportunity which
 17 must:

18 (1) Be in English, if the initial transaction was conducted in
 19 English, or in Spanish, if the initial transaction was conducted in
 20 Spanish;

21 (2) State that the customer has 30 days from the date the notice is
 22 postmarked to enter into the repayment plan and make his first payment;

23 (3) State that the customer can repay the amount owed in at least
 24 4 equal monthly installments; and

25 (4) State:

26 (i) The original amount owed less all payments made before
 27 and after default;

28 (ii) Any charges permitted by this chapter; and

29 (iii) The total due and owing.

30 ~~The licensee and customer may enter into a repayment plan if:~~

31 ~~(a) The customer defaults on the original loan, or any extension~~
 32 ~~thereof; or~~

33 ~~(b) Before such a default, the customer indicates that he is unable to~~
 34 ~~pay the original loan in full pursuant to the terms set forth in the~~
 35 ~~original loan agreement, or any extension thereof.~~

36 ~~2. If the customer defaults on the original loan or any extension~~
 37 ~~thereof, or indicates that he is unable to pay in full the original loan or~~
 38 ~~any extension thereof, the licensee:~~

39 ~~(a) Shall provide written notice in English, if the initial transaction~~
 40 ~~was conducted in English, or in Spanish, if the initial transaction was~~
 41 ~~conducted in Spanish, to the customer of his right to enter into a~~
 42 ~~repayment plan; and~~

43 ~~(b) Shall not commence any civil action to collect on the outstanding~~
 44 ~~loan unless:~~

45 ~~(1) Such a notice has been sent to the customer; and~~

Revises language
regarding repayment plans.

~~(2) The customer fails to exercise his right to enter into a repayment plan within 15 days after receipt of the notice.~~

~~3. If the licensee and customer enter into a repayment plan pursuant to this section, the customer may pay the remaining balance on the outstanding loan~~

~~(a) In four equal monthly installments; or~~

~~(b) Under any other terms negotiated and agreed to by the licensee and customer that comply with the provisions of this section.~~

4. 2. If the licensee and customer enter into a repayment plan pursuant to this section, the licensee shall, if ~~if~~

~~(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."~~

~~§ 3.~~ 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) Charge any other amount to a customer, including, without limitation, any amount or charge payable directly or indirectly by the customer and imposed directly or indirectly by the licensee as an incident to or as a condition of entering into a repayment plan. Such an amount includes, without limitation:

(1) Any interest, other than the interest charged pursuant to the original loan agreement, regardless of the name given to the interest; or

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

(b) Accept any security or collateral from the customer to enter into the repayment plan;

(c) 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;

(d) Make any other loan to the customer, unless the customer is seeking multiple loans that do not exceed the limit set forth in subsection 1 of section 34 of this act; or

(e) Commence a civil action or any alternative dispute resolution process against the customer during the term of the repayment plan.

~~§ 4.~~ 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;

Adds option of alternative dispute resolution.

1 (b) The identification number assigned to the loan agreement or
2 other information that identifies the loan;

3 (c) The date of the payment;

4 (d) The amount paid;

5 (e) The balance due on the loan or, when the customer makes the
6 final payment, a statement that the loan is paid in full; and

7 (f) If more than one loan made by the licensee to the customer was
8 outstanding at the time the payment was made, a statement indicating to
9 which loan the payment was applied.

10 **Sec. 43.** If a customer agrees to establish or extend the period for
11 the repayment, renewal, refinancing or consolidation of an outstanding
12 loan by using the proceeds of a new deferred deposit or short-term loan
13 to pay the balance of the outstanding loan, the licensee shall not
14 establish or extend such a period beyond ~~8 weeks~~ 2 months after the
15 expiration of the initial loan period. This section does not apply to a
16 licensee who lends according to all of the following criteria:

17 1. The licensee makes a loan with an annual percentage rate of less
18 than 200 percent, to be repaid on a monthly basis in not less than
19 5 months, and interest does not continue to accrue at the contract rate
20 after the date of maturity if not paid in full;

21 3. A credit check is performed with a major consumer reporting
22 agency prior to initiating the loan;

23 4. Loan experience information is reported to a major consumer
24 reporting agency;

25 5. The customer is provided a 5-day right to rescind a loan without
26 charge;

27 6. The licensee participates in good faith with a counseling agency
28 that is accredited by the Council on Accreditation for Services for
29 Families and Children, Inc.;

30 7. The licensee is a member of the National Foundation for Credit
31 Counseling; and

32 8. The licensee does not initiate litigation or an alternative dispute
33 resolution process on a defaulted loan, extension, or repayment plan.

34 **Sec. 44. 1.** If a customer defaults on a loan or on any extension
35 or repayment plan relating to the loan, whichever is later, the licensee
36 may collect only the following amounts from the customer:

37 (a) The principal amount of the loan, less all payments made before
38 and after default.

39 (b) The interest accrued before the expiration of the initial loan
40 period at the rate of interest set forth in the disclosure statement required
41 by the federal Truth in Lending Act, 15 U.S.C. §§ 1601 et seq., that is
42 provided to the customer. If there is an extension ~~or repayment plan~~
43 relating to the loan, the licensee may charge and collect interest
44 pursuant to this paragraph for a period not to exceed 8 weeks after the

Revises Section 43 to limit its application to deferred deposit or short-term loans, specify a period of 2 months (instead of 8 weeks), and provide an exemption for certain licensees.

Clarifies amounts a licensee may collect when a customer defaults, and deletes a reference to "repayment plan" under subsection 1(a).

1 *expiration of the initial loan period, unless otherwise allowed by*
 2 *section 43.*

Adds an exception for
 Section 43 and its new
 provisions.

3 *(c) The interest accrued after the expiration of the initial loan period*
 4 *or after any extension or repayment plan that is allowed pursuant to*
 5 *paragraph (b), whichever is later, at a rate of interest not to exceed the*
 6 *prime rate at the largest bank in Nevada, as ascertained by the*
 7 *Commissioner, on January 1 or July 1, as the case may be, immediately*
 8 *preceding the expiration of the initial loan period, plus 10 percent. The*
 9 *licensee may charge and collect interest pursuant to this paragraph for a*
 10 *period not to exceed 12 weeks. After that period, the licensee shall not*
 11 *charge or collect any interest on the loan.*

12 *(d) Any fees allowed pursuant to section 45 of this act for a check*
 13 *that is not paid upon presentment because the account of the customer*
 14 *contains insufficient funds or has been closed.*

15 *2. Except for the interest and fees permitted pursuant to subsection*
 16 *1, the licensee shall not charge any other amount to a customer,*
 17 *including, without limitation, any amount or charge payable directly or*
 18 *indirectly by the customer and imposed directly or indirectly by the*
 19 *licensee as an incident to or as a condition of the extension of the period*
 20 *for the payment of the loan or the extension of credit. Such an amount*
 21 *includes, without limitation:*

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

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

27 *Sec. 45. 1. A licensee may collect a fee of not more than \$25 if a*
 28 *check is not paid upon presentment because the account of the customer*
 29 *contains insufficient funds or has been closed.*

30 *2. If the account of the customer contains insufficient funds, the*
 31 *licensee may collect only two fees of \$25 each regardless of the number*
 32 *of times the check is presented for payment.*

33 *3. If the account of the customer has been closed, the licensee may*
 34 *collect only one fee of \$25 regardless of the number of times the check is*
 35 *presented for payment.*

36 *4. A customer is not liable for damages pursuant to NRS 41.620 or*
 37 *to criminal prosecution for a violation of chapter 205 of NRS unless the*
 38 *customer acted with criminal intent.*

39 *Sec. 46. In addition to any other provision in this chapter, each*
 40 *time a customer makes a payment to a licensee, the licensee shall give to*
 41 *the customer a receipt with the following information:*

42 *1. The name and address of the licensee;*

43 *2. The identification number assigned to the loan agreement or*
 44 *other information that identifies the loan;*

45 *3. The date of the payment;*

1 4. The amount paid;

2 5. The balance due on the loan or, when the customer makes a final
3 payment, a statement that the loan is paid in full; and

4 6. If more than one loan made by the licensee to the customer was
5 outstanding at the time the payment was made, a statement indicating to
6 which loan the payment was applied.

7 Sec. 47. 1. A person shall not act as an agent for or assist a
8 licensee in the making of a loan unless the licensee complies with all
9 applicable federal and state laws, regulations and guidelines.

10 2. The provisions of this section do not apply to the agent or
11 assistant to a state or federally chartered bank, thrift company, savings
12 and loan association or industrial loan company if the state or federally
13 chartered bank, thrift company, savings and loan association or
14 industrial loan company:

15 (a) Initially advances the loan proceeds to the customer; and

16 (b) Does not sell, assign or transfer a preponderant economic interest
17 in the loan to the agent or assistant or an affiliate or subsidiary of the
18 state or federally chartered bank, thrift company, savings and loan
19 association or industrial loan company, unless selling, assigning or
20 transferring a preponderant economic interest is expressly permitted by
21 the primary regulator of the state or federally chartered bank, thrift
22 company, savings and loan association or industrial loan company.

23 3. If a licensee acts as an agent for or assists a state or federally
24 chartered bank, thrift company, savings and loan association or
25 industrial loan company in the making of a loan and the licensee can
26 show that the standards set forth in subsection 2 are satisfied, the
27 licensee must comply with all other provisions in this chapter to the
28 extent they are not preempted by other state or federal law.

29 Sec. 48. 1. An application for a license pursuant to the provisions
30 of this chapter must be made in writing, under oath and on a form
31 prescribed by the Commissioner. The application must include:

32 (a) If the applicant is a natural person, the name and address of the
33 applicant.

34 (b) If the applicant is a business entity, the name and address of
35 each:

36 (1) Partner;

37 (2) Officer;

38 (3) Director;

39 (4) Manager or member who acts in a managerial capacity; and

40 (5) Registered agent,

41 ↗ of the business entity.

42 (c) Such other information, as the Commissioner determines
43 necessary, concerning the financial responsibility, background,
44 experience and activities of the applicant and its:

45 (1) Partners;

1 (2) Officers;

2 (3) Directors; and

3 (4) Managers or members who act in a managerial capacity.

4 (d) The address of each location at which the applicant proposes to
5 do business, including, without limitation, each location where the
6 applicant will operate at a kiosk, through the Internet, through any
7 telephone, facsimile machine or other telecommunication device or
8 through any other machine, network, system, device or means.

9 (e) If the applicant is or intends to be licensed to provide more than
10 one type of service pursuant to the provisions of this chapter, a statement
11 of that intent and which services he provides or intends to provide.

12 2. Each application for a license must be accompanied by:

13 (a) A nonrefundable application fee;

14 (b) Such additional expenses incurred in the process of investigation
15 as the Commissioner deems necessary; and

16 (c) A fee of not less than \$100 or more than \$500, prorated on the
17 basis of the licensing year.

18 ➡ All money received by the Commissioner pursuant to this subsection
19 must be placed in the Investigative Account for Financial Institutions
20 created by NRS 232.545.

21 3. The Commissioner shall adopt regulations establishing the
22 amount of the fees required pursuant to this section.

23 Sec. 49. 1. Except as otherwise provided in section 50 of this act,
24 each application for a license pursuant to the provisions of this chapter
25 must be accompanied by a surety bond payable to the State of Nevada in
26 the amount of \$50,000 for the use and benefit of any customer receiving
27 the services of the licensee.

28 2. The bond must be in a form satisfactory to the Commissioner,
29 issued by a bonding company authorized to do business in this State and
30 must secure the faithful performance of the obligations of the licensee
31 respecting the provision of the services.

32 3. A licensee shall, within 10 days after the commencement of any
33 action or notice of entry of any judgment against him by any creditor or
34 claimant arising out of business regulated by this chapter give notice
35 thereof to the Commissioner by certified mail with details sufficient to
36 identify the action or judgment. The surety shall, within 10 days after it
37 pays any claim or judgment to a creditor or claimant, give notice thereof
38 to the Commissioner by certified mail with details sufficient to identify
39 the creditor or claimant and the claim or judgment so paid.

40 4. Whenever the principal sum of the bond is reduced by recoveries
41 or payments thereon, the licensee shall furnish:

42 (a) A new or additional bond so that the total or aggregate principal
43 sum of the bonds equals the sum required pursuant to subsection 1; or

44 (b) An endorsement, duly executed by the surety, reinstating the bond
45 to the required principal sum.

1 5. The liability of the surety on the bond to a creditor or claimant is
 2 not affected by any misrepresentation, breach of warranty, failure to pay
 3 a premium or other act or omission of the licensee, or by any insolvency
 4 or bankruptcy of the licensee.

5 6. The liability of the surety continues as to all transactions entered
 6 into in good faith by the creditors and claimants with the agents of the
 7 licensee within 30 days after:

8 (a) The death of the licensee or the dissolution or liquidation of his
 9 business; or

10 (b) The termination of the bond,
 11 ↪ whichever event occurs first.

12 7. A licensee or his surety shall not cancel or alter a bond except
 13 after notice to the Commissioner by certified mail. The cancellation or
 14 alteration is not effective until 10 days after
 15 receipt of the notice by the Commissioner. A cancellation or alteration
 16 does not affect any liability incurred or accrued on the bond before the
 17 expiration of the 30-day period designated in subsection 6.

18 Sec. 50. 1. In lieu of any surety bond, or any portion of the
 19 principal sum thereof as required pursuant to the provisions of this
 20 chapter, a licensee may deposit with the State Treasurer or with any
 21 bank, credit union or trust company authorized to do business in this
 22 State as the licensee may select, with the approval of the Commissioner:

23 (a) Interest-bearing stocks;

24 (b) Bills, bonds, notes, debentures or other obligations of the United
 25 States or any agency or instrumentality thereof, or guaranteed by the
 26 United States; or

27 (c) Any obligation of this State or any city, county, town, township,
 28 school district or other instrumentality of this State or guaranteed by this
 29 State,

30 ↪ in an aggregate amount of, based upon principal amount or market
 31 value, whichever is lower, of not less than the amount of the required
 32 surety bond or portion thereof.

33 2. The securities must be held to secure the same obligation as
 34 would the surety bond, but the depositor may receive any interest or
 35 dividends and, with the approval of the Commissioner, substitute other
 36 suitable securities for those deposited.

37 Sec. 51. 1. A person may apply for a license for an office or other
 38 place of business located outside this State from which the applicant will
 39 conduct business in this State if the applicant or a subsidiary or affiliate
 40 of the applicant has a license issued pursuant to this chapter for an
 41 office or other place of business located in this State and if the applicant
 42 submits with the application for a license a statement signed by the
 43 applicant which states that the applicant agrees to:

44 (a) Make available at a location within this State the books, accounts,
 45 papers, records and files of the office or place of business located outside

1 *this State to the Commissioner or a representative of the Commissioner;*
2 *or*

3 *(b) Pay the reasonable expenses for travel, meals and lodging of the*
4 *Commissioner or a representative of the Commissioner incurred during*
5 *any investigation or examination made at the office or place of business*
6 *located outside this State.*

7 *⇒ The person must be allowed to choose between the provisions of*
8 *paragraph (a) or (b) in complying with the provisions of this subsection.*

9 *2. This section applies, without limitation, to any office or other*
10 *place of business located outside this State from which the applicant will*
11 *conduct business in this State at a kiosk, through the Internet, through*
12 *any telephone, facsimile machine or other telecommunication device or*
13 *through any other machine, network, system, device or means.*

14 *Sec. 52. 1. Upon the filing of the application and the payment of*
15 *the fees required pursuant to section 48 of this act,*
16 *the Commissioner shall investigate the facts concerning the application*
17 *and the requirements provided for in section 54 of this act.*

18 *2. The Commissioner may hold a hearing on the application at a*
19 *time not less than 30 days after the date the application was filed or not*
20 *more than 60 days after that date. The hearing must be held in the Office*
21 *of the Commissioner or such other place as he may designate. Notice in*
22 *writing of the hearing must be sent to the applicant and to any licensee to*
23 *which a notice of the application has been given and to such other*
24 *persons as the Commissioner may see fit, at least 10 days before the date*
25 *set for the hearing.*

26 *3. The Commissioner shall make his order granting or denying the*
27 *application within 10 days after the date of the closing of the hearing,*
28 *unless the period is extended by written agreement between the applicant*
29 *and the Commissioner.*

30 *Sec. 53. If the Commissioner finds that any applicant does not*
31 *possess the requirements specified in this chapter, he shall:*

32 *1. Enter an order denying the application and notify the applicant*
33 *of the denial.*

34 *2. Within 10 days after the entry of such an order, file his findings*
35 *and a summary of the evidence supporting those findings and deliver a*
36 *copy thereof to the applicant.*

37 *Sec. 54. 1. The Commissioner shall enter an order granting an*
38 *application if he finds that the financial responsibility, experience,*
39 *character and general fitness of the applicant are such as to command*
40 *the confidence of the public and to warrant belief that the business will*
41 *be operated lawfully, honestly, fairly and efficiently.*

42 *2. If the Commissioner grants an application, the Commissioner*
43 *shall:*

44 *(a) File his findings of fact together with the transcript of any*
45 *hearing held pursuant to the provisions of this chapter; and*

1 (b) Issue to the licensee a license in such form and size as is
2 prescribed by the Commissioner for each location at which the licensee
3 proposes to do business.

4 3. Each licensee shall prominently display his license at the location
5 where he does business. The Commissioner may issue additional licenses
6 to the same licensee for each branch location at which the licensee is
7 authorized to operate under the license, including, without limitation,
8 each branch location where the licensee is authorized to operate at a
9 kiosk, through the Internet, through any telephone, facsimile machine or
10 other telecommunication device or through any other machine, network,
11 system, device or means. Nothing in this subsection requires a license for
12 any place of business devoted to accounting, recordkeeping or
13 administrative purposes only.

14 4. Each license shall:

15 (a) State the address at which the business is to be conducted; and

16 (b) State fully:

17 (1) The name and address of the licensee;

18 (2) If the licensee is a copartnership or association, the names of
19 its members; and

20 (3) If the licensee is a corporation, the date and place of its
21 incorporation.

22 5. A license is not transferable or assignable.

23 Sec. 55. 1. A license issued pursuant to the provisions of this
24 chapter expires annually on the anniversary of the issuance of the
25 license. A licensee must renew his license on or before the date on which
26 the license expires by paying:

27 (a) A renewal fee; and

28 (b) An additional fee for each branch location at which the licensee
29 is authorized to operate under the license.

30 2. A licensee who fails to renew his license within the time required
31 by this section is not licensed pursuant to the provisions of this chapter.

32 3. The Commissioner may reinstate an expired license upon receipt
33 of the renewal fee and a fee for reinstatement.

34 4. The Commissioner shall adopt regulations establishing the
35 amount of the fees required pursuant to this section.

36 Sec. 56. 1. A licensee shall immediately notify the Commissioner
37 of any change of control of the licensee.

38 2. A person who acquires stock, partnership or member interests
39 resulting in a change of control of the licensee shall apply to the
40 Commissioner for approval of the transfer. The application must contain
41 information which shows that the requirements for obtaining a license
42 pursuant to the provisions of this chapter will be satisfied after the
43 change of control. If the Commissioner determines that those
44 requirements will not be satisfied, he may deny the application and
45 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. 57. A licensee shall not conduct the business of making loans under any name, at any place 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.

Sec. 58. 1. Except as otherwise provided in this section, a licensee may not conduct the business of making loans within any office, suite, room or place of business in which any other lending 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) Maintain separate accounts, books and records;

(II) Are subsidiaries of the same parent corporation; and

(III) 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) Maintain separate accounts, books and records;

(II) Are subsidiaries of the same parent corporation; and

(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.

3. If a pawnbroker is licensed to operate a check-cashing service, deferred deposit loan service, short-term loan service or title loan service, the pawnbroker may operate that service at the same office or place of business from which he conducts business as a pawnbroker pursuant to chapter 646 of NRS.

1 *Sec. 59. 1. A licensee who wishes to change the address of an*
 2 *office or other place of business for which he has a license pursuant to*
 3 *the provisions of this chapter must, at least 10 days before changing the*
 4 *address, give written notice of the proposed change to the Commissioner.*

5 *2. Upon receipt of the proposed change of address pursuant to*
 6 *subsection 1, the Commissioner shall provide written approval of the*
 7 *change and the date of the approval.*

8 *3. If a licensee fails to provide notice as required pursuant to*
 9 *subsection 1, the Commissioner may impose a fine in an amount not to*
 10 *exceed \$500.*

11 *4. This section applies, without limitation, to any office or other*
 12 *place of business at which the licensee intends to operate a kiosk,*
 13 *through the Internet, through any telephone, facsimile machine or other*
 14 *telecommunication device or through any other machine, network,*
 15 *system, device or means.*

16 *Sec. 60. 1. Each licensee shall keep and use in his business such*
 17 *books and accounting records as are in accord with generally accepted*
 18 *accounting practices.*

19 *2. Each licensee shall maintain a separate record or ledger card for*
 20 *the account of each customer and shall set forth separately the amount*
 21 *of cash advance and the total amount of interest and charges, but such a*
 22 *record may set forth precomputed declining balances based on the*
 23 *scheduled payments, without a separation of principal and charges.*

24 *3. Each licensee shall preserve all such books and accounting*
 25 *records for at least 2 years after making the final entry therein.*

26 *4. Each licensee who operates outside this State an office or other*
 27 *place of business that is licensed pursuant to provisions of this chapter*
 28 *shall:*

29 *(a) Make available at a location within this State the books, accounts,*
 30 *papers, records and files of the office or place of business located outside*
 31 *this State to the Commissioner or a representative of the Commissioner;*
 32 *or*

33 *(b) Pay the reasonable expenses for travel, meals and lodging of the*
 34 *Commissioner or a representative of the Commissioner incurred during*
 35 *any investigation or examination made at the office or place of business*
 36 *located outside this State.*

37 *↪ The licensee must be allowed to choose between the provisions of*
 38 *paragraph (a) or (b) in complying with this subsection.*

39 *5. As used in this section, "amount of cash advance" means the*
 40 *amount of cash or its equivalent actually received by a customer or paid*
 41 *out at his direction or in his behalf.*

42 *Sec. 61. 1. Except as otherwise provided in subsection 3, an*
 43 *officer or employee of the Division of Financial Institutions of the*
 44 *Department of Business and Industry shall not:*

1 (a) Be directly or indirectly interested in or act on behalf of any
2 licensee;

3 (b) Receive, directly or indirectly, any payment from any licensee;

4 (c) Be indebted to any licensee;

5 (d) Engage in the negotiation of loans for others with any licensee;
6 or

7 (e) Obtain credit or services from a licensee conditioned upon a
8 fraudulent practice or undue or unfair preference over other customers.

9 2. An employee of the Division of Financial Institutions in the
10 unclassified service of the State shall not obtain new extensions of credit
11 from a licensee while in office.

12 3. Any officer or employee of the Division of Financial Institutions
13 may be indebted to a licensee on the same terms as are available to the
14 public generally.

15 4. If an officer or employee of the Division of Financial Institutions
16 has a service, a preferred consideration, an interest or a relationship
17 prohibited by this section at the time of his appointment or employment,
18 or obtains it during his employment, he shall terminate it within 120 days
19 after the date of his appointment or employment or the discovery of the
20 prohibited act.

21 Sec. 62. 1. For the purpose of discovering violations of this
22 chapter or of securing information lawfully required under this chapter,
23 the Commissioner or his duly authorized representatives may at any time
24 investigate the business and examine the books, accounts, papers and
25 records used therein of:

26 (a) Any licensee;

27 (b) Any other person engaged in the business of making loans or
28 participating in such business as principal, agent, broker or otherwise;
29 and

30 (c) Any person who the Commissioner has reasonable cause to
31 believe is violating or is about to violate any provision of this chapter,
32 whether or not the person claims to be within the authority or beyond the
33 scope of this chapter.

34 2. For the purpose of examination, the Commissioner or his
35 authorized representatives shall have and be given free access to the
36 offices and places of business, and the files, safes and vaults of such
37 persons.

38 3. For the purposes of this section, any person who advertises for,
39 solicits or holds himself out as willing to make any deferred deposit loan,
40 short-term loan or title loan is presumed to be engaged in the business of
41 making loans.

42 Sec. 63. 1. The Commissioner may require the attendance of any
43 person and examine him under oath regarding:

44 (a) Any check-cashing service or loan service regulated pursuant to
45 the provisions of this chapter; or

1 (b) The subject matter of any audit, examination, investigation or
2 hearing.

3 2. The Commissioner may require the production of books,
4 accounts, papers and records for any audit, examination, investigation or
5 hearing.

6 Sec. 64. At least once each year, the Commissioner or his
7 authorized representatives shall make an examination of the place of
8 business of each licensee and of the loans, transactions, books, accounts,
9 papers and records of the licensee so far as they pertain to the business
10 for which he is licensed pursuant to the provisions of this chapter. If the
11 Commissioner or his authorized representatives conclude, that after
12 auditing one or more branches of a licensee, that the loans, computer
13 processes, disclosures, loan practices, filing systems, and records are
14 identical at each location, then the Commissioner has the authority to
15 only review those branches that are deemed necessary.

Adds new language
regarding review of branches
when documents are
identical at each location.

16 Sec. 65. 1. The Commissioner shall charge and collect from each
17 licensee a fee of \$40 per hour for any supervision, audit, examination,
18 investigation or hearing conducted pursuant to this chapter or any
19 regulations adopted pursuant thereto.

20 2. The Commissioner shall bill each licensee upon the completion
21 of the activity for the fee established pursuant to subsection 1. The
22 licensee shall pay the fee within 30 days after the date the bill is received.
23 Except as otherwise provided in this subsection, any payment received
24 after the date due must include a penalty of 10 percent of the fee plus an
25 additional 1 percent of the fee for each month, or portion of a month,
26 that the fee is not paid. The Commissioner may waive the penalty for
27 good cause.

28 3. The failure of a licensee to pay the fee required pursuant to
29 subsection 1 as provided in this section constitutes grounds for
30 revocation of the license of the licensee.

31 Sec. 66. If the Commissioner finds that probable cause for
32 revocation of any license exists and that enforcement of the provisions of
33 this chapter requires immediate suspension of a license pending
34 investigation, he may, upon 5 days' written notice and a hearing, enter
35 an order suspending a license for a period not exceeding 20 days,
36 pending a hearing upon the revocation.

37 Sec. 67. 1. Whenever the Commissioner has reasonable cause to
38 believe that any person is violating or is threatening to or intends to
39 violate any provision of this chapter, he may, in addition to all actions
40 provided for in this chapter and without prejudice thereto, enter an order
41 requiring the person to desist or to refrain from such violation.

42 2. The Attorney General or the Commissioner may bring an action
43 to enjoin a person from engaging in or continuing a violation or from
44 doing any act or acts in furtherance thereof. In any such action, an

1 order or judgment may be entered awarding a preliminary or final
2 injunction as may be deemed proper.

3 3. In addition to all other means provided by law for the
4 enforcement of a restraining order or injunction, the court in which an
5 action is brought may impound, and appoint a receiver for, the property
6 and business of the defendant, including books, papers, documents and
7 records pertaining thereto, or so much thereof as the court may deem
8 reasonably necessary to prevent violations of this chapter through or by
9 means of the use of property and business. A receiver, when appointed
10 and qualified, has such powers and duties as to custody, collection,
11 administration, winding up and liquidation of such property and
12 business as may from time to time be conferred upon him by the court.

13 Sec. 68. 1. If the Commissioner has reason to believe that
14 grounds for revocation or suspension of a license exist, he shall give 20
15 days' written notice to the licensee stating the contemplated action and,
16 in general, the grounds therefor and set a date for a hearing.

17 2. At the conclusion of a hearing, the Commissioner shall:

18 (a) Enter a written order either dismissing the charges, revoking the
19 license or suspending the license for a period of not more than 60 days,
20 which period must include any prior temporary suspension. The
21 Commissioner shall send a copy of the order to the licensee by registered
22 or certified mail.

23 (b) Impose upon the licensee a fine of \$500 for each violation by the
24 licensee of any provision of this chapter or any regulation adopted
25 pursuant thereto.

26 (c) If a fine is imposed pursuant to this section, enter such order as is
27 necessary to recover the costs of the proceeding, including his
28 investigative costs and attorney's fees.

29 3. The grounds for revocation or suspension of a license are that:

30 (a) The licensee has failed to pay the annual license fee;

31 (b) The licensee, either knowingly or without any exercise of due
32 care to prevent it, has violated any provision of this chapter or any lawful
33 regulation adopted pursuant thereto;

34 (c) The licensee has failed to pay a tax as required pursuant to the
35 provisions of chapter 363A of NRS;

36 (d) Any fact or condition exists which would have justified the
37 Commissioner in denying the licensee's original application for a license
38 pursuant to the provisions of this chapter; or

39 (e) The licensee:

40 (1) Failed to open an office for the conduct of the business
41 authorized by his license within 180 days after the date his license was
42 issued; or

43 (2) Has failed to remain open for the conduct of the business for a
44 period of 180 days without good cause therefor.

1 4. Any revocation or suspension applies only to the license granted
2 to a person for the particular office for which grounds for revocation or
3 suspension exist.

4 5. An order suspending or revoking a license becomes effective 5
5 days after being entered unless the order specifies otherwise or a stay is
6 granted.

7 Sec. 69. A licensee may surrender any license issued pursuant to
8 the provisions of this chapter by delivering it to the Commissioner with
9 written notice of its surrender, but a surrender does not affect his civil or
10 criminal liability for acts committed prior thereto.

11 Sec. 70. A revocation, suspension, expiration or surrender of any
12 license does not impair or affect the obligation of any preexisting lawful
13 loan agreement between the licensee and any customer. Such a loan
14 agreement and all lawful charges thereon may be collected by the
15 licensee, its successors or assigns.

16 Sec. 71. 1. Annually, on or before April 15, each licensee shall
17 file with the Commissioner a report of operations of the licensed
18 business for the preceding calendar year.

19 2. The licensee shall make the report under oath and on a form
20 prescribed by the Commissioner.

21 3. If any person or affiliated group holds more than one license in
22 this State, it may file a composite annual report.

23 Sec. 72. 1. A court of this State may exercise jurisdiction over a
24 party to a civil action arising under the provisions of this chapter on any
25 basis not inconsistent with the Constitution of the State of Nevada or the
26 Constitution of the United States.

27 2. Personal service of summons upon a party outside this State is
28 sufficient to confer upon a court of this State jurisdiction over the party
29 so served if the service is made by delivering a copy of the summons,
30 together with a copy of the complaint, to the party served in the manner
31 provided by statute or rule of court for service upon a person of like kind
32 within this State.

33 3. In all cases of such service, the defendant has 40 days, exclusive
34 of the day of service, within which to answer or plead.

35 4. This section provides an additional manner of serving process
36 and does not invalidate any other service.

37 Sec. 73. 1. Except as otherwise provided in this section, if a
38 licensee willfully:

39 (a) Enters into a loan agreement for an amount of interest or any
40 other charge or fee that violates the provisions of this chapter or any
41 regulation adopted pursuant thereto;

42 (b) Demands, collects or receives an amount of interest or any other
43 charge or fee that violates the provisions of this chapter or any
44 regulation adopted pursuant thereto; or

1 (c) Commits any other act or omission that violates the provisions of
 2 this chapter or any regulation adopted pursuant thereto,
 3 the loan is void and the licensee is not entitled to collect, receive or
 4 retain any principal, interest or other charges or fees with respect to the
 5 loan.

6 2. The provisions of this section do not apply if:

7 (a) A licensee shows by a preponderance of the evidence that the
 8 violation was not intentional and resulted from a bona fide error of
 9 computation, notwithstanding the maintenance of procedures reasonably
 10 adapted to avoid that error; and

11 (b) Within 60 days after discovering the error, the licensee notifies
 12 the customer of the error and makes whatever adjustments in the
 13 account are necessary to correct the error.

14 Sec. 74. In addition to any other remedy or penalty, if a licensee
 15 violates any provision of section 29, 31 to 47, inclusive, 49, 50, 57 or 58
 16 of this act or any regulation adopted pursuant thereto, the customer may
 17 bring a civil action against the licensee for any or all of the following
 18 relief:

19 1. Actual and consequential damages;

20 2. An additional amount, as statutory damages, which is equal to
 21 \$1,000 for each violation;

22 3. Punitive damages, which are subject to the provisions of NRS
 23 42.005;

24 4. Reasonable attorney's fees and costs; and

25 5. Any other legal or equitable relief that the court deems
 26 appropriate.

27 Sec. 75. NRS 598D.130 is hereby amended to read as follows:

28 598D.130 A mortgage, deed of trust or other instrument that
 29 encumbers home property as security for repayment of a home loan must
 30 expressly indicate in writing in a size equal to at least 14-point bold type
 31 on the front page of the mortgage, deed of trust or other instrument that
 32 the home loan is a home loan as defined in NRS 598D.040 ~~+~~ and is
 33 subject to the provisions of § 152 of the Home Ownership and Equity
 34 Protection Act of 1994, 15 U.S.C. § 1602(aa), and the regulations
 35 adopted by the Board of Governors of the Federal Reserve System
 36 pursuant thereto, including, without limitation, 12 C.F.R. § 226.32.

37 Sec. 76. NRS 232.545 is hereby amended to read as follows:

38 232.545 1. An Investigative Account for Financial Institutions is
 39 hereby created in the State General Fund. The Account consists of money
 40 which is:

41 (a) Received by the Department of Business and Industry in connection
 42 with the licensing of financial institutions and the investigation of persons
 43 associated with those institutions; and

44 (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 institution" 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 74, inclusive, of this act.*

Sec. 77. NRS 363A.050 is hereby amended to read as follows:

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 74, 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;

- 30 -

(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;

(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. 78. 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 74, inclusive, of this act.*

Sec. 79. 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 74, inclusive, of this act;*

1 (b) Collection agency that is supervised pursuant to chapter 649 of
2 NRS;

3 (c) Bank that is supervised pursuant to chapters 657 to 668, inclusive,
4 of NRS;

5 (d) Trust company that is supervised pursuant to chapter 669 of NRS;

6 (e) Development corporation that is supervised pursuant to chapter 670
7 of NRS;

8 (f) Corporation for economic revitalization and diversification that is
9 supervised pursuant to chapter 670A of NRS;

10 (g) Person engaged in the business of selling or issuing checks or of
11 receiving for transmission or transmitting money or credits that is
12 supervised pursuant to chapter 671 of NRS;

13 (h) Savings and loan association that is supervised pursuant to chapter
14 673 of NRS;

15 (i) Person engaged in the business of lending that is supervised
16 pursuant to chapter 675 of NRS;

17 (j) Person engaged in the business of debt adjusting that is supervised
18 pursuant to chapter 676 of NRS;

19 (k) Thrift company that is supervised pursuant to chapter 677 of NRS;
20 and

21 (l) Credit union that is supervised pursuant to chapter 678 of NRS.

22 2. The Commissioner shall determine the total amount of all
23 assessments to be collected from the entities identified in subsection 1, but
24 that amount must not exceed the amount necessary to recover the cost of
25 legal services provided by the Attorney General to the Commissioner and
26 to the Division of Financial Institutions. The total amount of all
27 assessments collected must be reduced by any amounts collected by the
28 Commissioner from an entity for the recovery of the costs of legal services
29 provided by the Attorney General in a specific case.

30 3. The Commissioner shall collect from each entity identified in
31 subsection 1 an assessment that is based on:

32 (a) A portion of the total amount of all assessments as determined
33 pursuant to subsection 2, such that the assessment collected from an entity
34 identified in subsection 1 shall bear the same relation to the total amount of
35 all assessments as the total assets of that entity bear to the total of all assets
36 of all entities identified in subsection 1; or

37 (b) Any other reasonable basis adopted by the Commissioner.

38 4. The assessment required by this section is in addition to any other
39 assessment, fee or cost required by law to be paid by an entity identified in
40 subsection 1.

41 5. Money collected by the Commissioner pursuant to this section
42 must be deposited in the State Treasury pursuant to the provisions of NRS
43 658.091.

44 **Sec. 80.** NRS 675.040 is hereby amended to read as follows:

45 675.040 This chapter does not apply to:

1 1. A person doing business under the authority of any law of this
 2 State or of the United States relating to banks, savings banks, trust
 3 companies, savings and loan associations, credit unions, development
 4 corporations, mortgage brokers, mortgage bankers, thrift companies,
 5 pawnbrokers or insurance companies.

6 2. A real estate investment trust, as defined in 26 U.S.C. § 856.

7 3. An employee benefit plan, as defined in 29 U.S.C. § 1002(3), if the
 8 loan is made directly from money in the plan by the plan's trustee.

9 4. An attorney at law rendering services in the performance of his
 10 duties as an attorney at law if the loan is secured by real property.

11 5. A real estate broker rendering services in the performance of his
 12 duties as a real estate broker if the loan is secured by real property.

13 6. Except as otherwise provided in this subsection, any firm or
 14 corporation:

15 (a) Whose principal purpose or activity is lending money on real
 16 property which is secured by a mortgage;

17 (b) Approved by the Federal National Mortgage Association as a seller
 18 or servicer; and

19 (c) Approved by the Department of Housing and Urban Development
 20 and the Department of Veterans Affairs.

21 7. A person who provides money for investment in loans secured by a
 22 lien on real property, on his own account.

23 8. A seller of real property who offers credit secured by a mortgage of
 24 the property sold.

25 9. A person holding a nonrestricted state gaming license issued
 26 pursuant to the provisions of chapter 463 of NRS.

27 10. *A person licensed to do business pursuant to sections 2 to 74,*
 28 *inclusive, of this act.*

29 **Sec. 81.** NRS 675.060 is hereby amended to read as follows:

30 675.060 1. No person may engage in the business of lending in this
 31 State without first having obtained a license from the Commissioner
 32 *pursuant to this chapter* for each office or other place of business at which
 33 the person engages in such business ~~+~~, *except that if a person intends to*
 34 *engage in the business of lending in this State as a deferred deposit loan*
 35 *service, short-term loan service or title loan service, as those terms are*
 36 *defined in sections 2 to 74, inclusive, of this act, the person must obtain a*
 37 *license from the Commissioner pursuant to sections 2 to 74, inclusive, of*
 38 *this act before the person may engage in any such business.*

39 2. For the purpose of this section, a person engages in the business of
 40 lending in this State if he:

41 (a) Solicits loans in this State or makes loans to persons in this State,
 42 unless these are isolated, incidental or occasional transactions; or

1 (b) Is located in this State and solicits loans outside of this State or
 2 makes loans to persons located outside of this State, unless these are
 3 isolated, incidental or occasional transactions.

4 **Sec. 82.** NRS 604.010, 604.020, 604.030, 604.040, 604.050,
 5 604.060, 604.070, 604.080, 604.090, 604.100, 604.110, 604.120, 604.130,
 6 604.140, 604.150, 604.160, 604.162, 604.164, 604.166, 604.170, 604.180
 7 and 604.190 are hereby repealed.

8 **Sec. 83.** 1. If a person:

9 (a) On July 1, 2005, holds a valid certificate of registration or license
 10 that was issued by the Commissioner of Financial Institutions pursuant to
 11 chapter 604 or 675 of NRS before July 1, 2005; and

12 (b) Operates a check-cashing service, deferred deposit loan service,
 13 short-term loan service or title loan service, as those terms are defined in
 14 the provisions of sections 2 to 74, inclusive, of this act,
 15 → the person's certificate of registration or license shall be deemed to be a
 16 license issued by the Commissioner of Financial Institutions pursuant to
 17 the provisions of sections 2 to 74, inclusive, of this act until the date on
 18 which the person would have been required to renew his certificate of
 19 registration or license pursuant to chapter 604 or 675 of NRS.

20 2. A person described in subsection 1 shall:

21 (a) On and after July 1, 2005, comply with all provisions of sections 2
 22 to 74, inclusive, of this act relating to transactions with customers,
 23 including, without limitation, all provisions relating to loans, extensions,
 24 repayment plans, interest, fees, charges and collections; and

25 (b) On and after October 1, 2005, comply with all other provisions of
 26 sections 2 to 74, inclusive, of this act, except that the person does not have
 27 to renew his certificate of registration or license until the date on which the
 28 person would have been required to renew his certificate of registration or
 29 license pursuant to chapter 604 or 675 of NRS.

30 **Sec. 84.** This act becomes effective on July 1, 2005.

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.

-- 34 --

- 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.

H

**ASSEMBLY BILL 384
PROPOSED AMENDMENTS
Assemblywoman Barbara E. Buckley**

**Senate Committee on Commerce and Labor
May 6, 2005**

Following is a summary of the sections amended in the mock-up of Assembly Bill 384 (first reprint):

1. Sections on Definitions

- **Section 8** – Clarifies definition of “default” to eliminate a reference to “repayment plan.”
- **Section 17** – Clarifies definition of a “short-term loan.”
- **Section 19** – Clarifies definition of a “title loan,” and in particular, what is not included in that term.
- **New Section** – Clarifies certain terms have the meanings given to them under federal law. (Inserted for purposes of the mock-up after Section 21.)

- 2. Section 23 (Grace Periods)** – Clarifies that a licensee cannot charge additional fees or interest on the outstanding loan during the grace period.
- 3. Section 31 (Written Agreements)** – Adds an additional disclosure requirement regarding the opportunity to enter into a repayment plan before a civil action or alternative dispute resolution may be commenced.
- 4. Section 33 (Protections for Customers Called to Active Duty in Military)** – Includes threats to garnish wages or to contact the military in the acts that are specifically prohibited.
- 5. Section 34 (Prohibitions on Certain Types of Loans)** – Limits the section to deferred deposit or short term loans (not title loans), and provides that the monthly payment (rather than the loan amount) cannot exceed 25 percent of the borrower’s expected gross monthly income when the loan is taken out.
- 6. Section 35 (Prohibitions on Certain Acts by Licensees)** – Clarifies language with regard to the prohibition on taking a note or promise to pay which does not make certain disclosures. Also adds language prohibiting a licensee from charging a pre-default late fee that is void as a penalty under common law.
- 7. New Section** – Adds language regarding the terms of a title loan and the authorization to renew the loan under certain conditions. (Inserted for the purposes of the mock-up between Sections 36 & 37)
- 8. Section 37 (Prohibitions on Certain Acts by Licensees)** – Adds “vehicle ownership” to the list of items concerning which the customer must sign an affidavit stating he has provided true and correct information.

9. **Section 38 (Application of the Uniform Commercial Code and Remedies on Default of Title Loan):**

- Provides that the sole remedy upon default on a title loan or an extension or repayment plan is to seek repossession and sale of the motor vehicle. Language requiring the commencement of a legal action to seek the repossession and sale is deleted.
- Deletes language specifying that making necessary repairs to the motor vehicle is not "deemed waste."
- Revises procedures for making available to the customer his personal property contained in a repossessed motor vehicle.
- Allows a civil action for fraud also to be brought against a customer who wrongfully transfers any interest in the motor vehicle to a third party before the loan is repaid.

10. **Section 40 (Authorization to Pay Loan in Full without Additional Fees) -** Adds language to clarify the charges and fees that may be negotiated and agreed to by the parties.

11. **Section 42 (Repayment Plans) -** Revises the language regarding repayment plans the licensee must offer prior to commencing a civil action or any alternative dispute resolution.

12. **Section 43 (Limitation on Period for Repayment) -** Limits the section to deferred deposit or short-term loans; specifies a 2-month limitation on the period for repayment (instead of 8 weeks); and provides an exemption to this section for certain licensees.

13. **Section 44 (Amounts that May be Collected on Default of Loan)**

- Clarifies the licensee may collect the principal amount of the loan less all payments made before and after default.
- Deletes a reference to "repayment plan" and adds a reference to section 43 (as amended) under subsection 1(b), which relates to the interest the licensee may collect if there is an extension relating to the loan.

14. **Section 64 (Annual Examination of Licensee's Business by Commissioner) -** Provides that if Commissioner concludes, after auditing one of more branches of a licensee, that the specified documents are identical at each location, the Commissioner has the authority to review only those branches that are deemed necessary.



Nevada Fair Housing Center, Inc.
paving the way to a world of resources

Gail Burks
President & CEO

**3380 W. Sahara Ave., Suite 150
Las Vegas, Nevada 89102**

**(702) 731-6095
Fax (702) 731-6170**

TESTIMONY BEFORE
THE SENATE
COMMERCE AND LABOR COMMITTEE
AB 384 – PAYDAY LENDING BILL

May 6, 2005

Nevada Fair Housing Center appreciates the opportunity to present this statement to the Nevada State Senate 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.

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.

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).

Despite this prohibition, our study found that some lenders¹ 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 lender² 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.

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.

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 amount; the typical Cool Cash customer ended up paying 5.28 times the original loan amount.

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 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 $\frac{1}{4}$ 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.

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.

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>.

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.

May 6, 2005

Good morning, my name is Michele Johnson. I am President/CEO of Consumer Credit Counseling Service, a not-for-profit United Way HUD certified organization serving residents 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 circumstances specific to these clients and the disturbing trends being experienced I would like to briefly address today.

As you are aware, the payday lending and small loan industry has grown exponentially the past few years and we see the effects on a daily basis with consumers seeking solutions (other than bankruptcy) for their indebtedness. Obligations to payday and/or small loan companies added to an already overburdened consumer result 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 as the written word.

In March 2005 our agency, on a statewide basis, provided financial counseling to 660 unduplicated individuals/families who were seeking options and resources to meet their financial obligations while still paying rent and utilities, buying food and paying child care expenses. Of those, **17.4% owed one or more payday loans and/or small loan companies.** These consumers were obligated to from one to seventeen different financial obligations and, in over 95% of the clients, this debt was in addition to other consumer debt (credit card, retail, etc.). In addition, of those providing the information, over **83% were ethnic groups and/or seniors.**

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 loan ... and on and on and on, resulting in almost \$4,000 in debt. Moreover, this amount did not reflect costs with the legal action that was being processed.

A Spanish-speaking client 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 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 and had, in fact, already received two payments as agreed.

The examples could continue, as we see them daily. Consumers are being exploited. Being indebted to 19 creditors (four of these loans to one company) 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 your constituents, the residents of Nevada. Thank you for allowing me to speak.

**TESTIMONY
AB384
SENATE COMMERCE & LABOR COMMITTEE
5/6/05**

GOOD MORNING MR. CHAIRMAN AND COMMITTEE MEMBERS. FOR THE RECORD DEBBIE SMITH REPRESENTING ASSEMBLY DISTRICT 30. I WAS CONTACTED BY A CONSTITUENT, ROBBIN NOVELLO WHO WANTED TO BE HERE TODAY TO PROVIDE TESTIMONY ON THIS BILL BUT WAS UNABLE TO TAKE TIME OFF WORK. SHE REQUESTED THAT I READ HER TESTIMONY FOR THE RECORD:

I was watching the news and saw a story regarding payday loans centers and noticed the 73rd Legislation was introducing a bill to "rein in" these places due to the high interest rates they charge consumers. I have a story of my own and was wondering how I could go about making my story known. I obtained a loan from a local payday loan center due to numerous job layoffs on my husband's part, and mounting financial difficulties that resulted from that. I had twins in high school at the time and the expenses that are part of school costs, sports, and eventually graduation only added to our problems financially. To try to put it in a nutshell, the payments they required me to make on a weekly basis were exorbitant, and unless I was able to pay more than the payment they required, the monies never went toward the actual loan amount. After months of paying them and not seeming to get anywhere, my husband again was laid off, making it extremely difficult for me to continue paying them at the pace I was. I requested on several occasions to work out some sort of payment arrangement and was denied each time. I eventually fell behind, which resulted in fines and penalties that only kept adding to the amount I originally owed. After some time, I received notice I was being taken to court, but even though the loan was obtained at a Sun Valley Loan store, I was taken to court in Las Vegas, Naturally I could not take time off of work to go in the middle of the week so of course, was "defaulted". What started out as a \$750.00 loan ended up being just under \$4,000.00. Not only were my wages garnished, but they also went into my husband's bank account and took every penny he had in there which was just over \$2,300.00. I tried to contact the Loan Center, but got no response. I also tried to contact the Collection Bureau, and received less than polite responses. I also wrote to the FID in Nevada that handles consumer issues, but have not yet heard back from

them. This whole experience has put a great strain on our already precarious financial situation, as well as our personal relationship. It has also done great damage in my relationship with my superiors at my job because of the amount of the garnishment. I have had other experiences as well, one other being with a Title Loan company in which I obtained a loan in order to not only pay the other loan center its weekly payments but also to try to keep up with the bills on the homefront. It seems to only be a vicious circle of owing everybody, and paying back five times what you originally borrow! Sincerely, Robbin Novello, 5550 Gentle Drive, Sun Valley, Nevada, 89433...(775) 674-1967.



Thank you Chairman Townsend and Senators for the opportunity to speak on behalf of Security Finance with regard to our industry and our views with respect to AB 384.

My name is Phillip Holt and I am the Vice President of Government Relations for Security Finance of Spartanburg, S.C. Security Finance is small consumer loan company with over 900 retail locations throughout the United States and Mexico. Security Finance currently has 14 locations in Nevada and with nearly 10,000 customers in the state.

The small installment loan industry provides consumers with a lending option for short-term, small consumer loans. There is a large and growing consumer demand for short-term, small consumer loans, but the current market provides only limited options for these consumers.

Security Finance is among the nation's leaders in short-term, small consumer loans, with operations in 19 states across the country with over 50 years of experience. As a leader in the industry, Security Finance is committed to highest level of standards, and is a active member of the American Financial Services Association. I have provided to each of you today a copy of the Code of Ethics which as a member of AFSA, we are determined to adhere to.

I have also taken the liberty to provide you with a "Member Company Fact Sheet", simply for reference purposes.

Unlike other competitors servicing similar customers, small installment loan companies, like Security Finance, offer several advantages to consumers:

- * Test the ability to repay the loan by working out a budget with borrowers
- * Allow the borrower to reduce the principal each month through monthly installments
- * Participate and invest in Financial Literacy programs such as Jump\$tart and MoneySKILL, sponsored by the American Financial Services Association
- * Report good and bad credit experience to Credit Bureaus, helping consumers establish a stronger credit record
- * Provide competitive, economic rates
- * Do not require post-dated checks
- * Do not take possession or title to any collateral
- * Do not use credit scoring
- * Do not inflict prepayment penalties

The short-term, small installment loan market is growing rapidly. The typical consumer is not able to obtain a short-term, small loan from a traditional bank or make use of credit cards. They desire or need a longer term than provided by a payday loan and may not have a car with clear title on which to obtain a car title loan.

More importantly, they are attracted to the relatively favorable terms of the Security Finance product, which can be much less expensive than the options currently available in the marketplace.

Short-term, small installment loans are growing rapidly in number. In each of the 19 states where Security Finance currently conducts business, they make thousands of consumer loans each year. The typical loan is for a few months, and the average loan is for just a few hundred dollars.

Consumers obtain short-term, small loans for the purposes you would expect: car and home repairs, medical bills and prescriptions, emergency travel, school supplies, children's clothes, and Christmas gifts are all typical examples.

The financial services market in the United States is changing rapidly. Most of the changes we hear about, insurance products with multiple options, security and real estate services from traditional banks, and low interest mortgage rates are designed for the middle class or those well-to-do. But not all consumers fit that profile. That is why it is necessary to provide to the consumer, a safe, affordable, regulated product that is completely transparent with all the cost associated with the loan.

I thank you for the opportunity to speak to your committee today and answer any questions from the committee.



Member Company Fact Sheet

The American Financial Services Association (AFSA) is the national trade association for finance companies and other consumer and commercial lenders that raise funds in the capital markets. These market funded lenders then "recycle" these funds by providing financial services at the community level to individuals and small businesses.

Founded in 1916, AFSA has a broad membership, ranging from large national financial services firms to single office, independently owned consumer finance companies. Although it is diverse, AFSA's membership is united by its main goal of serving the credit needs of consumers and businesses.

AFSA MEMBERS – PRODUCTS AND SERVICES

Current membership is nearly 400 active (consumer finance), associate (industry suppliers), affiliate (state associations) and commercial finance and foreign member companies with over 10,000 offices. Members include:

- **Diversified Financial Services Companies** – Companies that offer a broad range of financial products and services to middle-income consumers through offices nationwide. Credit products include: personal loans, first and second mortgages, home equity line of credit, credit cards and private label cards, sales financing and credit insurance. Many also offer consumer deposit products through banks or savings and loans owned or affiliated with them. Some AFSA members that are diversified financial services companies include: American General Finance, Inc.; The CIT Group, Inc., GE Consumer Finance – U.S. & Canada, Wells Fargo Financial, Inc. and Household Finance Corporation.

- **Automotive Finance Companies** – In addition to the captive companies, these companies operate on a regional and national basis providing indirect financing to automotive dealers of new and pre-owned vehicle customers. Companies include: AmeriCredit Financial Services, Ameristar Financial Company, Reliable Credit Association, Inc., Mission Financial Services, TICO Credit Company and Wells Fargo Financial Acceptance Corporation, among others.

- **Captive Finance Companies** – These companies, often owned by a manufacturer of hard durable goods, provide financing for customers who purchase their products. In addition to offering financing and leasing options on products manufactured by the parent, the companies or their parents have formed or acquired other financial entities that include: credit card affiliates, mortgage companies, savings and loans, and consumer finance affiliates. Finance subsidiaries of manufacturers include: DaimlerChrysler, GMAC Financial Services, Ford Motor Credit Company, Harley-Davidson Financial Services, Inc., Hyundai Motor Acceptance Corporation, Nissan Motor Acceptance Corporation, Saab Financial Services Corp. and Toyota Motor Credit Corporation.

● **Consumer Finance Companies** – Consumer loan companies' core business includes: unsecured personal loans, home equity loans and sales financing (providing credit for retailers' customers.) This group includes multi-billion dollar companies with nationwide offices, regional companies, and independently owned firms that have one branch office or branches in several states. Consumer finance companies include: American General Finance Corporation, CitiFinancial, Washington Mutual Finance, Wells Fargo Financial, Inc. and independently owned firms such as 1st Franklin Corporation, First Tower Corp, Heights Finance Corporation, Pioneer Credit Company, Reliable Credit Association, Security Finance Corporation of Spartanburg, United Finance Co. and World Acceptance Corporation.

Many independently owned companies specialize in one type of lending, for example such as specialty auto financing.

● **Mortgage Lenders** – Companies that provide home equity loans/second mortgages, manufactured housing loans and other loans secured by a borrower's residence. Companies in this category include Ameriquest Mortgage Company; Consecro Finance Corp., Countrywide Home Loans, Equity One; CitiFinancial, Household Finance Corp; Key Consumer Real Estate; Washington Mutual Finance and Wells Fargo Financial, Inc.

● **Commercial Finance Companies** – Companies that offer commercial finance and leasing services include: Boeing Capital Corporation, Financial Federal Credit, Inc., GATX Capital Corporation, International Lease Finance Corporation, John Deere Credit Corporation, and Textron Financial Corporation.

● **Credit Card Issuers** – Companies that offer bank cards, charge cards, credit cards, or private label cards. Several AFSA member companies are among the largest credit card issuers in the United States including: Capital One, GE Consumer Finance – U.S. & Canada; GMAC Financial Services, Household International, MBNA, Metris Companies Inc., Morgan Stanley (Discover).

● **Financial Services, Retail Trade** – Companies that are general merchandise or department store retailers, but have substantial volumes of captive financing business plus other financial services such as securitization, third-party servicing, etc. AFSA member includes: Sears Roebuck & Co.

For more information about AFSA, please visit its Website at www.afsaonline.org

Updated November 13, 2002



The American Financial Services Association's (AFSA) Code of Ethics

A guide to self-regulatory initiatives followed by AFSA members



AMERICAN FINANCIAL SERVICES ASSOCIATION**Table of Contents**

Code of Ethics	4
Collection Code	5
Consumer Mortgage Lending	7
Home Improvement Dealer Loans	9
Alternative Dispute Resolution	10
Reporting Credit Information to Credit Bureaus	13
Live Checks	13

CODE OF ETHICS

Code of Ethics

The members of the American Financial Services Association believe that the interest of the public, member companies, and industry employees can best be served by conducting business in a way which builds and fosters public trust and confidence in the consumer financial services industry through the continued commitment to ethical business practices. Voluntary standards and statements of industry values or best practices will be adopted from time to time by the Board of Directors of the Association. Each AFSA member is expected to review these standards and statements of value or best practices and, absent compelling reasons which would prevent their implementation, establish and enforce corporate policies to carry out the letter and the spirit of these voluntary standards and Association statements of values or best practices.

Implicit in this Code of Ethics is the presumption that all Members will comply fully with all federal, state, and local laws governing the conduct of their businesses. Members of AFSA therefore agree to subscribe to and conduct their businesses in accordance with the following minimum ethical guidelines:

1. Members will disclose fully to customers the cost, terms, and contractual obligations of credit and lease transactions. Written instruments will be written to be simple, plain, and unambiguous to the extent permitted by federal and state law.
2. The customer's ability to repay the credit obligation out of known current or expected resources within the defined term shall be the paramount consideration in the decision to extend credit.
3. Any offering of optional insurance or other optional products must be done in a clear and informative manner. Any purchase of such a product must reflect a voluntary choice by the consumer and must never be a condition to the extension of credit.
4. Members will abide by the AFSA Collection Code.
5. The advertising of financial services products shall be done in a clear and non-deceptive manner.
6. Electronic or telephonic monitoring of a Member's employees will not be conducted without the employee's general knowledge that such monitoring may be utilized for the purposes of ensuring compliance with any relevant consumer protection, upholding the Member's standards for professionalism and courtesy, or any other purpose consistent with the security, integrity, and efficiency of the business.
7. Each member will exercise reasonable diligence to ensure that third parties with which it deals conduct business in a lawful and ethical manner. Members shall be reasonably vigilant as to the third party's credentials, reputation, practices and adherence to ethical standards.

AMERICAN FINANCIAL SERVICES ASSOCIATION

Collection Code

Preamble

Believing that the responsibility of this industry to serve the credit needs of the consumer is a public trust, we, the members of the American Financial Services Association, hereby proclaim and agree to follow this Collection Code.

Purpose

It will be our purpose as an industry to exhibit the same care and concern for a customer's past due account as was demonstrated when the original transaction occurred. The goal is to keep customers in good standing and to assist them should they experience difficulties in repayment.

Communicating with Third Parties for the Purpose of Locating the Customer

A creditor who communicates with any person other than the customer for the purpose of acquiring location information (the customer's home address, phone number, and place of employment) shall:

1. identify himself, state that he is confirming or correcting location information regarding the customer, and, only if expressly requested, identify his employer;
2. not state that the customer owes any debt;
3. not communicate with any such person more than once unless requested to do so by such person or unless the creditor reasonably believes that the earlier response of such person is erroneous or incomplete and that such person now has current or complete location information;
4. not use a post card, nor use any language or symbol on any envelope or other type of communication which can be seen or read by the public which indicates that the creditor collects debts, or that the communication relates to the collection of a debt;
5. only communicate with the customer's attorney if the creditor knows the customer is represented and can obtain the attorney's name and address, unless the attorney does not respond within a reasonable time.

Communicating with the Customer for the Purpose of Collecting a Debt

All communication with a customer regarding a debt shall:

1. be at reasonable hours (normally between 8:00 a.m. and 9:00 p.m.)
2. not be at the customer's place of employment if the creditor knows or has reason to know that the customer's employer prohibits the customer from receiving such communication;
3. be through the customer's attorney if the creditor knows the customer is represented and can obtain the attorney's name and address, unless the attorney does not respond within a reasonable time or the customer or his attorney consents to direct contact with the creditor.

For purposes of this section, the term "customer" includes the customer's spouse or parent (if the customer is a minor).

Communicating with Third Persons for the Purpose of Collecting a Debt

Except when attempting to locate a customer, a creditor shall not communicate, without the prior consent of the customer given directly to the creditor, or the express permission of a court of competent jurisdiction or as reasonably necessary to effectuate a postjudgment judicial remedy, in connection with the collection of any debt, with any person other than the customer, his attorney, a consumer reporting agency if otherwise permitted by law, or the attorney for the creditor.

For purposes of this section, the term "customer" includes the customer's spouse or parent (if the customer is a minor).

CODE OF ETHICS

Ceasing Communication with the Customer and his Spouse with Respect to a Debt

If the customer notifies the creditor in writing that he refuses to pay the debt or that he wishes the creditor to cease further communication, then no further contact shall be made with the customer regarding the debt. However, the creditor may still notify the customer that certain legal remedies will be invoked if that is the case, and may still communicate with the customer's attorney.

Collection Practices

A creditor shall not engage in any conduct the natural consequences of which are to harass, oppress, or abuse any person in connection with the collection of any debt. Examples of harassment or abuse are contained in Section 806 of the Federal Fair Debt Collection Practices Act (15 U.S.C. 1692(e)).

A creditor shall not use any false, deceptive, or misleading representation or means in connection with the collection of any debt; nor shall the creditor design, compile, furnish, or use any form which creates the false belief in a customer that some other party is participating in the collection of a debt when in fact such party is not so participating. Examples of false or misleading representations are contained in Section 807 of the Federal Fair Debt Collection Practices Act (15 U.S.C. 1692(e)).

A creditor shall not use unfair or unconscionable means to collect or attempt to collect any debt. Examples of unfair practices are contained in Section 808 of the Federal Fair Debt Collection Practices Act (15 U.S.C. 1692(f)).

Validation of Debts

If a customer disputes a debt, the creditor shall take reasonable and responsible action to verify the existence of the debt and to resolve the complaint.

Multiple Debts

If a customer has more than one account with the creditor, all payments made shall be applied to such accounts as directed by the customer.

Legal Actions

If legal action is instituted by a creditor, suit shall be brought in the jurisdiction where the contract was made or where the customer resides, or in the case of any action to enforce an interest in real property securing the customer's obligation, where real property is located.

Existing Collection Laws

The purpose of this Code is to establish uniform rules of conduct for creditors to follow when collecting their debts. It is recognized that some jurisdictions have existing laws providing similar or greater protection for the customer and this Code shall not affect those laws or alter any creditor's obligation to comply with such laws in addition to the Collection Code.

The American Financial Services Association Collection Code is based on the principles contained in the Federal Fair Debt Collection Practices Act.

AMERICAN FINANCIAL SERVICES ASSOCIATION

Consumer Mortgage Lending

The American Financial Services Association (AFSA) has examined the market environment for mortgage lending as defined in the Home Ownership Equity Protection Act (HOEPA) and has adopted the following voluntary standards, effective upon its release, for the conduct of lenders in this market.

AFSA rejects abusive practices, and uniformly condemns violations of law, fraud and unfair and deceptive practices by anyone in the marketplace. In furtherance of this position members will ensure that their employees are appropriately trained and that their customers have access to effective complaint resolution channels.

HOEPA Standards. Uniform standards and triggers embodied in HOEPA represent a level playing field for these mortgage transactions in the United States. Adoption of differing standards and triggers in state legislation are not recommended and could reduce the availability of credit to consumers who need it.

Ability to Repay. The ability of the customer to repay the loan obligation should be the primary focus of underwriting standards. AFSA members will not extend credit to any customer who does not demonstrate the ability to pay when the application is made. Underwriting may be done on a manual basis or with a system that is empirically derived (statistical), and these underwriting decisions consider many factors. However, the amount of equity in the mortgaged property should not take precedent over the borrowers ability to repay the loan.

Credit Insurance Products. Credit life, credit disability, and credit IUI insurance represents a high value to consumers in mortgage lending. Consumers have recognized this value to retire debt or to provide payment continuity in the case of death, disability, or unemployment. Providers of credit insurance must make full and accurate disclosure of credit insurance terms in accordance with state or federal law as the foundation for the customer making an informed decision. Finally, existing law regarding the *optional* nature of credit insurance provides effective protection to consumers.

The AFSA Code of Ethics provides that the offering of any insurance must be done in a clear and informative manner. The purchase of such products must reflect a voluntary choice by the consumer and must never be a condition to the extension of credit. To further strengthen this position, AFSA member companies will offer customers who choose to buy credit insurance the choice of single premium or monthly premium insurance products on mortgage loans as state law and data processing systems enhancements will allow for such choices in the future. AFSA members will provide a full refund of single premium insurance charges within 30 days of the loan closing, for those customers who choose to cancel their insurance, thereby providing a 30-day "free look." AFSA members will refund the unused portion of any single premium credit insurance premium upon cancellation.

Prepayment Penalties. Costly administration of higher risk mortgages often demands that multiple components be included in the risk based pricing of mortgage loans. Prepayment penalties should not be assessed if a loan is to be refinanced by the same lender. If the borrower repays the loan through other sources, the original lender may recover costs through application of a prepayment penalty.

The AFSA standard is a maximum of 5 years for the duration of a prepayment penalty clause in a mortgage loan agreement.

Balloon Loans. AFSA recognizes that balloon loans may be beneficial for some borrowers, provided that either the balloon date is at least 7 years from the date of loan origination or the borrower has provided information in connection with the application indicating that the borrower's financial plans anticipate the need for the loan for only a period shorter than the length of the balloon (e.g. the borrower expects to be transferred within three years and wants a three year balloon). Each AFSA member will agree with its customers that it will refinance a balloon loan at maturity, upon request of the borrower, at its then-available rate, fees and terms, provided that (a) the member still

CODE OF ETHICS

owns the loan, (b) the member still has products that can be offered to the customer, (c) neither governmental nor market forces have restricted the ability of the member to require the rate, fees, and terms it deems necessary and appropriate to the credit involved, (d) the customer has performed well on the balloon loan, and (e) neither the customer's financial situation nor the value of the property has deteriorated.

Call Provisions. AFSA members do not support the introduction of call provisions into consumer mortgage loan contracts.

Refinancing. In the event an AFSA member refinances its loan (or the loan of an affiliate) within 12 months of the refinanced loan's origination, it will either refund pro rata the points on the old loan, or it will charge points only on the new money in the new loan. "New money" is the amount by which the new principal exceeds the payoff amount of the old loan. As a matter of principle, AFSA members will only refinance an existing loan if there is a reasonably anticipated present or potential benefit to the customer of the refinance.

AFSA members support prohibition of the refinancing at higher rates of unique, non-conventional, below market-rate loans that are characterized as publicly assisted, non-profit, or government subsidized. If such a transaction is identified in a member portfolio, the AFSA member creditor will cure the finance charge differential, regardless of the origin of the transaction.

Foreclosures. Foreclosure is a remedy of last resort in consumer transactions. It is not the intention of AFSA members to derive profit from the unfortunate circumstances involved in the foreclosure process.

In the unlikely event of a foreclosure on property securing a loan, lenders should return to the consumer any net surplus inclusive of transaction, carry, and direct costs, derived from the sale, upon final sale of the property by the AFSA member company from its inventory of real estate held as assets.

Home Improvement Lending. Members support the current AFSA voluntary standard on home improvement contracts.

Brokers. AFSA recognizes that many lenders use brokers in originating real estate loans. Broker honesty and skill are important elements in the smooth functioning of the real estate lending market. These principles are embedded in the AFSA Code of Ethics.

At the present time real estate mortgage brokers are often not licensed. AFSA supports the licensing and regulation of mortgage brokers. Mortgage brokers are expected to comply with the AFSA voluntary standards.

Consumer Counseling and Education. AFSA actively supports consumer education through the AFSA Education Foundation. AFSA fully supports the availability of voluntary independent credit counseling as one of the many tools available to help consumers understand responsible use of credit. AFSA recommends that lenders take steps to support initiatives for consumer education to improve the financial decisions that consumers make, and to ensure effective use of information.

Credit Reporting. AFSA supports the current voluntary standard on credit reporting.

Default Advice. AFSA believes any practice of encouraging consumers to withhold mortgage payments or to default while awaiting a refinance is irresponsible and unethical.

AMERICAN FINANCIAL SERVICES ASSOCIATION

Home Improvement Dealer Loans (Retail Installment Contracts)

The following Guidelines are promulgated by the undersigned lending associations as a voluntary standard of practice for member creditors regarding home improvement retail installment contracts:

1. Lenders shall assure that contractors from whom they purchase retail installment contracts for all home improvements have provided the consumer with the disclosure entitled: **"THINGS YOU SHOULD KNOW IF YOUR CONTRACTOR IS FINANCING YOUR HOME IMPROVEMENTS."** This disclosure (shown below) shall be provided by the contractor before initiating any work:
2. Lenders buying retail installment contracts for home improvements shall ensure that the seller/contractor meets minimum state law requirements with respect to licensing and bonding.
3. Lenders shall require a completion certificate signed by both the seller (contractor) and the borrower before the retail installment contract is purchased. Lenders who determine that false certifications of completion have been made by either the contractor or the borrower shall be referred to the appropriate enforcement agencies.
4. If the lender (or subsequent holder) of a retail installment contract directly solicits a borrower for a refinance of the retail installment contract, or otherwise offers the borrower funds in addition to the amount necessary for the payoff of the retail installment contract, the lender (or subsequent holder) shall continue to be subject to the customer's original claims and defenses under the FTC's holder rule for that portion of the principal balance of the new loan that is related to the original retail installment contract.
5. A minimum contract amount of \$5000 shall apply to any retail installment contract which is secured by a lien on the borrower's principal residence. (This guideline is subject to approval by the Federal Trade Commission and the Department of Justice).
6. Lenders shall respond to written inquiries from borrowers under a retail installment contract regarding problems they may have with the contractor or the quality of the goods and services provided by the contractor, within 20 business days. Within 60 business days of receipt, lender shall investigate the complaint and notify borrower in writing of the lender's findings regarding the borrower's inquiries.
7. Lenders will aid law enforcement agencies in an investigation or prosecution of the perpetrator of any fraudulent acts in connection with any home improvement project.

THINGS YOU SHOULD KNOW IF YOUR CONTRACTOR IS FINANCING YOUR HOME IMPROVEMENTS

- This loan is secured by a mortgage on your home. If you fail to make your payments on time, you could lose your home.
- You have 3 business days after signing this contract to change your mind and rescind this agreement.
- Upon notice that the home improvement contractor has completed the work, you are strongly advised to seek the services of an independent home inspector to certify whether the home improvement was properly completed in a professional and workmanlike manner.
- You will be asked to sign a completion certificate when the job is done. If the work has not been completed according to the terms of your work agreement, do not sign the certificate and notify the lender immediately.
- If after completion of the project you experience problems with materials or the workmanship of the home improvements, you should contact the contractor immediately. If the contractor does not respond or is unwilling to remedy the problem, you should contact your creditor regarding the problem. Your lender may be able to assist you in efforts to compel the contractor to correct the problems if they were a direct result of the home improvement project for which the contractor was engaged.

CODE OF ETHICS

Alternative Dispute Resolution

In the event that a member adopts an Alternative Dispute Resolution (ADR) process, the following principles¹ shall apply:

PRINCIPLE 1. FUNDAMENTALLY FAIR PROCESS

All reasonable efforts shall be made to ensure that all parties are subject to a fundamentally fair ADR process. As embodiments of fundamental fairness, these Principles should be observed in structuring ADR Programs.

PRINCIPLE 2. ACCESS TO INFORMATION REGARDING ADR PROGRAM

Providers of goods or services should undertake reasonable measures to provide consumers with full and accurate information regarding Consumer ADR Programs. At the time the consumer contracts for goods or services, such measures should include (1) clear and adequate notice regarding the ADR provisions, including a statement indicating whether participation in the ADR Program is mandatory or optional, and (2) reasonable means by which consumers may obtain additional information regarding the ADR Program. After a dispute arises, consumers should have access to all information necessary for effective participation in ADR.

PRINCIPLE 3. INDEPENDENT AND IMPARTIAL NEUTRAL; INDEPENDENT ADMINISTRATION

1. Independent and Impartial Neutral. Independent and impartial neutrals shall be used in an ADR proceeding.
2. Independent Administration. If participation in mediation or arbitration is mandatory, the procedure should be administered by an Independent ADR Institution. Administrative services should include the maintenance of a panel of prospective Neutrals, facilitation of Neutral selection, collection and distribution of Neutral's fees and expenses, oversight and implementation of ADR rules and procedures, and monitoring of Neutral qualifications, performance, and adherence to pertinent rules, procedures and ethical standards.
3. Standards for Neutrals. The Independent ADR Institution should make reasonable efforts to ensure that Neutrals understand and conform to pertinent ADR rules, procedures and ethical standards.
4. Disclosure and Disqualification. Beginning at the time of appointment, Neutrals should be required to disclose to the Independent ADR Institution any circumstance likely to affect impartiality, including any bias or financial or personal interest which might affect the result of the ADR proceeding, or any past or present relationship or experience with the parties or their representatives. The Independent ADR Institution should communicate any such information to the parties and other Neutrals, if any. Upon objection of a party to continued service of the Neutral, the Independent ADR Institution should determine whether the Neutral should be disqualified and should inform the parties of its decision. The disclosure obligation of the Neutral and procedure for disqualification should continue throughout the period of appointment.

PRINCIPLE 4. QUALITY AND COMPETENCE OF NEUTRALS

Competent, qualified Neutrals shall be used in an ADR proceeding. Independent ADR Institutions are responsible for establishing and maintaining standards for Neutrals in ADR Programs they administer.

¹ These principles are intended to serve as minimum standards for ADR programs. AFSA members using ADR programs are encouraged to develop and implement processes which further the goal of ensuring fundamental fairness to all parties.

AMERICAN FINANCIAL SERVICES ASSOCIATION

PRINCIPLE 5. REASONABLE COST

1. Reasonable Cost. Providers of goods and services should develop ADR programs which entail reasonable cost to consumers based on the circumstances of the dispute, including, among other things, the size and nature of the claim and the nature of goods or services provided. In some cases, this may require the provider to subsidize the process.
2. Handling of Payment. In the interest of ensuring fair and independent Neutrals, the making of fee arrangements and the payment of fees should be administered on a rational, equitable and consistent basis by the Independent ADR Institution.

PRINCIPLE 6. REASONABLY CONVENIENT LOCATION

In the case of face-to-face proceedings, the proceedings should be conducted at a location which is reasonably convenient to both parties with due consideration of their ability to travel and other pertinent circumstances. If the parties are unable to agree on a location, the determination should be made by the Independent ADR Institution or by the Neutral.

PRINCIPLE 7. REASONABLE TIME LIMITS

ADR proceedings should occur within a reasonable time, without undue delay. The rules governing ADR should establish specific reasonable time periods for each step in the ADR process.

PRINCIPLE 8. RIGHT TO REPRESENTATION

All parties participating in processes in ADR Programs have the option, at their own expense, to be represented by a spokesperson of their own choosing. The ADR rules and procedures should so specify.

PRINCIPLE 9. MEDIATION

The use of mediation is strongly encouraged as an informal means of assisting parties in resolving their own disputes.

SPECIAL PROVISIONS RELATING TO BINDING ARBITRATION

PRINCIPLE 10. AGREEMENTS TO ARBITRATE

Consumers should be given:

1. Clear and adequate notice of the arbitration provision and its consequences, including a statement of its mandatory or optional character;
2. Reasonable access to information regarding the arbitration process, including related costs and assistance as to where they may obtain more complete information regarding arbitration procedures; and,
3. A clear statement of the means by which the consumer may exercise the option (if any) to submit disputes to arbitration.

PRINCIPLE 11. ARBITRATION HEARINGS

1. Fundamentally Fair Hearing. All parties are entitled to a fundamentally fair arbitration hearing. This requires adequate notice of hearings and an opportunity to be heard and to present relevant evidence to impartial decision-makers. In some cases, such as some smaller claims, the requirement of fundamental fairness may be met by hearings conducted by electronic or telephonic means or by a submission of documents. However, the Neutral should have discretionary authority to require a face-to-face hearing upon the request of a party.

CODE OF ETHICS

2. Confidentiality in Arbitration. Consistent with general expectations of privacy in arbitration hearings, the arbitrator should make reasonable efforts to maintain the privacy of the hearing to the extent permitted by applicable law. The arbitrator should also carefully consider claims of privilege and confidentiality when addressing evidentiary issues.

PRINCIPLE 12. ACCESS TO INFORMATION

Consumer ADR agreements which provide for binding arbitration should establish procedures for arbitrator-supervised exchange of information prior to arbitration, bearing in mind the expedited nature of arbitration.

PRINCIPLE 13. ARBITRAL REMEDIES

The arbitrator should be empowered to grant whatever relief would be available under applicable law.

PRINCIPLE 14. ARBITRATION AWARDS

1. Final and Binding Award; Limited Scope of Review. If provided in the agreement to arbitrate, the arbitrator's award should be final and binding, but subject to review in accordance with applicable statutes governing arbitration awards.
2. Standards to Guide Arbitrator Decision-Making. In making the award, the arbitrator should apply any identified, pertinent contract terms, statutes and legal precedents.

AMERICAN FINANCIAL SERVICES ASSOCIATION

Reporting Credit Information to Credit Bureaus

In support of integrity in credit reporting, AFSA members shall not selectively report credit information on certain customers and withhold credit information on other customers for the purpose of preventing data on customers from becoming available to other lenders.

Live Checks

The following Guidelines are promulgated by the American Financial Services Association as a voluntary standard of practice for member creditors using pre-approved loan offers which includes a live check or other negotiable instrument made payable to the consumer in a specific amount.

1. Live check loans by mail refers to the use of a negotiable check, money order, draft or other instrument which may be used by a consumer to activate a new loan.
2. The instrument, regardless of its form, will not be negotiable after six (6) months from receipt. Printed material accompanying the instrument must advise the consumer to void and destroy the instrument if it is not going to be negotiated; and would contain the following disclosure:

"THIS IS A SOLICITATION FOR A LOAN—READ THE ENCLOSED DISCLOSURES BEFORE SIGNING AND CASHING THIS CHECK"

3. Notification of the Loan Agreement must be on the back of each instrument so that the consumer is advised that by signing the back of the instrument he or she will have activated a loan transaction. Following is an example of a triggering notification which may appear on the back of the instrument:

"By endorsing this instrument, you agree to repay this loan according to the terms of the Loan Agreement, which you acknowledge receiving and which provides you with the contract terms in connection with this loan transaction."

4. Opt-out provisions of the Fair Credit Reporting Act Amendments effective in October 1997 are incorporated by reference.
5. Live check loan solicitations should be mailed in envelopes with no indication that a negotiable instrument is contained in the mailing. Marketing imperatives to encourage the consumer to open the item are permissible. Envelopes must be marked with instructions to the postal service to indicate that the item is not to be forwarded if the intended addressee is no longer at the location.
6. The creditor who receives a negotiated instrument must execute the following steps consistent with the structure of that business:
 - Insure the instrument is placed in the consumers loan folder, record or other filing procedure consistent with the creditors business which will enable recovery of the item, or an exact facsimile of the original document.
 - A coupon book or billing statement or other medium consistent with the creditor's business practice will be provided to the consumer as confirmation of the activation of the loan.
7. In the event an instrument is stolen or incorrectly received by someone other than the intended payee, and the instrument is fraudulently cashed, the following safeguards for the consumer will be triggered;

CODE OF ETHICS

The creditor, upon receipt of notification that the consumer did not negotiate the live check, will provide, and the consumer will complete a statement confirming that the consumer did not deposit or cash the live check.

Completion of the confirmation statement will be facilitated by the creditor by providing the consumer the opportunity to fill it out at a local location of the creditor by mail or both and by providing an explanation that the consumer is relieved from any liability on the loan. The creditor will also provide the consumer with a contact person to provide assistance if required.

The consumer who was the intended payee will have no liability for the loan obligation. Further, the creditor will insure that all references to the transaction (if reported) are removed from the credit report of the intended payee.

8. The creditor will cooperate with law enforcement agencies in an investigation or prosecution of the perpetrator of the fraudulent act.
9. State Law Requirements. Creditor will accommodate these guidelines within any existing State law requirements.
10. Exclusion. These guidelines are not intended to reference any live check form provided by a creditor for the purpose of accessing an existing line of credit with the creditor.



www.afsaonline.org

919 Eighteenth Street, NW
Suite 300
Washington, DC 20006-5517
Phone (202) 296-5544
Fax (202) 223-0321

Sandra Perry

PROPOSED LEGISLATION REGARDING THE PAYDAY LOAN INDUSTRY Re: AB 340 & AB 384
Comments from Money Express Catalog Sales, Inc/ Cash Express Points of Concern (page 2)

AB 384 Sec 8 - Sec 23 Sec 42 2A & 3A

Question

Concerning default, is it possible that you have overlooked the subsequent problems arising from this proposed legislation?

Problem

Example - John Doe has a loan due on Friday in the amount of 130.00 which will be 28 days from the loan origination date. He has called our office and said that he wishes to extend his loan for an additional two weeks, but because he has to work late on Friday and Saturday he will be unable to make it in until Monday. He does not want his check deposited. Now under your proposed legislation we will be forced to deposit his check on Saturday in hopes of avoiding having our money out for a term of over 18 weeks (4 months + 15 days from date of notice of default), while we receive little if any compensation. By depositing his check there is a strong possibility that our check or others that he has written will be returned NSF. Of course that will at least give us an additional 25.00 to add to his fees, in the event our check is returned. John Doe may then be faced with numerous returned bank charges that could possibly end up costing him 175.00 or more for a small 100.00 loan. In the end we will have an unhappy customer who now will have their bank account overdrawn and checks bouncing due to this proposed legislation.

Possible Solution

It seems only fair that this definition of Default under Sect 8 - 1 be extended to read that .."Default shall begin 15 days from the original due date or last extension due date of the loan" and that Sec 23 have in the beginning inserted " After 15 day from the original due date of last extension thereof the provisions of this chapter ".... etc.

AB 384 Sec. 39

Question

Why are you singling our industry when a consumer does not have the right to go to any other financial institution and walk out the door with cash in hand and use their money for a period of up to four full days without interest? **Problem**


Customers will now be aware that they can pick up a loan on Friday morning, use our money

Friday, Saturday, Sunday and Monday and then come back Monday night and return the principal saying he didn't need the loan and has changed his mind? It seems it would be futile to give out loans on Friday or Saturday with this legislation in place. Who could afford to operate a loan business under these dire conditions?

Solution

Elimination of AB Sec 39 as written

Respectfully submitted,


 Sandra J. Perry, President
 Money Express Catalog Sales, Inc

D. C. Younger

4792 Lana Drive Las Vegas, Nevada 89121 702-460-7896

To: Senate Commerce and Labor

Re: Concerns Regarding AB 340 & AB 384

I am presently an employee of Cash Express. At one time I was a customer of this same Cash Express and was helped when no bank would come to my rescue. I am getting ready to utilize their insurance for a much needed hernia operation. Am I now supposed to think that my pending medical procedure will be cancelled? I've also mortgaged my home to invest in this same Cash Express. Now you want to impact their lending procedures to such an extent that less people will qualify and the profit margin will shrink them into nonexistence. Is this Democracy in action? Is this the free market place in action? Or is this another a nail in the coffin of free enterprise? Do you really think that you are serving the average man on the street by making the loan procedure so belabored and less cost effective that it will only make it more difficult for him to qualify and utilize these needed services and thus less able to survive between paychecks? These stricter rules WILL make less and less people qualify. Even now, as banks continue to charge more and higher fees for every possible service and continue to deny the poorer segment of our population the benefits of their services, the need for such places as the Payday Loan store is more important than ever before. Handicapping this revenue source will be a deterrent to commerce and place a hardship on the less affluent people in our society. The Bill 384, Sec 8 #1 & #2 & Sec 23 touts the choice of permitting, for example, a two week due loan to be paid out in installments over 16 weeks at a rate not worth redeeming or choosing to deposit the check, knowing it will bounce and impact the customer in the negative. How does this help the customer? This is surely a bill against and not for the average man. It only serves to strengthen the grip that the large corporate banks maintains on society as a whole. This is NOT the free market place that Nevada has been recognized and celebrated for. It is another way to strangle free enterprise in the guise of being a solace to the borrower. With all the talk of free trade between countries and as more and more jobs are dissolving in America as a whole, don't you think it's time to question the motives of a bill that destroys a business that has flourished for years for the average man who needed the solace of such lending institutions after being denied access to the loftier palaces of lucre?

D. C. Younger



**MINUTES OF THE
SENATE COMMITTEE ON COMMERCE AND LABOR**

**Seventy-third Session
May 9, 2005**

The Senate Committee on Commerce and Labor was called to order by Chair Randolph J. Townsend at 10:06 a.m. on Monday, May 9, 2005, in Room 2135 of the Legislative Building, Carson City, 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

GUEST LEGISLATORS PRESENT:

Assemblywoman Barbara E. Buckley, Assembly District No. 8

STAFF MEMBERS PRESENT:

Kevin Powers, Committee Counsel
Jane Tetherton, Committee Secretary
Scott Young, Committee Policy Analyst
Lynn Hendricks, Committee Secretary

OTHERS PRESENT:

Jim Marchesi, President/Chief Executive Officer, Check City
Mark Thomson, Nevada Financial Services Association; Community Financial Services Association of America
Keith Lee, Consumer Lending Alliance
Kim Koster, Koster Finance
Noel Sheckells, Budget Loans
John M. Vergiels, Nevada Financial Services Association

Senate Committee on Commerce and Labor
May 9, 2005
Page 2

CHAIR TOWNSEND:

I will open the hearing on Assembly Bill (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 met with representatives from the industry to develop proposed amendments (Exhibit C). This is based on the mock-up of the bill used at Friday's meeting of the Committee (Exhibit D). I will review the proposed amendments.

In section 19, subsection 1 of the bill, the definition of "title loan" is changed.

In section 34, subsection 1, we deleted the phrase: "in which the terms of repayment require a payment or payments." This is a technical change.

In section 34, subsection 2, paragraph (c), in addition to the language noted in Exhibit C, I would like to add the phrase "not to exceed \$50" after the words "reasonable documentary fee."

In section 49, the language is rewritten to clarify the bonding amounts.

In section 74, a new subsection 2 is added to make it clear that the damages section does not apply to honest or technical mistakes that do not cause harm. This is the language used in the federal Truth In Lending Act of 1968. This will allow us to catch those ignoring the law without penalizing those who simply make a typographical error.

The final amendment adds language stipulating that a licensee cannot sue in a venue other than where the loan was made. This is in response to a suggestion made at the Committee meeting on May 6, 2005.

Section 42 is rewritten in its entirety, as shown on the second page of Exhibit C. This has to do with the repayment provision. It requires that before proceeding with civil action, repossession or any other resolution of nonpayment, the licensee offer the customer the opportunity to enter a

Senate Committee on Commerce and Labor
May 9, 2005
Page 3

repayment plan. If the customer defaults on the repayment plan, the licensee can then proceed to civil action or repossession to resolve the balance.

SENATOR HECK:

In Exhibit D, a "short-term loan" is defined as one required to be repaid in 18 months rather than 12 months. What is the reasoning behind this?

ASSEMBLYWOMAN BUCKLEY:

This was requested by lenders. I have not heard from any lender who will be adversely affected by this change.

SENATOR HECK:

I commend the protections for members of the armed forces in section 33. Are these types of loans subject to the Soldiers' and Sailors' Civil Relief Act of 1940, which caps loans at 6-percent interest?

ASSEMBLYWOMAN BUCKLEY:

Yes.

SCOTT YOUNG (Committee Policy Analyst):

We have received written testimony from Cynthia Fedelleck (Exhibit E), Sandra Perry (Exhibit F) and Charles Brennan (Exhibit G).

JIM MARCHESI (President/Chief Executive Officer, Check City):

We have an amendment to offer (Exhibit H) which makes two additions to the bill.

In section 32, we have added a new subsection 2 allowing the licensee to charge a onetime late fee of \$25 if a customer defaults on a short-term loan. As the bill is currently written, there is no penalty for defaulting on a payment. This late fee would give the customer some incentive to make payments on time.

SENATOR CARLTON:

If someone is already in debt, digging the hole a little deeper is not going to act as an incentive to pay off the debt.

MR. MARCHESI:

This is a request of lenders who do unsecured loans. They have no other late payments. I believe this is a reasonable request.

Senate Committee on Commerce and Labor
May 9, 2005
Page 4

In section 44, we have deleted the final sentence of subsection 1, paragraph (c). This eliminates the limit of 12 weeks on the time the licensee may charge the prime rate plus 10 percent.

SENATOR CARLTON:

I have some concerns about this. The purpose of a repayment provision is to resolve the matter. You are proposing to make it open-ended. Why would you not want to have this thing done?

MR. MARCHESI:

The repayment plan currently requires the lender to provide a free extension of credit to the customer for 90 days. We are asking for a minimal continuation, and nothing that is not allowed for any other lender. If the customer defaults on the repayment plan, the bill as written would allow the lender to charge interest at the prime rate plus 10 percent for 12 weeks. Collecting on a defaulted loan can take six months or more. We would therefore like to remove the 12-week limit on the amount of time the lender can charge prime plus 10 percent.

SENATOR CARLTON:

My concern is that the money has been paid back many times over, but just not to the satisfaction of the lender at the triple-digit interest rates being charged. I will respectfully disagree with you on the fairness of the request.

SENATOR LEE:

In section 28 of Exhibit H, why are you deleting subsection 2?

MR. MARCHESI:

Subsection 2 was deleted to simplify the language. The provision has never been used and serves no purpose. We have no objection to leaving it in.

SENATOR HECK:

What was the rationale for changing the definition of "short-term loan" from 12 months to 18 months? I would have thought it would be to your advantage to have fewer loans coming under these guidelines.

MR. MARCHESI:

This was not our suggestion.

Senate Committee on Commerce and Labor
May 9, 2005
Page 5

MARK THOMSON (Nevada Financial Services Association; Community Financial Services Association of America):

We support the amendments offered in Exhibit C. We are neutral on any other amendments.

KIM KOSTER (Koster Finance):

This bill will drive me out of business. If the repayment period is an interest-free period, a lender making an unsecured loan has no recourse in case of default. None of my customers will be stupid enough to pay me when they can be one day late on a payment and automatically have an interest-free loan with no late fees and no penalties. The unsecured-loan industry will go out of business in Nevada.

KEITH LEE (Consumer Lending Alliance):

There seems to be a misunderstanding about the provision regarding the repayment plan. The repayment plan is not an interest-free period. Additional interest cannot be charged, but the original contract interest rate still applies.

ASSEMBLYWOMAN BUCKLEY:

It was our intention that the original contract be in effect and unchanged during the repayment period. If the customer defaults on the repayment plan, the lender may go to court.

MR. LEE:

Will the originally-contracted interest continue to accrue during the repayment period?

ASSEMBLYWOMAN BUCKLEY:

The intention was that it would not.

MS. KOSTER:

I misunderstood the repayment provision. I withdraw my objection.

NOEL SHECKELLS (Budget Loans):

I had the same objection as Ms. Koster and will likewise withdraw my objection.

JOHN M. VERGIELS (Nevada Financial Services Association):

With that clarification, we will withdraw the two changes suggested in Exhibit H.

Senate Committee on Commerce and Labor
May 9, 2005
Page 6

CHAIR TOWNSEND:

I will close the hearing on A.B. 384. If staff will produce a new mock-up with the agreed-upon changes by Wednesday, we will discuss the bill again in the Committee meeting on Thursday.

Is there any further comment? Hearing none, I will adjourn this meeting at 11:02 a.m.

RESPECTFULLY SUBMITTED:

Lynn Hendricks,
Committee Secretary

APPROVED BY:

Senator Randolph J. Townsend, Chair

DATE: _____

000375

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.

Proposed Conceptual Amendments
Assembly Bill No. 384 First Reprint
Submitted by Assemblywoman Barbara Buckley
May 9, 2005

1. Sec. 19(1) – change to: Title loan means a loan with an effective annual percentage rate made in excess of 35% that is made to a customer who secures the loan by giving possession of a motor vehicle title to the person making the loan or to any agent, affiliate, or subsidiary of the person, whether or not the lender perfects a security interest in the motor vehicle by having its name noted as lienholder on the title.
2. Sec. 34(1), p. 8, ln 9, delete “in which the terms of repayment require a payment or payments”
3. Sec. 34(2)(c) – change to: “except for that part of the finance charge that consists of interest only, the licensee does not impose any other charge or fee to initiate any additional loans, but a licensee who lends according to all of the criteria set forth in sec. 43 may charge a reasonable documentary fee; and
4. sec. 35, para. 7 – delete.
5. sec. 36(2) – change to “commence a civil action or repossess a vehicle before default” – delete words “before the expiration...”
6. sec. 42 – See below
7. sec. 49 - \$50,000 for each company; \$5,000 per location (SB 431-R1 language)
8. sec. 74 – Add a new section 2 as follows: A lender may not be held liable in any action if the lender shows, by a preponderance of the evidence, that the violation was not intentional, was technical in nature, and resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error. Examples include, but are not limited to, clerical, calculation, computer malfunction in programming, and printing errors, except that an error of legal judgment with respect to a person’s obligation is not a bona fide error.
9. A licensee cannot sue in a venue other than where the loan was made, except upon mutual agreement of both parties before suit is initiated.

**Proposed Conceptual Amendments
Assembly Bill No. 384 First Reprint
Submitted by Assemblywoman Barbara Buckley
May 9, 2005**

Sec. 42

Prior to commencement of civil action, repossession, or any alternative dispute resolution, the licensee shall offer the customer an opportunity to enter into a repayment plan.

The licensee shall provide the customer notice within 30 days of default.

The notice shall be in Spanish or English.

Notice shall inform consumer within 15 days of default that they have 30 days from date of default to enter into a repayment plan by making an initial payment within that period of time.

Notice shall state that the repayment plan must extend at least 90 days from the date of default.

Notice shall state the original amount owed, any payments, any charges permitted by the chapter, and the total amount due

If the licensee and customer enter into a repayment plan, it:

- Must be in writing
- Copy must be provided to customer
- Must provide for an initial payment within 30 days of the date of default, and must extend at least 90 days from the date of default.
- Allow licensee to accept checks for payments, not to exceed the amount owed and not to exceed the total amount owed in the aggregate but prohibit licensee from charging an additional NSF fee if one has already been charged. If customer makes a payment in the amount of the check taken for that payment, licensee shall return the check to the customer or destroy it.

If the licensee and customer enter into a repayment plan, the licensee shall not

- Charge any other amounts
- Accept any other security or collateral except as otherwise allowed by this section
- Sell any other products
- Take civil action to collect more than what is owed after all payments are credited

The licensee shall provide a receipt to the customer for all payments made on the payment plan

If the customer defaults upon the payment plan, the licensee:

- May take civil action, repossession, or alternative dispute resolution process to collect the outstanding balance as otherwise allowed under this act.

MOCK-UP

PROPOSED AMENDMENT TO ASSEMBLY BILL NO. 384 FIRST REPRINT

PREPARED FOR ASSEMBLYWOMAN BARBARA E. BUCKLEY

MAY 6, 2005

PREPARED BY THE RESEARCH 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:

1 **Section 1.** Title 52 of NRS is hereby amended by adding thereto a
2 new chapter to consist of the provisions set forth as sections 2 to 74,
3 inclusive, of this act.

4 **Sec. 2.** *As used in this chapter, unless the context otherwise*
5 *requires, the words and terms defined in sections 3 to 21, inclusive, of*
6 *this act have the meanings ascribed to them in those sections.*

7 **Sec. 3.** "Cashing" means providing currency or a negotiable
8 instrument in exchange for a check.

9 **Sec. 4.** 1. "Check" means:

10 (a) A draft, other than a documentary draft, payable on demand and
11 drawn on a bank; or

12 (b) A cashier's check or teller's check.

13 2. An instrument may be a check even though it is described on its
14 face by another term, such as "money order."

15 **Sec. 5.** "Check-cashing service" means any person engaged in the
16 business of cashing checks for a fee, service charge or other
17 consideration.

EXHIBIT D Senate Committee on Commerce/Labor
Date: 5-9-05 Page 1 of 34

PROPOSED AMENDMENT TO AB384_R1

1 **Sec. 6.** "Commissioner" means the Commissioner of Financial
2 Institutions.

3 **Sec. 7.** "Customer" means any person who receives or attempts to
4 receive check-cashing services, deferred deposit loan services, short-term
5 loan services or title loan services from another person.

6 **Sec. 8.** 1. "Default" means the failure of a customer to:

7 (a) Make a scheduled payment on a loan on or before the due date
8 for the payment under the terms of a lawful loan agreement and any
9 grace period that complies with the provisions of section 23 of this act or
10 under the terms of any lawful extension ~~or repayment plan~~ relating to
11 the loan and any grace period that complies with the provisions of
12 section 23 of this act; or

Delete reference to
"repayment plan." Same
change is made in Section 44.

13 (b) Pay a loan in full on or before:

14 (1) The expiration of the initial loan period as set forth in a lawful
15 loan agreement and any grace period that complies with the provisions
16 of section 23 of this act; or

17 (2) The due date of any lawful extension or repayment plan
18 relating to the loan and any grace period that complies with the
19 provisions of section 23 of this act, provided that the due date of the
20 extension or repayment plan is not later than 8 weeks after the expiration
21 of the initial loan period.

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

24 **Sec. 9.** "Deferred deposit loan" means a transaction in which,
25 pursuant to a written agreement:

26 1. A customer tenders to another person:

27 (a) A personal check drawn upon the account of the customer; or

28 (b) Written authorization for an electronic transfer of money for a
29 specified amount from the account of the customer; and

30 2. The other person:

31 (a) Provides to the customer an amount of money that is equal to the
32 face value of the check or the amount specified in the written
33 authorization for an electronic transfer of money, less any fee charged
34 for the transaction; and

35 (b) Agrees, for a specified period, not to cash the check or execute
36 the electronic transfer of money for the amount specified in the written
37 authorization.

38 **Sec. 10.** "Deferred deposit loan service" means any person engaged
39 in the business of making deferred deposit loans for a fee, service charge
40 or other consideration.

41 **Sec. 11.** "Electronic transfer of money" means any transfer of
42 money, other than a transaction initiated by a check or other similar
43 instrument, that is initiated through an electronic terminal, telephone,
44 computer or magnetic tape for the purpose of ordering, instructing or
45 authorizing a financial institution to debit or credit an account.

Sec. 12. 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. 13. "Grace period" means any period of deferment offered gratuitously by a licensee to a customer if the licensee complies with the provisions of section 23 of this act.

Sec. 14. "Licensee" means any person who has been issued one or more licenses to operate a check-cashing service, deferred deposit loan service, short-term loan service or title loan service pursuant to the provisions of this chapter.

Sec. 15. "Loan" means any deferred deposit loan, short-term loan or title loan, or any extension or repayment plan relating to such a loan, made at 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. 16. "Motor vehicle" has the meaning ascribed to it by the Commissioner pursuant to section 28 of this act.

Sec. 17. 1. "Short-term loan" 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 an annual percentage rate of more than 40 percent; and~~

(b) ~~Requires the loan to be paid in full in less than 1 year~~ 18 months.

2. The term does not include:

(a) A deferred deposit loan; or

(b) A title loan.

Sec. 18. "Short-term loan service" means any person engaged in the business of providing short-term loans for a fee, service charge or other consideration.

Sec. 19. 1. "Title loan" means a loan made to a customer who secures the loan with the title to a motor vehicle and who gives possession of the title to the person making the loan or to any agent, affiliate or subsidiary of the person.

2. The term does not include a loan which creates a purchase money security interest in a motor vehicle or the refinance of any such loan. ~~The term does not include a loan which is secured by a lien or other security interest that attaches to a motor vehicle or appears on its title, including, without limitation, a loan to finance the purchase of the motor vehicle, if the person making the loan, or any agent, affiliate or subsidiary of the person, does not take possession of the title.~~

Revise the definition of a "short-term loan."

Revise the definition of a "title loan."

Sec. 20. "Title loan service" means any person engaged in the business of providing title loans for a fee, service charge or other consideration.

Sec. 21. "Title to a motor vehicle" or "title" means a certificate of title issued by the Department of Motor Vehicles that identifies the legal owner of a motor vehicle or any similar document issued pursuant to the laws of another jurisdiction.

NEW SECTION

Unless otherwise specifically provided herein, the terms "annual percentage rate," "finance charge," "amount financed," "total of payments," and "payment schedule" have the meanings given to the under the federal Truth in Lending Act, 15 U.S.C. §§1601 et seq., and Regulation Z, 12 C.F.R. 226, and proper calculation of the annual percentage rate, finance charge, and amount financed shall be in accordance therewith.

Add a new section to clarify the meaning of certain terms under the act.

Sec. 22. The provisions of this chapter apply to any person who seeks to evade its application by any device, subterfuge or pretense, including, without limitation, calling a loan by any other name or using any agents, affiliates or subsidiaries in an attempt to avoid the application of the provisions of this chapter.

Sec. 23. 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 additional fees or additional interest on the outstanding loan during such a grace period.

Clarification of reference to fees or interest.

Sec. 24. 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.

Sec. 25. This chapter or any part thereof may be modified, amended or repealed by the Legislature 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. 26. 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. 27. The provisions of this chapter do not apply to:

- 1 1. A person doing business pursuant to the authority of any law of
2 this State or of the United States relating to banks, savings banks, trust
3 companies, savings and loan associations, credit unions, development
4 corporations, mortgage brokers, mortgage bankers, thrift companies or
5 insurance companies.
- 6 2. A person who is primarily engaged in the retail sale of goods or
7 services who:
8 (a) As an incident to or independently of a retail sale or service, from
9 time to time cashes checks for a fee or other consideration of not more
10 than \$2; and
11 (b) Does not hold himself out as a check-cashing service.
- 12 3. A person while performing any act authorized by a license issued
13 pursuant to chapter 671 of NRS.
- 14 4. A person who holds a nonrestricted gaming license issued
15 pursuant to chapter 463 of NRS while performing any act in the course
16 of that licensed operation.
- 17 5. A person who is exclusively engaged in a check-cashing service
18 relating to out-of-state checks.
- 19 6. A corporation organized pursuant to the laws of this State that
20 has been continuously and exclusively engaged in a check-cashing
21 service in this State since July 1, 1973.
- 22 7. A pawnbroker, unless the pawnbroker operates a check-cashing
23 service, deferred deposit loan service, short-term loan service or title loan
24 service.
- 25 8. A real estate investment trust, as defined in 26 U.S.C. § 856.
- 26 9. An employee benefit plan, as defined in 29 U.S.C. § 1002(3), if
27 the loan is made directly from money in the plan by the plan's trustee.
- 28 10. An attorney at law rendering services in the performance of his
29 duties as an attorney at law if the loan is secured by real property.
- 30 11. A real estate broker rendering services in the performance of his
31 duties as a real estate broker if the loan is secured by real property.
- 32 12. Any firm or corporation:
33 (a) Whose principal purpose or activity is lending money on real
34 property which is secured by a mortgage;
35 (b) Approved by the Federal National Mortgage Association as a
36 seller or servicer; and
37 (c) Approved by the Department of Housing and Urban Development
38 and the Department of Veterans Affairs.
- 39 13. A person who provides money for investment in loans secured
40 by a lien on real property, on his own account.
- 41 14. A seller of real property who offers credit secured by a mortgage
42 of the property sold.
- 43 **Sec. 28.** 1. The Commissioner shall adopt by regulation a
44 definition of the term "motor vehicle" as that term is used in the
45 definition of "title loan" for the purposes of this chapter.

1 2. The Commissioner may establish by regulation the fees that a
2 licensee who provides check-cashing services may impose for cashing
3 checks.

4 3. The Commissioner shall adopt any other regulations as are
5 necessary to carry out the provisions of this chapter.

6 **Sec. 29.** 1. A person, including, without limitation, a person
7 licensed pursuant to chapter 675 of NRS, shall not operate a check-
8 cashing service, deferred deposit loan service, short-term loan service or
9 title loan service unless the person is licensed with the Commissioner
10 pursuant to the provisions of this chapter.

11 2. A person must have a license regardless of the location or method
12 that the person uses to operate such a service, including, without
13 limitation, at a kiosk, through the Internet, through any telephone,
14 facsimile machine or other telecommunication device or through any
15 other machine, network, system, device or means.

16 **Sec. 30.** 1. A licensee shall post in a conspicuous place in every
17 location at which he conducts business under his license, a notice that
18 states the fees he charges for providing check-cashing services, deferred
19 deposit loan services, short-term loan services or title loan services.

20 2. If a licensee offers loans to customers at a kiosk, through the
21 Internet, through any telephone, facsimile machine or other
22 telecommunication device or through any other machine, network,
23 system, device or means, the licensee shall, as appropriate to the location
24 or method for making the loan, post in a conspicuous place where
25 customers will see it before they enter into a loan, or disclose in an open
26 and obvious manner to customers before they enter into a loan, a notice
27 that states:

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

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

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

37 **Sec. 31.** 1. Before making any loan to a customer, a licensee shall
38 provide to the customer a written loan agreement which may be kept by
39 the customer and which must be written in:

40 (a) English, if the transaction is conducted in English; or

41 (b) Spanish, if the transaction is conducted in Spanish.

42 2. The loan agreement must include, without limitation, the
43 following information:

44 (a) The name and address of the licensee and the customer;

45 (b) The date of the loan;

- 1 (c) The nature of the security for the loan, if any;
 2 (d) The amount of the loan obligation, including, without limitation,
 3 an itemization of the interest, charges and fees the customer must pay if
 4 the licensee makes a loan to the customer;
 5 (e) The description or schedule of payments on the loan;
 6 (f) A disclosure of the right of the customer to rescind a loan
 7 pursuant to the provisions of this chapter;
 8 (g) A disclosure of the right of the customer to pay his loan in full or
 9 in part with no additional charge pursuant to the provisions of this
 10 chapter;
 11 (h) Disclosures required for a similar transaction by the federal
 12 Truth in Lending Act, 15 U.S.C. §§ 1601 et seq.; and
 13 (i) Disclosures required under any other applicable state statute or
 14 regulation.
 15 (j) A disclosure that the customer has the opportunity to enter into a
 16 repayment plan of at least four (4) equal monthly installments within 30
 17 days of defaulting before any civil action or alternative dispute resolution
 18 process may be commenced.

Adds an additional disclosure requirement to be included in the loan agreement.

19 **Sec. 32.** 1. If a customer defaults on a loan, the licensee may
 20 collect the debt owed to the licensee only in a professional, fair and
 21 lawful manner. When collecting such a debt, the licensee must act in
 22 accordance with and must not violate sections 803 to 812, inclusive, of
 23 the federal Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692a to
 24 1692j, inclusive, even if the licensee is not otherwise subject to the
 25 provisions of that Act.

26 2. If a licensee initiates a civil action against a customer to collect a
 27 debt, the court may award:

- 28 (a) Court costs;
 29 (b) Costs of service of process, except that the costs must not exceed
 30 the amount of the fees charged by the sheriff or constable for service of
 31 process in the county where the action was brought or, if the customer is
 32 not served in that county, in the county where the customer was served;
 33 and
 34 (c) Reasonable attorney's fees. In determining the amount of the
 35 attorney's fees and whether they are reasonable, the court shall consider
 36 the complexity of the case, the amount of the debt and whether the
 37 licensee could have used less costly means to collect the debt.

38 **Sec. 33.** 1. If a customer is called to active duty in the military, a
 39 licensee shall:

40 (a) Defer for the duration of the active duty all collection activity
 41 against the customer and his property, including, without limitation, any
 42 community property in which the customer has an interest; and

43 (b) Honor the terms of any repayment plan between the licensee and
 44 customer, including, without limitation, any repayment plan negotiated
 45 through military counselors or third-party credit counselors.

2. When collecting any defaulted loan, a licensee shall not:
 (a) Garnish or threaten to garnish any wages or salary paid to a customer for active service in the military; or
 (b) Contact or threaten to contact the military chain of command of a customer in an effort to collect the defaulted loan.

Includes threats under the prohibited acts.

3. As used in this section, "military" means the Armed Forces of the United States, a reserve component thereof or the National Guard.

Sec. 34. A licensee shall not:

1. Make a deferred deposit or short term loan in which the terms of repayment require a payment or payments that ~~exceeds~~ exceed 25 percent of the expected gross monthly income of the customer when the loan is made. ~~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 gross monthly income to the licensee and represents to the licensee in writing that the repayment terms do ~~loan does~~ not exceed 25 percent of the expected gross monthly income of the customer during the term of the loan.

Revises Section 34 to limit its application to deferred deposit or short term loans (not title loans), and to provide that the monthly payment, rather than the loan amount, cannot exceed 25 percent of the borrower's expected gross monthly income when the loan is taken out.

2. Make more than one deferred deposit or short term loan to the same customer at one time or before any outstanding balance is paid in full on an existing loan made by that licensee to the customer unless:

(a) The customer is seeking multiple loans in which repayment terms together ~~that~~ do not exceed the limit set forth in subsection 1;

(b) The licensee charges the same rate or a lower annual percentage rate of interest for any additional loans as he charged for the initial loan;

(c) Except for the interest charged pursuant to paragraph (b), the licensee does not impose any other charge or fee to initiate any additional loans; and

(d) If the additional loans are deferred deposit loans and the customer provides one or more additional checks that are not paid upon presentment, the licensee does not charge any fees to the customer pursuant to section 45 of this act, except for the fees allowed pursuant to that section for the first check that is not paid upon presentment.

Sec. 35. A licensee shall not:

1. Accept:

(a) Collateral as security for a loan, 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.

(c) A check as security for a 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

1 amount of total payments set forth in the disclosure statement required
2 by the federal Truth in Lending Act, 15 U.S.C. §§ 1601 et seq., that is
3 provided to the customer.

4 2. Take any note or promise to pay which does not disclose the date
5 and amount of the loan, an annual percentage rate, a finance charge, an
6 amount finance, a total of payments, a payment schedule, late fees, and
7 any other fee not required to be included in the finance charge under the
8 rate or aggregate amount of the interest, charges and fees negotiated and
9 agreed to by the licensee and customer. Compliance with the federal
10 Truth in Lending Act, 15 U.S.C. §§ 1601 et seq., and Regulation Z,
11 12 C.F.R. 226. Compliance with the federal Truth in Lending Act,
12 15 U.S.C. §§1601 et seq., and Regulation Z, 12 C.F.R. 226, constitutes
13 compliance with this subsection.

Clarifying language with
regard to disclosures.

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

18 4. Make any transaction contingent on the purchase of insurance or
19 any other goods or services or sell any insurance to the customer with
20 the loan.

21 5. Fail to comply with a payment plan which is negotiated and
22 agreed to by the licensee and customer.

23 6. Charge any fee to cash a check representing the proceeds of a
24 loan made by the licensee or any agent, affiliate or subsidiary of the
25 licensee.

26 7. Charge a pre-default late fee which is void as a penalty under
27 common law.

Prohibits the licensee from
charging a pre-default late fee
that is void as a penalty under
common law.

28 **Sec. 36.** A licensee shall not:

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

32 2. Commence a civil action before the expiration of the original
33 term of a loan agreement or before the expiration of any repayment plan,
34 extension or grace period negotiated and agreed to by the licensee and
35 customer, unless otherwise authorized pursuant to this chapter.

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

39 4. Include in any written agreement:

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

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

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

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

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

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

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

NEW SECTION (Relates only to title loans)

1. The original term of a title loan shall not exceed the greater of either 30 days or one month. The title loan can be renewed for up to, but not exceeding, six (6) additional such periods provided that:

(a) No interest or charges from prior loan or renewal periods are capitalized or added to the principal amount in any renewal;

(b) The annual percentage rate of interest associated with the title loan is not increased from that charged in previous periods; and

(c) No additional origination fees, set-up fees, collection fees, transaction fees, negotiation fees, handling fees, processing fees, late fees, default fees, or any other fees, regardless of the name given to the fee, are charged in connection with any renewal.

New section regarding the terms of title loans.

Sec. 37. 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 customer has provided the licensee with true and correct information concerning the customer's income, obligations, and employment, and vehicle ownership; and

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

Adds "vehicle ownership" to the list of items concerning which the customer must sign an affidavit stating he has provided true and correct information.

Sec. 38. 1. Except where in conflict with the provisions of this chapter, the provisions of chapter 104 of NRS apply to any title loan between a licensee and a customer.

2. Except as otherwise provided in this section, if a customer defaults on a title loan, or on any extension or repayment plan relating to the 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:

Language regarding commencing a legal action is deleted.

1 (a) Payment of the loan, unless the licensee proves the customer
2 prevented the repossession and sale of the motor vehicle by any means,
3 including, without limitation, hiding the motor vehicle; or

4 (b) Any deficiency after repossession and sale of the motor vehicle
5 which the customer used to secure the title loan, unless the licensee
6 proves the customer damaged or otherwise committed or permitted waste
7 on the motor vehicle. For the purposes of this paragraph, it shall not be
8 deemed waste for the customer to continue to use the motor vehicle in
9 the same manner it was used before he entered into the title loan ~~or to~~
10 ~~make necessary repairs to the motor vehicle.~~

11 3. A licensee shall make available to a customer any personal
12 property contained in a motor vehicle that is repossessed by the licensee
13 upon default of the borrower on a title loan. In the event a licensee uses
14 a third party repossession company to effect repossession, the licensee
15 shall instruct such repossession company to make the customer's
16 personal property reasonably available to the customer. After
17 ~~repossession and sale of the motor vehicle securing the title loan, the~~
18 ~~licensee shall return to the customer any proceeds from the sale of the~~
19 ~~motor vehicle which exceed the amount owed on the title loan.~~

20 4. If a customer uses fraud to secure a title loan, or if the customer
21 wrongfully transfers any interest in the motor vehicle to a third party
22 before the loan is repaid, the licensee may bring a civil action against the
23 customer for any or all of the following relief:

24 (a) The amount of the loan obligation, including, without limitation,
25 the aggregate amount of the interest, charges and fees negotiated and
26 agreed to by the licensee and customer which are permitted by this Act,
27 less any repayments;

28 (b) Reasonable attorney's fees and costs; and

29 (c) Any other legal or equitable relief that the court deems
30 appropriate.

31 5. As used in this section, "fraud" means an intentional
32 misrepresentation, deception or concealment of a material fact known to
33 the customer with the intent to deprive the licensee of his rights or
34 property or to otherwise injure the licensee. The term includes, without
35 limitation, giving to a licensee as security for a title loan the title to a
36 motor vehicle which does not belong to the customer.

37 **Sec. 39. 1.** A customer may rescind a loan on or before the close
38 of business on the next day of business at the location where the loan
39 was initiated. To rescind the loan, the customer must deliver to the
40 licensee:

41 (a) A sum of money equal to the face value of the loan, less any fee
42 charged to the customer to initiate the loan; or

43 (b) The original check, if any, which the licensee gave to the
44 customer pursuant to the loan. Upon receipt of the original check, the
45 licensee shall refund any fee charged to the customer to initiate the loan.

Language providing that making necessary repairs to the motor vehicles is not "deemed waste" is deleted.

Revised procedure for making available to the customer his personal property contained in a repossessed motor vehicle.

Language to clarify actions involving customer fraud.

1 2. If a customer rescinds a loan pursuant to this section, the
2 licensee:

3 (a) Shall not charge the customer any fee for rescinding the loan;
4 and

5 (b) Upon receipt of the sum of money or check pursuant to
6 subsection 1, shall give to the customer a receipt showing the account
7 paid in full and:

8 (1) If the customer gave to the licensee a check or a written
9 authorization for an electronic transfer of money to initiate a deferred
10 deposit loan, the check or written authorization stamped "void";

11 (2) If the customer gave to the licensee a promissory note to
12 initiate a short-term loan, a copy of the promissory note stamped "void"
13 or the receipt stamped "paid in full"; or

14 (3) If the customer gave to the licensee a title to a motor vehicle to
15 initiate the title loan, the title.

16 **Sec. 40.** 1. A customer may pay a loan, or any extension thereof,
17 in full at any time, without an additional charge or fee, before the date
18 his final payment on the loan, or any extension thereof, is due.

19 2. If a customer pays the loan in full, including all interest, charges
20 and fees negotiated and agreed to by the licensee and customer as
21 permitted under this Act, the licensee shall:

22 (a) Give to the customer:

23 (1) If the customer gave to the licensee a check or a written
24 authorization for an electronic transfer of money to initiate a deferred
25 deposit loan, the check or the written authorization stamped "void";

26 (2) If the customer gave to the licensee a promissory note to
27 initiate a short-term loan, the promissory note stamped "void" or a
28 receipt stamped "paid in full"; or

29 (3) If the customer gave to the licensee a title to a motor vehicle to
30 initiate a title loan, the title; and

31 (b) Give to the customer a receipt with the following information:

32 (1) The name and address of the licensee;

33 (2) The identification number assigned to the loan agreement or
34 other information that identifies the loan;

35 (3) The date of the payment;

36 (4) The amount paid;

37 (5) An itemization of interest, charges and fees;

38 (6) A statement that the loan is paid in full; and

39 (7) If more than one loan made by the licensee to the customer
40 was outstanding at the time the payment was made, a statement
41 indicating to which loan the payment was applied.

42 **Sec. 41.** 1. A customer may make a partial payment on a loan, or
43 any extension thereof, at any time without an additional charge or fee.

44 2. If a customer makes such a partial payment, the licensee shall
45 give to the customer a receipt with the following information:

Clarifies the charges and
fees that may be negotiated
and agreed to.

- 1 (a) The name and address of the licensee;
- 2 (b) The identification number assigned to the loan agreement or
- 3 other information that identifies the loan;
- 4 (c) The date of the payment;
- 5 (d) The amount paid;
- 6 (e) An itemization of interest, charges and fees;
- 7 (f) The balance due on the loan; and
- 8 (g) If more than one loan made by the licensee to the customer was
- 9 outstanding at the time the payment was made, a statement indicating to
- 10 which loan the payment was applied.

11 **Sec. 42. 1. Prior to commencing civil action or any alternative**
 12 **dispute resolution process to collect a loan, the licensee shall**

13 **(a) Offer the customer the opportunity to enter into a repayment plan**
 14 **within 30 days of default or the end of any grace period, whichever**
 15 **occurs later, that is at least four (4) equal monthly installments.**

16 **(b) Provide the customer with written notice of the opportunity which**
 17 **must:**

18 **(1) Be in English, if the initial transaction was conducted in**
 19 **English, or in Spanish, if the initial transaction was conducted in**
 20 **Spanish;**

21 **(2) State that the customer has 30 days from the date the notice is**
 22 **postmarked to enter into the repayment plan and make his first payment;**

23 **(3) State that the customer can repay the amount owed in at least**
 24 **4 equal monthly installments; and**

25 **(4) State:**

26 **(i) The original amount owed less all payments made before**
 27 **and after default;**

28 **(ii) Any charges permitted by this chapter; and**

29 **(iii) The total due and owing.**

30 ~~The licensee and customer may enter into a repayment plan if:~~

31 ~~(a) The customer defaults on the original loan, or any extension~~
 32 ~~thereof; or~~

33 ~~(b) Before such a default, the customer indicates that he is unable to~~
 34 ~~pay the original loan in full pursuant to the terms set forth in the~~
 35 ~~original loan agreement, or any extension thereof.~~

36 ~~2. If the customer defaults on the original loan or any extension~~
 37 ~~thereof, or indicates that he is unable to pay in full the original loan or~~
 38 ~~any extension thereof, the licensee:~~

39 ~~(a) Shall provide written notice in English, if the initial transaction~~
 40 ~~was conducted in English, or in Spanish, if the initial transaction was~~
 41 ~~conducted in Spanish, to the customer of his right to enter into a~~
 42 ~~repayment plan; and~~

43 ~~(b) Shall not commence any civil action to collect on the outstanding~~
 44 ~~loan unless:~~

45 ~~(1) Such a notice has been sent to the customer; and~~

Revises language
regarding repayment plans.

1 ~~(2) The customer fails to exercise his right to enter into a~~
2 ~~repayment plan within 15 days after receipt of the notice.~~
3 ~~3. If the licensee and customer enter into a repayment plan~~
4 ~~pursuant to this section, the customer may pay the remaining balance on~~
5 ~~the outstanding loan:~~
6 ~~(a) In four equal monthly installments; or~~
7 ~~(b) Under any other terms negotiated and agreed to by the licensee~~
8 ~~and customer that comply with the provisions of this section.~~
9 ~~4. 2. If the licensee and customer enter into a repayment plan~~
10 ~~pursuant to this section, the licensee shall, if:~~
11 ~~(a) Provide to the customer a document which confirms that the~~
12 ~~customer has entered into a repayment plan and which states the date~~
13 ~~and terms of the repayment plan; and~~
14 ~~(b) If the repayment plan is for a deferred deposit loan, return to the~~
15 ~~customer the check or written authorization for an electronic transfer of~~
16 ~~money that the customer used to initiate the deferred deposit loan, with~~
17 ~~the check or written authorization stamped "void."~~
18 ~~5. 3. If the licensee and customer enter into a repayment plan~~
19 ~~pursuant to this section, the licensee shall honor the terms of the~~
20 ~~repayment plan, and the licensee shall not:~~
21 ~~(a) Charge any other amount to a customer, including, without~~
22 ~~limitation, any amount or charge payable directly or indirectly by the~~
23 ~~customer and imposed directly or indirectly by the licensee as an incident~~
24 ~~to or as a condition of entering into a repayment plan. Such an amount~~
25 ~~includes, without limitation:~~
26 ~~(1) Any interest, other than the interest charged pursuant to the~~
27 ~~original loan agreement, regardless of the name given to the interest; or~~
28 ~~(2) Any origination fees, set-up fees, collection fees, transaction~~
29 ~~fees, negotiation fees, handling fees, processing fees, late fees, default~~
30 ~~fees or any other fees, regardless of the name given to the fee;~~
31 ~~(b) Accept any security or collateral from the customer to enter into~~
32 ~~the repayment plan;~~
33 ~~(c) Sell to the customer any insurance or require the customer to~~
34 ~~purchase insurance or any other goods or services to enter into the~~
35 ~~repayment plan;~~
36 ~~(d) Make any other loan to the customer, unless the customer is~~
37 ~~seeking multiple loans that do not exceed the limit set forth in subsection~~
38 ~~1 of section 34 of this act; or~~
39 ~~(e) Commence a civil action or any alternative dispute resolution~~
40 ~~process against the customer during the term of the repayment plan.~~
41 ~~6. 4. Each time a customer makes a payment pursuant to a~~
42 ~~repayment plan, the licensee shall give to the customer a receipt with the~~
43 ~~following information:~~
44 ~~(a) The name and address of the licensee;~~

Adds option of alternative
dispute resolution.

1 (b) The identification number assigned to the loan agreement or
2 other information that identifies the loan;

3 (c) The date of the payment;

4 (d) The amount paid;

5 (e) The balance due on the loan or, when the customer makes the
6 final payment, a statement that the loan is paid in full; and

7 (f) If more than one loan made by the licensee to the customer was
8 outstanding at the time the payment was made, a statement indicating to
9 which loan the payment was applied.

10 **Sec. 43.** If a customer agrees to establish or extend the period for
11 the repayment, renewal, refinancing or consolidation of an outstanding
12 loan by using the proceeds of a new deferred deposit or short-term loan
13 to pay the balance of the outstanding loan, the licensee shall not
14 establish or extend such a period beyond ~~8 weeks~~ 2 months after the
15 expiration of the initial loan period. This section does not apply to a
16 licensee who lends according to all of the following criteria:

17 1. The licensee makes a loan with an annual percentage rate of less
18 than 200 percent, to be repaid on a monthly basis in not less than
19 5 months, and interest does not continue to accrue at the contract rate
20 after the date of maturity if not paid in full;

21 3. A credit check is performed with a major consumer reporting
22 agency prior to initiating the loan;

23 4. Loan experience information is reported to a major consumer
24 reporting agency;

25 5. The customer is provided a 5-day right to rescind a loan without
26 charge;

27 6. The licensee participates in good faith with a counseling agency
28 that is accredited by the Council on Accreditation for Services for
29 Families and Children, Inc.;

30 7. The licensee is a member of the National Foundation for Credit
31 Counseling; and

32 8. The licensee does not initiate litigation or an alternative dispute
33 resolution process on a defaulted loan, extension, or repayment plan.

34 **Sec. 44.** 1. If a customer defaults on a loan or on any extension
35 or repayment plan relating to the loan, whichever is later, the licensee
36 may collect only the following amounts from the customer:

37 (a) The principal amount of the loan, less all payments made before
38 and after default.

39 (b) The interest accrued before the expiration of the initial loan
40 period at the rate of interest set forth in the disclosure statement required
41 by the federal Truth in Lending Act, 15 U.S.C. §§ 1601 et seq., that is
42 provided to the customer. If there is an extension ~~or repayment plan~~
43 relating to the loan, the licensee may charge and collect interest
44 pursuant to this paragraph for a period not to exceed 8 weeks after the

Revises Section 43 to limit its application to deferred deposit or short-term loans, specify a period of 2 months (instead of 8 weeks), and provide an exemption for certain licensees.

Clarifies amounts a licensee may collect when a customer defaults, and deletes a reference to "repayment plan" under subsection 1(a).

Adds an exception for
Section 43 and its new
provisions.

1 *expiration of the initial loan period, unless otherwise allowed by*
2 *section 43.*

3 *(c) The interest accrued after the expiration of the initial loan period*
4 *or after any extension or repayment plan that is allowed pursuant to*
5 *paragraph (b), whichever is later, at a rate of interest not to exceed the*
6 *prime rate at the largest bank in Nevada, as ascertained by the*
7 *Commissioner, on January 1 or July 1, as the case may be, immediately*
8 *preceding the expiration of the initial loan period, plus 10 percent. The*
9 *licensee may charge and collect interest pursuant to this paragraph for a*
10 *period not to exceed 12 weeks. After that period, the licensee shall not*
11 *charge or collect any interest on the loan.*

12 *(d) Any fees allowed pursuant to section 45 of this act for a check*
13 *that is not paid upon presentment because the account of the customer*
14 *contains insufficient funds or has been closed.*

15 *2. Except for the interest and fees permitted pursuant to subsection*
16 *1, the licensee shall not charge any other amount to a customer,*
17 *including, without limitation, any amount or charge payable directly or*
18 *indirectly by the customer and imposed directly or indirectly by the*
19 *licensee as an incident to or as a condition of the extension of the period*
20 *for the payment of the loan or the extension of credit. Such an amount*
21 *includes, without limitation:*

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

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

27 **Sec. 45. 1.** *A licensee may collect a fee of not more than \$25 if a*
28 *check is not paid upon presentment because the account of the customer*
29 *contains insufficient funds or has been closed.*

30 *2. If the account of the customer contains insufficient funds, the*
31 *licensee may collect only two fees of \$25 each regardless of the number*
32 *of times the check is presented for payment.*

33 *3. If the account of the customer has been closed, the licensee may*
34 *collect only one fee of \$25 regardless of the number of times the check is*
35 *presented for payment.*

36 *4. A customer is not liable for damages pursuant to NRS 41.620 or*
37 *to criminal prosecution for a violation of chapter 205 of NRS unless the*
38 *customer acted with criminal intent.*

39 **Sec. 46.** *In addition to any other provision in this chapter, each*
40 *time a customer makes a payment to a licensee, the licensee shall give to*
41 *the customer a receipt with the following information:*

42 *1. The name and address of the licensee;*

43 *2. The identification number assigned to the loan agreement or*
44 *other information that identifies the loan;*

45 *3. The date of the payment;*

4. The amount paid;

5. The balance due on the loan or, when the customer makes a final payment, a statement that the loan is paid in full; and

6. 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. 47. 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, regulations and guidelines.

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; and

(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.

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. 48. 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;

1 (2) Officers;

2 (3) Directors; and

3 (4) Managers or members who act in a managerial capacity.

4 (d) The address of each location at which the applicant proposes to
5 do business, including, without limitation, each location where the
6 applicant will operate at a kiosk, through the Internet, through any
7 telephone, facsimile machine or other telecommunication device or
8 through any other machine, network, system, device or means.

9 (e) If the applicant is or intends to be licensed to provide more than
10 one type of service pursuant to the provisions of this chapter, a statement
11 of that intent and which services he provides or intends to provide.

12 2. Each application for a license must be accompanied by:

13 (a) A nonrefundable application fee;

14 (b) Such additional expenses incurred in the process of investigation
15 as the Commissioner deems necessary; and

16 (c) A fee of not less than \$100 or more than \$500, prorated on the
17 basis of the licensing year.

18 ⇒ All money received by the Commissioner pursuant to this subsection
19 must be placed in the Investigative Account for Financial Institutions
20 created by NRS 232.545.

21 3. The Commissioner shall adopt regulations establishing the
22 amount of the fees required pursuant to this section.

23 **Sec. 49.** 1. Except as otherwise provided in section 50 of this act,
24 each application for a license pursuant to the provisions of this chapter
25 must be accompanied by a surety bond payable to the State of Nevada in
26 the amount of \$50,000 for the use and benefit of any customer receiving
27 the services of the licensee.

28 2. The bond must be in a form satisfactory to the Commissioner,
29 issued by a bonding company authorized to do business in this State and
30 must secure the faithful performance of the obligations of the licensee
31 respecting the provision of the services.

32 3. A licensee shall, within 10 days after the commencement of any
33 action or notice of entry of any judgment against him by any creditor or
34 claimant arising out of business regulated by this chapter give notice
35 thereof to the Commissioner by certified mail with details sufficient to
36 identify the action or judgment. The surety shall, within 10 days after it
37 pays any claim or judgment to a creditor or claimant, give notice thereof
38 to the Commissioner by certified mail with details sufficient to identify
39 the creditor or claimant and the claim or judgment so paid.

40 4. Whenever the principal sum of the bond is reduced by recoveries
41 or payments thereon, the licensee shall furnish:

42 (a) A new or additional bond so that the total or aggregate principal
43 sum of the bonds equals the sum required pursuant to subsection 1; or

44 (b) An endorsement, duly executed by the surety, reinstating the bond
45 to the required principal sum.

1 5. The liability of the surety on the bond to a creditor or claimant is
2 not affected by any misrepresentation, breach of warranty, failure to pay
3 a premium or other act or omission of the licensee, or by any insolvency
4 or bankruptcy of the licensee.

5 6. The liability of the surety continues as to all transactions entered
6 into in good faith by the creditors and claimants with the agents of the
7 licensee within 30 days after:

8 (a) The death of the licensee or the dissolution or liquidation of his
9 business; or

10 (b) The termination of the bond,
11 ⇨ whichever event occurs first.

12 7. A licensee or his surety shall not cancel or alter a bond except
13 after notice to the Commissioner by certified mail. The cancellation or
14 alteration is not effective until 10 days after
15 receipt of the notice by the Commissioner. A cancellation or alteration
16 does not affect any liability incurred or accrued on the bond before the
17 expiration of the 30-day period designated in subsection 6.

18 **Sec. 50.** 1. In lieu of any surety bond, or any portion of the
19 principal sum thereof as required pursuant to the provisions of this
20 chapter, a licensee may deposit with the State Treasurer or with any
21 bank, credit union or trust company authorized to do business in this
22 State as the licensee may select, with the approval of the Commissioner:

23 (a) Interest-bearing stocks;

24 (b) Bills, bonds, notes, debentures or other obligations of the United
25 States or any agency or instrumentality thereof, or guaranteed by the
26 United States; or

27 (c) Any obligation of this State or any city, county, town, township,
28 school district or other instrumentality of this State or guaranteed by this
29 State,

30 ⇨ in an aggregate amount of, based upon principal amount or market
31 value, whichever is lower, of not less than the amount of the required
32 surety bond or portion thereof.

33 2. The securities must be held to secure the same obligation as
34 would the surety bond, but the depositor may receive any interest or
35 dividends and, with the approval of the Commissioner, substitute other
36 suitable securities for those deposited.

37 **Sec. 51.** 1. A person may apply for a license for an office or other
38 place of business located outside this State from which the applicant will
39 conduct business in this State if the applicant or a subsidiary or affiliate
40 of the applicant has a license issued pursuant to this chapter for an
41 office or other place of business located in this State and if the applicant
42 submits with the application for a license a statement signed by the
43 applicant which states that the applicant agrees to:

44 (a) Make available at a location within this State the books, accounts,
45 papers, records and files of the office or place of business located outside

1 *this State to the Commissioner or a representative of the Commissioner;*
2 *or*

3 *(b) Pay the reasonable expenses for travel, meals and lodging of the*
4 *Commissioner or a representative of the Commissioner incurred during*
5 *any investigation or examination made at the office or place of business*
6 *located outside this State.*

7 *⇒ The person must be allowed to choose between the provisions of*
8 *paragraph (a) or (b) in complying with the provisions of this subsection.*

9 *2. This section applies, without limitation, to any office or other*
10 *place of business located outside this State from which the applicant will*
11 *conduct business in this State at a kiosk, through the Internet, through*
12 *any telephone, facsimile machine or other telecommunication device or*
13 *through any other machine, network, system, device or means.*

14 **Sec. 52.** *1. Upon the filing of the application and the payment of*
15 *the fees required pursuant to section 48 of this act,*
16 *the Commissioner shall investigate the facts concerning the application*
17 *and the requirements provided for in section 54 of this act.*

18 *2. The Commissioner may hold a hearing on the application at a*
19 *time not less than 30 days after the date the application was filed or not*
20 *more than 60 days after that date. The hearing must be held in the Office*
21 *of the Commissioner or such other place as he may designate. Notice in*
22 *writing of the hearing must be sent to the applicant and to any licensee to*
23 *which a notice of the application has been given and to such other*
24 *persons as the Commissioner may see fit, at least 10 days before the date*
25 *set for the hearing.*

26 *3. The Commissioner shall make his order granting or denying the*
27 *application within 10 days after the date of the closing of the hearing,*
28 *unless the period is extended by written agreement between the applicant*
29 *and the Commissioner.*

30 **Sec. 53.** *If the Commissioner finds that any applicant does not*
31 *possess the requirements specified in this chapter, he shall:*

32 *1. Enter an order denying the application and notify the applicant*
33 *of the denial.*

34 *2. Within 10 days after the entry of such an order, file his findings*
35 *and a summary of the evidence supporting those findings and deliver a*
36 *copy thereof to the applicant.*

37 **Sec. 54.** *1. The Commissioner shall enter an order granting an*
38 *application if he finds that the financial responsibility, experience,*
39 *character and general fitness of the applicant are such as to command*
40 *the confidence of the public and to warrant belief that the business will*
41 *be operated lawfully, honestly, fairly and efficiently.*

42 *2. If the Commissioner grants an application, the Commissioner*
43 *shall:*

44 *(a) File his findings of fact together with the transcript of any*
45 *hearing held pursuant to the provisions of this chapter; and*

1 (b) Issue to the licensee a license in such form and size as is
2 prescribed by the Commissioner for each location at which the licensee
3 proposes to do business.

4 3. Each licensee shall prominently display his license at the location
5 where he does business. The Commissioner may issue additional licenses
6 to the same licensee for each branch location at which the licensee is
7 authorized to operate under the license, including, without limitation,
8 each branch location where the licensee is authorized to operate at a
9 kiosk, through the Internet, through any telephone, facsimile machine or
10 other telecommunication device or through any other machine, network,
11 system, device or means. Nothing in this subsection requires a license for
12 any place of business devoted to accounting, recordkeeping or
13 administrative purposes only.

14 4. Each license shall:

15 (a) State the address at which the business is to be conducted; and

16 (b) State fully:

17 (1) The name and address of the licensee;

18 (2) If the licensee is a copartnership or association, the names of
19 its members; and

20 (3) If the licensee is a corporation, the date and place of its
21 incorporation.

22 5. A license is not transferable or assignable.

23 **Sec. 55.** 1. A license issued pursuant to the provisions of this
24 chapter expires annually on the anniversary of the issuance of the
25 license. A licensee must renew his license on or before the date on which
26 the license expires by paying:

27 (a) A renewal fee; and

28 (b) An additional fee for each branch location at which the licensee
29 is authorized to operate under the license.

30 2. A licensee who fails to renew his license within the time required
31 by this section is not licensed pursuant to the provisions of this chapter.

32 3. The Commissioner may reinstate an expired license upon receipt
33 of the renewal fee and a fee for reinstatement.

34 4. The Commissioner shall adopt regulations establishing the
35 amount of the fees required pursuant to this section.

36 **Sec. 56.** 1. A licensee shall immediately notify the Commissioner
37 of any change of control of the licensee.

38 2. A person who acquires stock, partnership or member interests
39 resulting in a change of control of the licensee shall apply to the
40 Commissioner for approval of the transfer. The application must contain
41 information which shows that the requirements for obtaining a license
42 pursuant to the provisions of this chapter will be satisfied after the
43 change of control. If the Commissioner determines that those
44 requirements will not be satisfied, he may deny the application and
45 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. 57. A licensee shall not conduct the business of making loans under any name, at any place 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.

Sec. 58. 1. Except as otherwise provided in this section, a licensee may not conduct the business of making loans within any office, suite, room or place of business in which any other lending 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) Maintain separate accounts, books and records;

(II) Are subsidiaries of the same parent corporation; and

(III) 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) Maintain separate accounts, books and records;

(II) Are subsidiaries of the same parent corporation; and

(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.

3. If a pawnbroker is licensed to operate a check-cashing service, deferred deposit loan service, short-term loan service or title loan service, the pawnbroker may operate that service at the same office or place of business from which he conducts business as a pawnbroker pursuant to chapter 646 of NRS.

1 **Sec. 59.** 1. *A licensee who wishes to change the address of an*
2 *office or other place of business for which he has a license pursuant to*
3 *the provisions of this chapter must, at least 10 days before changing the*
4 *address, give written notice of the proposed change to the Commissioner.*

5 2. *Upon receipt of the proposed change of address pursuant to*
6 *subsection 1, the Commissioner shall provide written approval of the*
7 *change and the date of the approval.*

8 3. *If a licensee fails to provide notice as required pursuant to*
9 *subsection 1, the Commissioner may impose a fine in an amount not to*
10 *exceed \$500.*

11 4. *This section applies, without limitation, to any office or other*
12 *place of business at which the licensee intends to operate a kiosk,*
13 *through the Internet, through any telephone, facsimile machine or other*
14 *telecommunication device or through any other machine, network,*
15 *system, device or means.*

16 **Sec. 60.** 1. *Each licensee shall keep and use in his business such*
17 *books and accounting records as are in accord with generally accepted*
18 *accounting practices.*

19 2. *Each licensee shall maintain a separate record or ledger card for*
20 *the account of each customer and shall set forth separately the amount*
21 *of cash advance and the total amount of interest and charges, but such a*
22 *record may set forth precomputed declining balances based on the*
23 *scheduled payments, without a separation of principal and charges.*

24 3. *Each licensee shall preserve all such books and accounting*
25 *records for at least 2 years after making the final entry therein.*

26 4. *Each licensee who operates outside this State an office or other*
27 *place of business that is licensed pursuant to provisions of this chapter*
28 *shall:*

29 (a) *Make available at a location within this State the books, accounts,*
30 *papers, records and files of the office or place of business located outside*
31 *this State to the Commissioner or a representative of the Commissioner;*
32 *or*

33 (b) *Pay the reasonable expenses for travel, meals and lodging of the*
34 *Commissioner or a representative of the Commissioner incurred during*
35 *any investigation or examination made at the office or place of business*
36 *located outside this State.*

37 ~~⇒~~ *The licensee must be allowed to choose between the provisions of*
38 *paragraph (a) or (b) in complying with this subsection.*

39 5. *As used in this section, "amount of cash advance" means the*
40 *amount of cash or its equivalent actually received by a customer or paid*
41 *out at his direction or in his behalf.*

42 **Sec. 61.** 1. *Except as otherwise provided in subsection 3, an*
43 *officer or employee of the Division of Financial Institutions of the*
44 *Department of Business and Industry shall not:*

1 (a) Be directly or indirectly interested in or act on behalf of any
2 licensee;
3 (b) Receive, directly or indirectly, any payment from any licensee;
4 (c) Be indebted to any licensee;
5 (d) Engage in the negotiation of loans for others with any licensee;
6 or
7 (e) Obtain credit or services from a licensee conditioned upon a
8 fraudulent practice or undue or unfair preference over other customers.
9 2. An employee of the Division of Financial Institutions in the
10 unclassified service of the State shall not obtain new extensions of credit
11 from a licensee while in office.
12 3. Any officer or employee of the Division of Financial Institutions
13 may be indebted to a licensee on the same terms as are available to the
14 public generally.
15 4. If an officer or employee of the Division of Financial Institutions
16 has a service, a preferred consideration, an interest or a relationship
17 prohibited by this section at the time of his appointment or employment,
18 or obtains it during his employment, he shall terminate it within 120 days
19 after the date of his appointment or employment or the discovery of the
20 prohibited act.
21 **Sec. 62.** 1. For the purpose of discovering violations of this
22 chapter or of securing information lawfully required under this chapter,
23 the Commissioner or his duly authorized representatives may at any time
24 investigate the business and examine the books, accounts, papers and
25 records used therein of:
26 (a) Any licensee;
27 (b) Any other person engaged in the business of making loans or
28 participating in such business as principal, agent, broker or otherwise;
29 and
30 (c) Any person who the Commissioner has reasonable cause to
31 believe is violating or is about to violate any provision of this chapter,
32 whether or not the person claims to be within the authority or beyond the
33 scope of this chapter.
34 2. For the purpose of examination, the Commissioner or his
35 authorized representatives shall have and be given free access to the
36 offices and places of business, and the files, safes and vaults of such
37 persons.
38 3. For the purposes of this section, any person who advertises for,
39 solicits or holds himself out as willing to make any deferred deposit loan,
40 short-term loan or title loan is presumed to be engaged in the business of
41 making loans.
42 **Sec. 63.** 1. The Commissioner may require the attendance of any
43 person and examine him under oath regarding:
44 (a) Any check-cashing service or loan service regulated pursuant to
45 the provisions of this chapter; or

1 (b) The subject matter of any audit, examination, investigation or
2 hearing.

3 2. The Commissioner may require the production of books,
4 accounts, papers and records for any audit, examination, investigation or
5 hearing.

6 **Sec. 64.** At least once each year, the Commissioner or his
7 authorized representatives shall make an examination of the place of
8 business of each licensee and of the loans, transactions, books, accounts,
9 papers and records of the licensee so far as they pertain to the business
10 for which he is licensed pursuant to the provisions of this chapter. If the
11 Commissioner or his authorized representatives conclude, that after
12 auditing one or more branches of a licensee, that the loans, computer
13 processes, disclosures, loan practices, filing systems, and records are
14 identical at each location, then the Commissioner has the authority to
15 only review those branches that are deemed necessary.

Adds new language
regarding review of branches
when documents are
identical at each location.

16 **Sec. 65.** 1. The Commissioner shall charge and collect from each
17 licensee a fee of \$40 per hour for any supervision, audit, examination,
18 investigation or hearing conducted pursuant to this chapter or any
19 regulations adopted pursuant thereto.

20 2. The Commissioner shall bill each licensee upon the completion
21 of the activity for the fee established pursuant to subsection 1. The
22 licensee shall pay the fee within 30 days after the date the bill is received.
23 Except as otherwise provided in this subsection, any payment received
24 after the date due must include a penalty of 10 percent of the fee plus an
25 additional 1 percent of the fee for each month, or portion of a month,
26 that the fee is not paid. The Commissioner may waive the penalty for
27 good cause.

28 3. The failure of a licensee to pay the fee required pursuant to
29 subsection 1 as provided in this section constitutes grounds for
30 revocation of the license of the licensee.

31 **Sec. 66.** If the Commissioner finds that probable cause for
32 revocation of any license exists and that enforcement of the provisions of
33 this chapter requires immediate suspension of a license pending
34 investigation, he may, upon 5 days' written notice and a hearing, enter
35 an order suspending a license for a period not exceeding 20 days,
36 pending a hearing upon the revocation.

37 **Sec. 67.** 1. Whenever the Commissioner has reasonable cause to
38 believe that any person is violating or is threatening to or intends to
39 violate any provision of this chapter, he may, in addition to all actions
40 provided for in this chapter and without prejudice thereto, enter an order
41 requiring the person to desist or to refrain from such violation.

42 2. The Attorney General or the Commissioner may bring an action
43 to enjoin a person from engaging in or continuing a violation or from
44 doing any act or acts in furtherance thereof. In any such action, an

1 order or judgment may be entered awarding a preliminary or final
2 injunction as may be deemed proper.

3 3. In addition to all other means provided by law for the
4 enforcement of a restraining order or injunction, the court in which an
5 action is brought may impound, and appoint a receiver for, the property
6 and business of the defendant, including books, papers, documents and
7 records pertaining thereto, or so much thereof as the court may deem
8 reasonably necessary to prevent violations of this chapter through or by
9 means of the use of property and business. A receiver, when appointed
10 and qualified, has such powers and duties as to custody, collection,
11 administration, winding up and liquidation of such property and
12 business as may from time to time be conferred upon him by the court.

13 **Sec. 68.** 1. If the Commissioner has reason to believe that
14 grounds for revocation or suspension of a license exist, he shall give 20
15 days' written notice to the licensee stating the contemplated action and,
16 in general, the grounds therefor and set a date for a hearing.

17 2. At the conclusion of a hearing, the Commissioner shall:

18 (a) Enter a written order either dismissing the charges, revoking the
19 license or suspending the license for a period of not more than 60 days,
20 which period must include any prior temporary suspension. The
21 Commissioner shall send a copy of the order to the licensee by registered
22 or certified mail.

23 (b) Impose upon the licensee a fine of \$500 for each violation by the
24 licensee of any provision of this chapter or any regulation adopted
25 pursuant thereto.

26 (c) If a fine is imposed pursuant to this section, enter such order as is
27 necessary to recover the costs of the proceeding, including his
28 investigative costs and attorney's fees.

29 3. The grounds for revocation or suspension of a license are that:

30 (a) The licensee has failed to pay the annual license fee;

31 (b) The licensee, either knowingly or without any exercise of due
32 care to prevent it, has violated any provision of this chapter or any lawful
33 regulation adopted pursuant thereto;

34 (c) The licensee has failed to pay a tax as required pursuant to the
35 provisions of chapter 363A of NRS;

36 (d) Any fact or condition exists which would have justified the
37 Commissioner in denying the licensee's original application for a license
38 pursuant to the provisions of this chapter; or

39 (e) The licensee:

40 (1) Failed to open an office for the conduct of the business
41 authorized by his license within 180 days after the date his license was
42 issued; or

43 (2) Has failed to remain open for the conduct of the business for a
44 period of 180 days without good cause therefor.

1 4. Any revocation or suspension applies only to the license granted
2 to a person for the particular office for which grounds for revocation or
3 suspension exist.

4 5. An order suspending or revoking a license becomes effective 5
5 days after being entered unless the order specifies otherwise or a stay is
6 granted.

7 **Sec. 69.** A licensee may surrender any license issued pursuant to
8 the provisions of this chapter by delivering it to the Commissioner with
9 written notice of its surrender, but a surrender does not affect his civil or
10 criminal liability for acts committed prior thereto.

11 **Sec. 70.** A revocation, suspension, expiration or surrender of any
12 license does not impair or affect the obligation of any preexisting lawful
13 loan agreement between the licensee and any customer. Such a loan
14 agreement and all lawful charges thereon may be collected by the
15 licensee, its successors or assigns.

16 **Sec. 71.** 1. Annually, on or before April 15, each licensee shall
17 file with the Commissioner a report of operations of the licensed
18 business for the preceding calendar year.

19 2. The licensee shall make the report under oath and on a form
20 prescribed by the Commissioner.

21 3. If any person or affiliated group holds more than one license in
22 this State, it may file a composite annual report.

23 **Sec. 72.** 1. A court of this State may exercise jurisdiction over a
24 party to a civil action arising under the provisions of this chapter on any
25 basis not inconsistent with the Constitution of the State of Nevada or the
26 Constitution of the United States.

27 2. Personal service of summons upon a party outside this State is
28 sufficient to confer upon a court of this State jurisdiction over the party
29 so served if the service is made by delivering a copy of the summons,
30 together with a copy of the complaint, to the party served in the manner
31 provided by statute or rule of court for service upon a person of like kind
32 within this State.

33 3. In all cases of such service, the defendant has 40 days, exclusive
34 of the day of service, within which to answer or plead.

35 4. This section provides an additional manner of serving process
36 and does not invalidate any other service.

37 **Sec. 73.** 1. Except as otherwise provided in this section, if a
38 licensee willfully:

39 (a) Enters into a loan agreement for an amount of interest or any
40 other charge or fee that violates the provisions of this chapter or any
41 regulation adopted pursuant thereto;

42 (b) Demands, collects or receives an amount of interest or any other
43 charge or fee that violates the provisions of this chapter or any
44 regulation adopted pursuant thereto; or

1 (c) Commits any other act or omission that violates the provisions of
2 this chapter or any regulation adopted pursuant thereto,
3 ⇒ the loan is void and the licensee is not entitled to collect, receive or
4 retain any principal, interest or other charges or fees with respect to the
5 loan.

6 2. The provisions of this section do not apply if:

7 (a) A licensee shows by a preponderance of the evidence that the
8 violation was not intentional and resulted from a bona fide error of
9 computation, notwithstanding the maintenance of procedures reasonably
10 adapted to avoid that error; and

11 (b) Within 60 days after discovering the error, the licensee notifies
12 the customer of the error and makes whatever adjustments in the
13 account are necessary to correct the error.

14 **Sec. 74.** In addition to any other remedy or penalty, if a licensee
15 violates any provision of section 29, 31 to 47, inclusive, 49, 50, 57 or 58
16 of this act or any regulation adopted pursuant thereto, the customer may
17 bring a civil action against the licensee for any or all of the following
18 relief:

19 1. Actual and consequential damages;

20 2. An additional amount, as statutory damages, which is equal to
21 \$1,000 for each violation;

22 3. Punitive damages, which are subject to the provisions of NRS
23 42.005;

24 4. Reasonable attorney's fees and costs; and

25 5. Any other legal or equitable relief that the court deems
26 appropriate.

27 **Sec. 75.** NRS 598D.130 is hereby amended to read as follows:

28 **598D.130** A mortgage, deed of trust or other instrument that
29 encumbers home property as security for repayment of a home loan must
30 expressly indicate in writing in a size equal to at least 14-point bold type
31 on the front page of the mortgage, deed of trust or other instrument that
32 the home loan is a home loan as defined in NRS 598D.040 ~~+~~ and is
33 subject to the provisions of § 152 of the Home Ownership and Equity
34 Protection Act of 1994, 15 U.S.C. § 1602(aa), and the regulations
35 adopted by the Board of Governors of the Federal Reserve System
36 pursuant thereto, including, without limitation, 12 C.F.R. § 226.32.

37 **Sec. 76.** NRS 232.545 is hereby amended to read as follows:

38 232.545 1. An Investigative Account for Financial Institutions is
39 hereby created in the State General Fund. The Account consists of money
40 which is:

41 (a) Received by the Department of Business and Industry in connection
42 with the licensing of financial institutions and the investigation of persons
43 associated with those institutions; and

44 (b) Required by law to be placed therein.

1 2. The Director of the Department of Business and Industry or his
 2 designee may authorize expenditures from the Investigative Account to
 3 pay the expenses incurred:

4 (a) In investigating applications for licensing of financial institutions
 5 and in investigating persons associated with those institutions;

6 (b) In conducting special investigations relating to financial institutions
 7 and persons associated with those institutions; and

8 (c) In connection with mergers, consolidations, conversions,
 9 receiverships and liquidations of financial institutions.

10 3. As used in this section, "financial institution" means an institution
 11 for which licensing or registration is required by the provisions of titles 55
 12 and 56 ~~and chapters 604 and 649~~ of NRS ~~[-]~~, *chapter 649 of NRS and*
 13 *sections 2 to 74, inclusive, of this act.*

14 **Sec. 77.** NRS 363A.050 is hereby amended to read as follows:

15 363A.050 1. Except as otherwise provided in subsection 2,
 16 "financial institution" means:

17 (a) An institution licensed, registered or otherwise authorized to do
 18 business in this State pursuant to the provisions of *title 55 or 56 of NRS or*
 19 ~~chapter 604,~~ 645B, 645E or 649 of NRS or ~~title 55 or 56 of NRS,~~
 20 *sections 2 to 74, inclusive, of this act,* or a similar institution chartered or
 21 licensed pursuant to federal law and doing business in this State;

22 (b) Any person primarily engaged in:

23 (1) The purchase, sale and brokerage of securities;

24 (2) Originating, underwriting and distributing issues of securities;

25 (3) Buying and selling commodity contracts on either a spot or
 26 future basis for the person's own account or for the account of others, if
 27 the person is a member or is associated with a member of a recognized
 28 commodity exchange;

29 (4) Furnishing space and other facilities to members for the purpose
 30 of buying, selling or otherwise trading in stocks, stock options, bonds or
 31 commodity contracts;

32 (5) Furnishing investment information and advice to others
 33 concerning securities on a contract or fee basis;

34 (6) Furnishing services to holders of or brokers or dealers in
 35 securities or commodities;

36 (7) Holding or owning the securities of banks for the sole purpose
 37 of exercising some degree of control over the activities of the banks whose
 38 securities the person holds;

39 (8) Holding or owning securities of companies other than banks, for
 40 the sole purpose of exercising some degree of control over the activities of
 41 the companies whose securities the person holds;

42 (9) Issuing shares, other than unit investment trusts and face-
 43 amount certificate companies, whose shares contain a provision requiring
 44 redemption by the company upon request of the holder of the security;

1 (10) Issuing shares, other than unit investment trusts and face-
2 amount certificate companies, whose shares contain no provision requiring
3 redemption by the company upon request by the holder of the security;
4 (11) Issuing unit investment trusts or face-amount certificates;
5 (12) The management of the money of trusts and foundations
6 organized for religious, educational, charitable or nonprofit research
7 purposes;
8 (13) The management of the money of trusts and foundations
9 organized for purposes other than religious, educational, charitable or
10 nonprofit research;
11 (14) Investing in oil and gas royalties or leases, or fractional
12 interests therein;
13 (15) Owning or leasing franchises, patents and copyrights which the
14 person in turn licenses others to use;
15 (16) Closed-end investments in real estate or related mortgage
16 assets operating in such a manner as to meet the requirements of the Real
17 Estate Investment Trust Act of 1960, as amended;
18 (17) Investing; or
19 (18) Any combination of the activities described in this paragraph,
20 ➤ who is doing business in this State;
21 (c) Any other person conducting loan or credit card processing
22 activities in this State; and
23 (d) Any other bank, bank holding company, national bank, savings
24 association, federal savings bank, trust company, credit union, building
25 and loan association, investment company, registered broker or dealer in
26 securities or commodities, finance company, dealer in commercial paper or
27 other business entity engaged in the business of lending money, providing
28 credit, securitizing receivables or fleet leasing, or any related business
29 entity, doing business in this State.
30 2. The term does not include a credit union organized under the
31 provisions of chapter 678 of NRS or the Federal Credit Union Act.
32 **Sec. 78.** NRS 645B.0119 is hereby amended to read as follows:
33 645B.0119 "Financial services license or registration" means any
34 license or registration issued in this State or any other state, district or
35 territory of the United States that authorizes the person who holds the
36 license or registration to engage in any business or activity described in the
37 provisions of this chapter, *title 55 or 56 of NRS or chapter 604,* 645,
38 645A, 645C, 645E or 649 of NRS or ~~title 55 or 56 of NRS,~~ *sections 2 to*
39 *74, inclusive, of this act.*
40 **Sec. 79.** NRS 658.098 is hereby amended to read as follows:
41 658.098 1. On a quarterly or other regular basis, the Commissioner
42 shall collect an assessment pursuant to this section from each:
43 (a) Check-cashing service or deferred deposit *loan* service that is
44 supervised pursuant to ~~chapter 604 of NRS,~~ *sections 2 to 74, inclusive,*
45 *of this act;*

- 1 (b) Collection agency that is supervised pursuant to chapter 649 of
2 NRS;
3 (c) Bank that is supervised pursuant to chapters 657 to 668, inclusive,
4 of NRS;
5 (d) Trust company that is supervised pursuant to chapter 669 of NRS;
6 (e) Development corporation that is supervised pursuant to chapter 670
7 of NRS;
8 (f) Corporation for economic revitalization and diversification that is
9 supervised pursuant to chapter 670A of NRS;
10 (g) Person engaged in the business of selling or issuing checks or of
11 receiving for transmission or transmitting money or credits that is
12 supervised pursuant to chapter 671 of NRS;
13 (h) Savings and loan association that is supervised pursuant to chapter
14 673 of NRS;
15 (i) Person engaged in the business of lending that is supervised
16 pursuant to chapter 675 of NRS;
17 (j) Person engaged in the business of debt adjusting that is supervised
18 pursuant to chapter 676 of NRS;
19 (k) Thrift company that is supervised pursuant to chapter 677 of NRS;
20 and
21 (l) Credit union that is supervised pursuant to chapter 678 of NRS.
22 2. The Commissioner shall determine the total amount of all
23 assessments to be collected from the entities identified in subsection 1, but
24 that amount must not exceed the amount necessary to recover the cost of
25 legal services provided by the Attorney General to the Commissioner and
26 to the Division of Financial Institutions. The total amount of all
27 assessments collected must be reduced by any amounts collected by the
28 Commissioner from an entity for the recovery of the costs of legal services
29 provided by the Attorney General in a specific case.
30 3. The Commissioner shall collect from each entity identified in
31 subsection 1 an assessment that is based on:
32 (a) A portion of the total amount of all assessments as determined
33 pursuant to subsection 2, such that the assessment collected from an entity
34 identified in subsection 1 shall bear the same relation to the total amount of
35 all assessments as the total assets of that entity bear to the total of all assets
36 of all entities identified in subsection 1; or
37 (b) Any other reasonable basis adopted by the Commissioner.
38 4. The assessment required by this section is in addition to any other
39 assessment, fee or cost required by law to be paid by an entity identified in
40 subsection 1.
41 5. Money collected by the Commissioner pursuant to this section
42 must be deposited in the State Treasury pursuant to the provisions of NRS
43 658.091.
44 **Sec. 80.** NRS 675.040 is hereby amended to read as follows:
45 675.040 This chapter does not apply to:

1 1. A person doing business under the authority of any law of this
 2 State or of the United States relating to banks, savings banks, trust
 3 companies, savings and loan associations, credit unions, development
 4 corporations, mortgage brokers, mortgage bankers, thrift companies,
 5 pawnbrokers or insurance companies.

6 2. A real estate investment trust, as defined in 26 U.S.C. § 856.

7 3. An employee benefit plan, as defined in 29 U.S.C. § 1002(3), if the
 8 loan is made directly from money in the plan by the plan's trustee.

9 4. An attorney at law rendering services in the performance of his
 10 duties as an attorney at law if the loan is secured by real property.

11 5. A real estate broker rendering services in the performance of his
 12 duties as a real estate broker if the loan is secured by real property.

13 6. Except as otherwise provided in this subsection, any firm or
 14 corporation:

15 (a) Whose principal purpose or activity is lending money on real
 16 property which is secured by a mortgage;

17 (b) Approved by the Federal National Mortgage Association as a seller
 18 or servicer; and

19 (c) Approved by the Department of Housing and Urban Development
 20 and the Department of Veterans Affairs.

21 7. A person who provides money for investment in loans secured by a
 22 lien on real property, on his own account.

23 8. A seller of real property who offers credit secured by a mortgage of
 24 the property sold.

25 9. A person holding a nonrestricted state gaming license issued
 26 pursuant to the provisions of chapter 463 of NRS.

27 10. *A person licensed to do business pursuant to sections 2 to 74,*
 28 *inclusive, of this act.*

29 **Sec. 81.** NRS 675.060 is hereby amended to read as follows:

30 675.060 1. No person may engage in the business of lending in this
 31 State without first having obtained a license from the Commissioner
 32 *pursuant to this chapter* for each office or other place of business at which
 33 the person engages in such business ~~}-}~~, *except that if a person intends to*
 34 *engage in the business of lending in this State as a deferred deposit loan*
 35 *service, short-term loan service or title loan service, as those terms are*
 36 *defined in sections 2 to 74, inclusive, of this act, the person must obtain a*
 37 *license from the Commissioner pursuant to sections 2 to 74, inclusive, of*
 38 *this act before the person may engage in any such business.*

39 2. For the purpose of this section, a person engages in the business of
 40 lending in this State if he:

41 (a) Solicits loans in this State or makes loans to persons in this State,
 42 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. 82. 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. 83. 1. If a person:

(a) On July 1, 2005, holds a valid certificate of registration or license that was issued by the Commissioner of Financial Institutions pursuant to chapter 604 or 675 of NRS before July 1, 2005; and

(b) Operates a check-cashing service, deferred deposit loan service, short-term loan service or title loan service, as those terms are defined in the provisions of sections 2 to 74, inclusive, of this act,

↳ the person's certificate of registration or license shall be deemed to be a license issued by the Commissioner of Financial Institutions pursuant to the provisions of sections 2 to 74, inclusive, of this act until the date on which the person would have been required to renew his certificate of registration or license pursuant to chapter 604 or 675 of NRS.

2. A person described in subsection 1 shall:

(a) On and after July 1, 2005, comply with all provisions of sections 2 to 74, inclusive, of this act relating to transactions with customers, including, without limitation, all provisions relating to loans, extensions, repayment plans, interest, fees, charges and collections; and

(b) On and after October 1, 2005, comply with all other provisions of sections 2 to 74, inclusive, of this act, except that the person does not have to renew his certificate of registration or license until the date on which the person would have been required to renew his certificate of registration or license pursuant to chapter 604 or 675 of NRS.

Sec. 84. This act becomes effective on July 1, 2005.

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.

H

To: Senator Randolph J. Townsend and Members of the
Commerce and Labor Committee

Re: Assembly Bill 384

Dear Sir:

I am writing this letter to address certain Sections within this bill that would cause undue hardship on both companies that provide and consumers who use short-term credit services.

Section 8 – Default definition

This would force companies to do one of two things: a) automatically default good customers for being late or, b) institute grace periods for which the companies would not be paid.

The fallacy here is that customers always make their payments on time. All too often customers may get tied up in traffic, encounter a schedule change at work or have a transportation problem and through no fault of their own, be unable to get to their credit provider to make a timely payment. Should these customers be defaulted and their credit scores damaged for this?

Or should the credit provider take the hit and allow a large enough free grace period to all customers to ensure that they accommodate those that might run late?

Remember, we are talking about a one or a two week loan – even offering a free grace period of 3 days would mean a 21-42% reduction in gross income causing *irreparable damage to the industry and costing jobs.*

Section 42 – Repayment Plans

Once a customer defaulted under the above referenced provision, they would in effect have 5 full months to repay the loan with minimal interest. This again is an undue

hardship on the companies providing the service and would effectively cripple the industry and drive us out of business.

Section 39 – Rescission clause

Allowing a customer the right to rescind a loan by the end of the following business day puts the industry at great risk for persons to take a loan on Friday, pay it back by Monday evening and in effect use our money for 4 full days with no charge. Again, please consider the short-term nature of these loans. Also, consider that under no circumstances could you walk into a bank, walk out with cash in your hand and return it 4 days later with no charge. Forcing the short-term credit provider to comply with such a provision would again, severely harm the industry.

With over 500 locations in Nevada providing credit to subprime credit consumers, it's obvious that there is a well-established need for these services. Yes, the fees are high if you look at them as an APR. However, the nature of these loans as a one or two week transaction makes an APR just as meaningless as it would applying an APR to an ATM cash withdrawal transaction. Harming this industry would be a great disservice to both its customers and employees.

Please take time to consider these issues before you cast your vote and vote NO on Assembly Bill 384. Should you have any questions or wish to discuss this further, please call me at (702) 204-5412.

Respectfully,

Cynthia Fedelleck
Managing Partner
Fast Check

E-2

Sandra Perry
(702) 460-1113

Attention: Chairman Senator Randolph Townsend

PROPOSED LEGISLATION REGARDING THE PAYDAY LOAN INDUSTRY Comments from Sandra Perry, Owner Money Express Catalog Sales, Inc/ Cash Express

Points of Concern

PROPOSED LEGISLATION REGARDING THE PAYDAY LOAN INDUSTRY Re: AB 384
Comments from Money Express Catalog Sales, Inc/ Cash Express Points of Concern (page 2)

AB 384 Sec 8 - Sec 23 Sec 42 2A & 3A

Question

Concerning default, is it possible that you have overlooked the subsequent problems arising from this proposed legislation?

Potential Problem for Operator and Consumer Operator - excessive loss of income. Customer - Forces the operator to penalize a good customer.

Example John Doe has a loan due on Friday in the amount of 130.00 which will be 28 days from the loan origination date. He has called our office and said that he wishes to extend his loan for an additional two weeks, but because he has to work late on Friday and Saturday he will be unable to make it in until Monday. He does not want his check deposited. Now under your proposed legislation we will be forced to deposit his check on Saturday in hopes of avoiding having our money out for a term of up to 5 months while we receive 4 cents a day per \$100 that is out. That's right, **FOUR CENTS A DAY!** By depositing his check there is a strong possibility that our check or others that he has written will be returned NSF. Of course, that will at least give us an additional 25.00 to add to his fees, in the event our check is returned. However if our check does clear, there is a strong possibility that John Doe will be faced with numerous returned NSF charges that could possibly end up costing him many times his original \$100.00 loan (up to 37.00 per item). In the end we will have an unhappy customer who now will have their bank account overdrawn X number of times with checks bouncing due to this proposed legislation. With all the people utilizing these short term loans for weeks at a time do you think it will be possible for any of the loan companies to stay in business with millions of dollars out at pennies to 0% a day in interest?

You will have effectively killed an industry that helped people pay mortgages, buy groceries, pay car payments and help a consumer squeak by when there was no other way to make ends meet. By this legislation you have changed my status of being an operator that was sensitive to my customer's needs. Previously, I worked in a creative manner within the framework of Nevada law with each and every customer to provide a service that was sensitive to my customers financial condition. Now by this legislation, I have been forced to deposit my customers check, regardless of funds available. You have put me in a dark corner wherein I must now become the type of operator that this bill seeks to eliminate. Ladies and Gentlemen, who of you would like to go into the business of loaning money for two weeks with five months to pay? What business on earth operates like this? How long do you think you could keep your overhead going?

Comments AB384 from Sandra Perry/Cash Express Page 2 of 2

Possible Solution (Section 8-1)

Amend the definition of default under Section 8-1 to state as follows:

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

(a) Make a payment on or within a period of fifteen days following the scheduled due date under the terms of a lawful loan agreement and any grace period that complies with the provisions of Section 23 of this act or under the terms of any lawful extension relating to the loan and any grace period that complies with the provisions of Section 23 of this act; or

(b) as written

(1) The expiration of the initial loan period as set forth in a lawful loan agreement, or fifteen days thereafter as written and any grace period that complies with the provisions of Section 23 of this act; or

(2) The due date of any lawful extension or 15 days following or repayment plan relating to the loan and any grace period (continue as written).....

2. A default occurs (15) fifteen days following the date of the customer's failure to perform as described in subsection 1.


3. The APR of the original Loan or extension thereof shall apply to the 15 day following the original loan date or the extension thereof.

In summary, I ask you do you really think we as operators can operate under a bill the forces us to give up to five months to repay a one or two week loan. As a business owner I should be allowed to make the decision of who I wish to put on a repayment plan and for how long that plan should be. I am very concerned about my financial security under the weight of this proposed legislation. My employees are also very concerned about their job security should this bill pass, and rightly so.

I have been a local business owner since moving to Nevada and in the payday loan business since 1997. We now have banks such as Well Fargo (large corporations) stepping into the market. They have security due to the customers direct deposit. Of course, they are exempt from the far reaching consequences of this proposed legislation. Is this really the kind of action you wish to impose on your local business owners, reducing their income and eventually forcing them out of business. I am hopeful that is not your intent.

My request to you today is that you not destroy this large, much needed industry. Please consider the dire consequences of this proposed legislation and vote NO on Assembly Bill 384.

Respectfully,


Sandra J. Perry, Owner
Cash Express
Contact number 702-460-1113

May 9, 2005

BRENNAN

SENT VIA FAX – I LIVE IN LAS VEGAS AND I PREPARED TO TESTIFY ON VIDEO CONFERENCE THIS MORNING, UNAWARE THAT IT WAS NOT AVAILABLE TODAY. BELOW ARE THE HIGHLIGHTS OF WHAT I HAD INTENDED TO TESTIFY TODAY. PLEASE ACCEPT THIS 2 PAGE DOCUMENT AS MY TESTIMONY IN LIEU OF BEING ABLE TO TESTIFY IN-PERSON VIA VIDEO CONFERENCE.

Mr. Chair (Townsend), Members of the Committee.

My name is Charles Brennan and I represent Dollar Loan Center with locations in both Northern and Southern Nevada.

I put myself, my 87 employees, and the 10,000 customers who walk thru the doors of Dollar Loan Center each and every week at your mercy. Please kill this bill.

No amendments have worked yet, in fact the bill has gotten beyond fixing.

Without burdening the committee by pointing out all of the impossibilities of the bill, I would like to focus on two main areas.

This bill rewards our customers for defaulting on their loans and forces us to notify them in writing how to go about doing that.

There is not one single industry in Nevada that could survive legislation that prevents them from collecting monies owed to them for services they provided.

Obviously you would not vote to prevent banks and credit unions from not being able to collect on their loans. Well, we are financial institutions that provide well over 100,000 loans per week to Nevada Consumers. And that is exactly what this bill does.

AB384 literally tells us in section 42 and 44 that when a customer comes in to borrow \$400, that before they leave, we need to notify them in writing, that it would be less expensive to never make one payment than it would be to pay us back.

The second major issue is that passage of this bill will create unfair monopolies amongst National companies.

The cost to the good consumers is going to skyrocket without a free trade system.

Of course Advance America thinks this is a great bill. They testified that less than ½ of 1 percent of their operation is based in Nevada.

As a matter of fact, most of the so called "good guys" that have been testifying in favor of this bill are based out of state and Nevada is just a line item on their balance sheet.

With the passing of this bill, they corner the market and force the rest of us out of business. Small companies operate nearly 300 of the 400 locations in Nevada.

And finally.

The most outrageous example of Assemblywoman Buckley's agreeing to the special interests of only these large companies is this bill's effective date of July 1, 2005.

They own their own software development companies to make any changes to their process.

If passed, my company, along with the other 300 who are not big conglomerates, need much more time to be able to comply with these laws.

Most companies will need to

- Develop new contracts,
- change computer programs,
- convert their entire process to Spanish,
- educate employees,
- hire new bi-lingual employees, etc.

And for those of us without huge, out of state, technology departments, we simply can not comply with implementing changes by July 1st. We will be lucky to have it done by the first of the year.

Our contention is that this is a complex and unnecessary law. There are adequate laws on the books right now that the FID has a hard time enforcing.

If this law passes, the FID will be overwhelmed and not be able to properly enforce it. You can verify this by simply asking the FID.

Thank you for allowing me to be heard.

Charles C. Brennan, President / CEO

Dollar Loan Center, LLC

6122 W. Sahara Avenue

Las Vegas, Nevada 89146

702-364-5626 Office

702-364-5627 Fax

702-493-9422 Mobile

cbrennan@dontbebroke.com

Jim Marchess

NFSA/CFSA
MOCK-UP

\\
PROPOSED AMENDMENT TO
ASSEMBLY BILL NO. 384
FIRST REPRINT

PREPARED FOR ASSEMBLYWOMAN BARBARA E. BUCKLEY
MAY 6, 2005

PREPARED BY THE RESEARCH 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:

- 1 **Section 1.** Title 52 of NRS is hereby amended by adding thereto a
2 new chapter to consist of the provisions set forth as sections 2 to 74,
3 inclusive, of this act.
4 **Sec. 2.** *As used in this chapter, unless the context otherwise*
5 *requires, the words and terms defined in sections 3 to 21, inclusive, of*
6 *this act have the meanings ascribed to them in those sections.*
7 **Sec. 3.** *"Cashing" means providing currency or a negotiable*
8 *instrument in exchange for a check.*
9 **Sec. 4.** 1. *"Check" means:*
10 (a) *A draft, other than a documentary draft, payable on demand and*
11 *drawn on a bank; or*
12 (b) *A cashier's check or teller's check.*
13 2. *An instrument may be a check even though it is described on its*
14 *face by another term, such as "money order."*
15 **Sec. 5.** *"Check-cashing service" means any person engaged in the*
16 *business of cashing checks for a fee, service charge or other*
17 *consideration.*

EXHIBIT H Senate Committee on Commerce/Labor
Date: 5-9-05 Page 1 of 36

*NFSA/CFSA PROPOSED AMENDMENT TO
AB384_R1*

1 **Sec. 6.** "Commissioner" means the Commissioner of Financial
2 Institutions.

3 **Sec. 7.** "Customer" means any person who receives or attempts to
4 receive check-cashing services, deferred deposit loan services, short-term
5 loan services or title loan services from another person.

6 **Sec. 8.** 1. "Default" means the failure of a customer to:

7 (a) Make a scheduled payment on a loan on or before the due date
8 for the payment under the terms of a lawful loan agreement and any
9 grace period that complies with the provisions of section 23 of this act or
10 under the terms of any lawful extension ~~or repayment plan~~ relating to
11 the loan and any grace period that complies with the provisions of
12 section 23 of this act; or

13 (b) Pay a loan in full on or before:

14 (1) The expiration of the initial loan period as set forth in a lawful
15 loan agreement and any grace period that complies with the provisions
16 of section 23 of this act; or

17 (2) The due date of any lawful extension or repayment plan
18 relating to the loan and any grace period that complies with the
19 provisions of section 23 of this act, provided that the due date of the
20 extension or repayment plan is not later than 8 weeks after the expiration
21 of the initial loan period.

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

24 **Sec. 9.** "Deferred deposit loan" means a transaction in which,
25 pursuant to a written agreement:

26 1. A customer tenders to another person:

27 (a) A personal check drawn upon the account of the customer; or

28 (b) Written authorization for an electronic transfer of money for a
29 specified amount from the account of the customer; and

30 2. The other person:

31 (a) Provides to the customer an amount of money that is equal to the
32 face value of the check or the amount specified in the written
33 authorization for an electronic transfer of money, less any fee charged
34 for the transaction; and

35 (b) Agrees, for a specified period, not to cash the check or execute
36 the electronic transfer of money for the amount specified in the written
37 authorization.

38 **Sec. 10.** "Deferred deposit loan service" means any person engaged
39 in the business of making deferred deposit loans for a fee, service charge
40 or other consideration.

41 **Sec. 11.** "Electronic transfer of money" means any transfer of
42 money, other than a transaction initiated by a check or other similar
43 instrument, that is initiated through an electronic terminal, telephone,
44 computer or magnetic tape for the purpose of ordering, instructing or
45 authorizing a financial institution to debit or credit an account.

1 **Sec. 12. 1.** "Extension" means any extension or rollover of a loan
 2 beyond the date on which the loan is required to be paid in full under the
 3 original terms of the loan agreement, regardless of the name given to the
 4 extension or rollover.

5 2. The term does not include a grace period.

6 **Sec. 13.** "Grace period" means any period of deferment offered
 7 gratuitously by a licensee to a customer if the licensee complies with the
 8 provisions of section 23 of this act.

9 **Sec. 14.** "Licensee" means any person who has been issued one or
 10 more licenses to operate a check-cashing service, deferred deposit loan
 11 service, short-term loan service or title loan service pursuant to the
 12 provisions of this chapter.

13 **Sec. 15.** "Loan" means any deferred deposit loan, short-term loan
 14 or title loan, or any extension or repayment plan relating to such a loan,
 15 made at any location or through any method, including, without
 16 limitation, at a kiosk, through the Internet, through any telephone,
 17 facsimile machine or other telecommunication device or through any
 18 other machine, network, system, device or means.

19 **Sec. 16.** "Motor vehicle" has the meaning ascribed to it by the
 20 Commissioner pursuant to section 28 of this act.

21 **Sec. 17. 1.** "Short-term loan" means a loan made to a customer
 22 pursuant to a loan agreement which, under its original terms:

23 (a) ~~Charges fees or a rate of interest, or any combination thereof,~~
 24 ~~that when calculated as an annualized percentage rate is an annual~~
 25 percentage rate of more than 40 percent; and

26 (b) ~~Requires the loan to be paid in full in less than 1 year~~ 18 months.

27 2. The term does not include:

28 (a) A deferred deposit loan; or

29 (b) A title loan.

30 **Sec. 18.** "Short-term loan service" means any person engaged in
 31 the business of providing short-term loans for a fee, service charge or
 32 other consideration.

33 **Sec. 19. 1.** "Title loan" means a loan made to a customer who
 34 secures the loan with the title to a motor vehicle and who gives
 35 possession of the title to the person making the loan or to any agent,
 36 affiliate or subsidiary of the person.

37 2. The term does not include a loan which creates a purchase
 38 money security interest in a motor vehicle or the refinance of any such
 39 loan. The term does not include a loan which is secured by a lien or
 40 other security interest that attaches to a motor vehicle or appears on its
 41 title, including, without limitation, a loan to finance the purchase of the
 42 motor vehicle, if the person making the loan, or any agent, affiliate or
 43 subsidiary of the person, does not take possession of the title.

1 **Sec. 20.** "Title loan service" means any person engaged in the
2 business of providing title loans for a fee, service charge or other
3 consideration.

4 **Sec. 21.** "Title to a motor vehicle" or "title" means a certificate of
5 title issued by the Department of Motor Vehicles that identifies the legal
6 owner of a motor vehicle or any similar document issued pursuant to the
7 laws of another jurisdiction.

8
9 **NEW SECTION**

10 *Unless otherwise specifically provided herein, the terms "annual*
11 *percentage rate," "finance charge," "amount financed," "total of*
12 *payments," and "payment schedule" have the meanings given to the*
13 *under the federal Truth in Lending Act, 15 U.S.C. §§1601 et seq., and*
14 *Regulation Z, 12 C.F.R. 226, and proper calculation of the annual*
15 *percentage rate, finance charge, and amount financed shall be in*
16 *accordance therewith.*

17
18 **Sec. 22.** The provisions of this chapter apply to any person who
19 seeks to evade its application by any device, subterfuge or pretense,
20 including, without limitation, calling a loan by any other name or using
21 any agents, affiliates or subsidiaries in an attempt to avoid the
22 application of the provisions of this chapter.

23 **Sec. 23.** The provisions of this chapter do not prohibit a licensee
24 from offering a customer a grace period on the repayment of a loan,
25 except that the licensee shall not charge the customer:

26 1. Any fees for granting such a grace period; or
27 2. Any additional fees or additional interest on the outstanding loan
28 in addition to any fee or interest allowed under section 44 of this act
29 during such a grace period.

30 **Sec. 24.** 1. The provisions of this chapter must be interpreted so
31 as to effectuate their general purpose to provide for, to the extent
32 practicable, uniform regulation of the loans and transactions that are
33 subject to the provisions of this chapter.

34 2. If there is a conflict between the provisions of this chapter and
35 the provisions of any other general law regulating loans and similar
36 transactions, the provisions of this chapter control.

37 **Sec. 25.** This chapter or any part thereof may be modified,
38 amended or repealed by the Legislature so as to effect a cancellation or
39 alteration of any license or right of a licensee under this chapter,
40 provided that such cancellation or alteration shall not impair or affect
41 the obligation of any preexisting lawful loan agreement between any
42 licensee and any customer.

43 **Sec. 26.** Any loan lawfully made outside this State as permitted by
44 the laws of the state in which the loan was made may be collected or
45 otherwise enforced in this State in accordance with its terms.

1 **Sec. 27.** *The provisions of this chapter do not apply to:*

2 1. *A person doing business pursuant to the authority of any law of*
3 *this State or of the United States relating to banks, savings banks, trust*
4 *companies, savings and loan associations, credit unions, development*
5 *corporations, mortgage brokers, mortgage bankers, thrift companies or*
6 *insurance companies.*

7 2. *A person who is primarily engaged in the retail sale of goods or*
8 *services who:*

9 (a) *As an incident to or independently of a retail sale or service, from*
10 *time to time cashes checks for a fee or other consideration of not more*
11 *than \$2; and*

12 (b) *Does not hold himself out as a check-cashing service.*

13 3. *A person while performing any act authorized by a license issued*
14 *pursuant to chapter 671 of NRS.*

15 4. *A person who holds a nonrestricted gaming license issued*
16 *pursuant to chapter 463 of NRS while performing any act in the course*
17 *of that licensed operation.*

18 5. *A person who is exclusively engaged in a check-cashing service*
19 *relating to out-of-state checks.*

20 6. *A corporation organized pursuant to the laws of this State that*
21 *has been continuously and exclusively engaged in a check-cashing*
22 *service in this State since July 1, 1973.*

23 7. *A pawnbroker, unless the pawnbroker operates a check-cashing*
24 *service, deferred deposit loan service, short-term loan service or title loan*
25 *service.*

26 8. *A real estate investment trust, as defined in 26 U.S.C. § 856.*

27 9. *An employee benefit plan, as defined in 29 U.S.C. § 1002(3), if*
28 *the loan is made directly from money in the plan by the plan's trustee.*

29 10. *An attorney at law rendering services in the performance of his*
30 *duties as an attorney at law if the loan is secured by real property.*

31 11. *A real estate broker rendering services in the performance of his*
32 *duties as a real estate broker if the loan is secured by real property.*

33 12. *Any firm or corporation:*

34 (a) *Whose principal purpose or activity is lending money on real*
35 *property which is secured by a mortgage;*

36 (b) *Approved by the Federal National Mortgage Association as a*
37 *seller or servicer; and*

38 (c) *Approved by the Department of Housing and Urban Development*
39 *and the Department of Veterans Affairs.*

40 13. *A person who provides money for investment in loans secured*
41 *by a lien on real property, on his own account.*

42 14. *A seller of real property who offers credit secured by a mortgage*
43 *of the property sold.*

1 **Sec. 28.** 1. The Commissioner shall adopt by regulation a
2 definition of the term "motor vehicle" as that term is used in the
3 definition of "title loan" for the purposes of this chapter.

4 ~~2. The Commissioner may establish by regulation the fees that a~~
5 ~~licensee who provides check-cashing services may impose for cashing~~
6 ~~checks.~~

7 3. The Commissioner shall adopt any other regulations as are
8 necessary to carry out the provisions of this chapter.

9 **Sec. 29.** 1. A person, including, without limitation, a person
10 licensed pursuant to chapter 675 of NRS, shall not operate a check-
11 cashing service, deferred deposit loan service, short-term loan service or
12 title loan service unless the person is licensed with the Commissioner
13 pursuant to the provisions of this chapter.

14 2. A person must have a license regardless of the location or method
15 that the person uses to operate such a service, including, without
16 limitation, at a kiosk, through the Internet, through any telephone,
17 facsimile machine or other telecommunication device or through any
18 other machine, network, system, device or means.

19 **Sec. 30.** 1. A licensee shall post in a conspicuous place in every
20 location at which he conducts business under his license, a notice that
21 states the fees he charges for providing check-cashing services, deferred
22 deposit loan services, short-term loan services or title loan services.

23 2. If a licensee offers loans to customers at a kiosk, through the
24 Internet, through any telephone, facsimile machine or other
25 telecommunication device or through any other machine, network,
26 system, device or means, the licensee shall, as appropriate to the location
27 or method for making the loan, post in a conspicuous place where
28 customers will see it before they enter into a loan, or disclose in an open
29 and obvious manner to customers before they enter into a loan, a notice
30 that states:

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

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

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

40 **Sec. 31.** 1. Before making any loan to a customer, a licensee shall
41 provide to the customer a written loan agreement which may be kept by
42 the customer and which must be written in:

43 (a) English, if the transaction is conducted in English; or

44 (b) Spanish, if the transaction is conducted in Spanish.

1 2. The loan agreement must include, without limitation, the
2 following information:

3 (a) The name and address of the licensee and the customer;

4 (b) The date of the loan;

5 (c) The nature of the security for the loan, if any;

6 (d) The amount of the loan obligation, including, without limitation,
7 an itemization of the interest, charges and fees the customer must pay if
8 the licensee makes a loan to the customer;

9 (e) The description or schedule of payments on the loan;

10 (f) A disclosure of the right of the customer to rescind a loan
11 pursuant to the provisions of this chapter;

12 (g) A disclosure of the right of the customer to pay his loan in full or
13 in part with no additional charge pursuant to the provisions of this
14 chapter;

15 (h) Disclosures required for a similar transaction by the federal
16 Truth in Lending Act, 15 U.S.C. §§ 1601 et seq.; and

17 (i) Disclosures required under any other applicable state statute or
18 regulation.

19 ~~(j) A disclosure that the customer has the opportunity to enter into a~~
20 ~~repayment plan of at least four (4) equal monthly installments within 30~~
21 ~~days of defaulting before any civil action or alternative dispute resolution~~
22 ~~process may be commenced.~~

23 **Sec. 32. 1.** If a customer defaults on a loan, the licensee may
24 collect the debt owed to the licensee only in a professional, fair and
25 lawful manner. When collecting such a debt, the licensee must act in
26 accordance with and must not violate sections 803 to 812, inclusive, of
27 the federal Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692a to
28 1692j, inclusive, even if the licensee is not otherwise subject to the
29 provisions of that Act.

30 **2.** If a customer defaults upon a short term loan, the licensee may
31 charge a one-time late fee of \$25.

32 **2.3.** If a licensee initiates a civil action against a customer to collect
33 a debt, the court may award:

34 (a) Court costs;

35 (b) Costs of service of process, except that the costs must not exceed
36 the amount of the fees charged by the sheriff or constable for service of
37 process in the county where the action was brought or, if the customer is
38 not served in that county, in the county where the customer was served;
39 and

40 (c) Reasonable attorney's fees. In determining the amount of the
41 attorney's fees and whether they are reasonable, the court shall consider
42 the complexity of the case, the amount of the debt ~~and whether the~~
43 ~~licensee could have used less costly means to collect the debt.~~

44 **Sec. 33. 1.** If a customer is called to active duty in the military, a
45 licensee shall:

1 (a) Defer for the duration of the active duty all collection activity
2 against the customer and his property, including, without limitation, any
3 community property in which the customer has an interest; and

4 (b) Honor the terms of any repayment plan between the licensee and
5 customer, including, without limitation, any repayment plan negotiated
6 through military counselors or third-party credit counselors.

7 2. When collecting any defaulted loan, a licensee shall not:

8 (a) Garnish or threaten to garnish any wages or salary paid to a
9 customer for active service in the military; or

10 (b) Contact or threaten to contact the military chain of command of a
11 customer in an effort to collect the defaulted loan.

12 3. As used in this section, "military" means the Armed Forces of the
13 United States, a reserve component thereof or the National Guard.

14 **Sec. 34.** A licensee shall not:

15 1. ~~Make a deferred deposit or short term loan in which the terms of~~
16 ~~repayment require a payment or payments that exceeds exceeds 25~~
17 ~~percent of the expected gross monthly income of the customer when the~~
18 ~~loan is made. during the term of the loan unless justified by particular~~
19 ~~circumstances.~~ A licensee is not in violation of the provisions of this
20 subsection if the customer presents evidence of his gross monthly income
21 to the licensee and represents to the licensee in writing that the
22 ~~repayment terms do loan does loan does~~ not exceed 25 percent of the
23 expected gross monthly income of the customer ~~during the term of the~~
24 ~~loan.~~

25 2. Make more than one ~~deferred deposit or short term loan~~ to the
26 same customer at one time or before any outstanding balance is paid in
27 full on an existing loan made by that licensee to the customer unless:

28 (a) The customer is seeking multiple loans ~~in which repayment terms~~
29 ~~together that~~ that do not exceed the limit set forth in subsection 1;

30 (b) The licensee charges the same rate ~~or a lower annual percentage~~
31 ~~rate~~ of interest for any additional loans as he charged for the initial
32 loan;

33 (c) Except for the interest charged pursuant to paragraph (b), the
34 licensee does not impose any other charge or fee to initiate any
35 additional loans; and

36 (d) If the additional loans are deferred deposit loans and the
37 customer provides one or more additional checks that are not paid upon
38 presentment, the licensee does not charge any fees to the customer
39 pursuant to section 45 of this act, except for the fees allowed pursuant to
40 that section for the first check that is not paid upon presentment.

41 **Sec. 35.** A licensee shall not:

42 1. Accept:

43 (a) Collateral as security for a loan, except that a title to a motor
44 vehicle may be accepted as security for a title loan.

1 (b) An assignment of wages, salary, commissions or other
2 compensation for services, whether earned or to be earned, as security
3 for a loan.

4 (c) A check as security for a short-term loan or title loan.

5 (d) More than one check or written authorization for the electronic
6 transfer of money for each deferred deposit loan.

7 (e) A check or written authorization for the electronic transfer of
8 money for any deferred deposit loan in an amount which exceeds the
9 amount of total payments set forth in the disclosure statement required
10 by the federal Truth in Lending Act, 15 U.S.C. §§ 1601 et seq., that is
11 provided to the customer.

12 2. Take any note or promise to pay which does not disclose the date
13 and amount of the loan, ~~an the annual percentage rate, a the finance~~
14 ~~charge, anthe amount financed, the a total of payments, a payment~~
15 ~~schedule, late fees, and any other fee not required to be included in the~~
16 ~~finance charge under the a schedule or description of the payments to~~
17 ~~be made thereon and the rate or aggregate amount of the interest,~~
18 ~~charges and fees negotiated and agreed to by the licensee and customer.~~
19 ~~Compliance with the federal Truth in Lending Act, 15 U.S.C. §§ 1601 et~~
20 ~~seq., and Regulation Z, 12 C.F.R. 226. Compliance with the federal~~
21 ~~Truth in Lending Act, 15 U.S.C. §§1601 et seq., and Regulation Z, 12~~
22 ~~C.F.R. 226, constitutes compliance with this subsection.~~

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

26 4. Make any transaction contingent on the purchase of insurance or
27 any other goods or services or sell any insurance to the customer with
28 the loan.

29 5. Fail to comply with a payment plan which is negotiated and
30 agreed to by the licensee and customer.

31 6. Charge any fee to cash a check representing the proceeds of a
32 loan made by the licensee or any agent, affiliate or subsidiary of the
33 licensee.

34 ~~7. Charge a pre-default late fee which is void as a penalty under~~
35 ~~common law.~~

36 **Sec. 36.** A licensee shall not:

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

40 2. Commence a civil action before the expiration of the original
41 term of a loan agreement or before the expiration of any agreed
42 repayment plan that is not in default, extension or grace period
43 negotiated and agreed to by the licensee and customer, unless otherwise
44 authorized pursuant to this chapter.

3. 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.

4. Include in any written agreement:

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

(b) A confession of judgment by the customer;

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

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

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

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

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

NEW SECTION (Relates only to title loans)

1. The original term of a title loan shall not exceed the greater of either 30 days or one month. The title loan can be renewed for up to, but not exceeding, six (6) additional such periods provided that:

(a) No interest or charges from prior loan or renewal periods are capitalized or added to the principal amount in any renewal;

(b) The annual percentage rate of interest associated with the title loan is not increased from that charged in previous periods; and

(c) No additional origination fees, set-up fees, collection fees, transaction fees, negotiation fees, handling fees, processing fees, late fees, default fees, or any other fees, regardless of the name given to the fee, are charged in connection with any renewal.

Sec. 37. 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 customer has provided the licensee with true and correct information concerning the customer's income, obligations, and employment, and vehicle ownership; and

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

1 **Sec. 38. 1.** *Except where in conflict with the provisions of this*
2 *chapter, the provisions of chapter 104 of NRS apply to any title loan*
3 *between a licensee and a customer.*

4 2. *Except as otherwise provided in this section, if a customer*
5 *defaults on a title loan, or on any extension or repayment plan relating to*
6 *the title loan, the sole remedy of the licensee who made the title loan is to*
7 ~~*commence a legal action to seek repossession and sale of the motor*~~
8 ~~*vehicle which the customer used to secure the title loan. The licensee*~~
9 ~~*may not pursue the customer personally for:*~~

10 (a) *Payment of the loan, unless the licensee proves the customer*
11 *prevented the repossession and sale of the motor vehicle by any means,*
12 *including, without limitation, hiding the motor vehicle; or*

13 (b) *Any deficiency after repossession and sale of the motor vehicle*
14 *which the customer used to secure the title loan, unless the licensee*
15 *proves the customer damaged or otherwise committed or permitted waste*
16 *on the motor vehicle. For the purposes of this paragraph, it shall not be*
17 *deemed waste for the customer to continue to use the motor vehicle in*
18 *the same manner it was used before he entered into the title loan or to*
19 ~~*make necessary repairs to the motor vehicle.*~~

20 3. *A licensee shall make available to a customer any personal*
21 *property contained in a motor vehicle that is repossessed by the licensee*
22 *upon default of the borrower on a title loan. In the event a licensee uses*
23 *a third party repossession company to effect repossession, the licensee*
24 *shall instruct such repossession company to make the customer's*
25 *personal property reasonably available to the customer. After*
26 ~~*repossession and sale of the motor vehicle securing the title loan, the*~~
27 ~~*licensee shall return to the customer any proceeds from the sale of the*~~
28 ~~*motor vehicle which exceed the amount owed on the title loan.*~~

29 4. *If a customer uses fraud to secure a title loan, or if the customer*
30 *wrongfully transfers any interest in the motor vehicle to a third party*
31 *before the loan is repaid, the licensee may bring a civil action against the*
32 *customer for any or all of the following relief:*

33 (a) *The amount of the loan obligation, including, without limitation,*
34 *the aggregate amount of the interest, charges and fees negotiated and*
35 *agreed to by the licensee and customer which are permitted by this Act,*
36 ~~*less any repayments;*~~

37 (b) *Reasonable attorney's fees and costs; and*

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

40 5. *As used in this section, "fraud" means an intentional*
41 *misrepresentation, deception or concealment of a material fact known to*
42 *the customer with the intent to deprive the licensee of his rights or*
43 *property or to otherwise injure the licensee. The term includes, without*
44 *limitation, giving to a licensee as security for a title loan the title to a*
45 *motor vehicle which does not belong to the customer.*

1 **Sec. 39. 1.** *A customer may rescind a deferred deposit loan or title*
 2 *loan on or before the close of business on the next day of business at the*
 3 *location where the loan was initiated; unless the loan is prorated to the*
 4 *days used. To rescind the loan, the customer must deliver to the licensee:*

5 *(a) A sum of money equal to the face value of the loan, less any fee*
 6 *charged to the customer to initiate the loan; or*

7 *(b) The original check, if any, which the licensee gave to the*
 8 *customer pursuant to the loan. Upon receipt of the original check, the*
 9 *licensee shall refund any fee charged to the customer to initiate the loan.*

10 **2.** *If a customer rescinds a loan pursuant to this section, the*
 11 *licensee:*

12 *(a) Shall not charge the customer any fee for rescinding the loan;*
 13 *and*

14 *(b) Upon receipt of the sum of money or check pursuant to*
 15 *subsection 1, shall give to the customer a receipt showing the account*
 16 *paid in full and:*

17 *(1) If the customer gave to the licensee a check or a written*
 18 *authorization for an electronic transfer of money to initiate a deferred*
 19 *deposit loan, the check or written authorization stamped "void";*

20 *(2) If the customer gave to the licensee a promissory note to*
 21 *initiate a short-term loan, a copy of the promissory note stamped "void"*
 22 *or the receipt stamped "paid in full"; or*

23 *(3) If the customer gave to the licensee a title to a motor vehicle to*
 24 *initiate the title loan, the title.*

25 **Sec. 40. 1.** *A customer may pay a loan, or any extension thereof,*
 26 *in full at any time, without an additional charge or fee, before the date*
 27 *his final payment on the loan, or any extension thereof, is due.*

28 **2.** *If a customer pays the loan in full, including all interest, charges*
 29 *and fees negotiated and agreed to by the licensee and customer as*
 30 *permitted under this Act, the licensee shall:*

31 *(a) Give to the customer:*

32 *(1) If the customer gave to the licensee a check or a written*
 33 *authorization for an electronic transfer of money to initiate a deferred*
 34 *deposit loan, the check or the written authorization stamped "void";*

35 *(2) If the customer gave to the licensee a promissory note to*
 36 *initiate a short-term loan, the promissory note stamped "void" or a*
 37 *receipt stamped "paid in full"; or*

38 *(3) If the customer gave to the licensee a title to a motor vehicle to*
 39 *initiate a title loan, the title; and*

40 *(b) Give to the customer a receipt with the following information:*

41 *(1) The name and address of the licensee;*

42 *(2) The identification number assigned to the loan agreement or*
 43 *other information that identifies the loan;*

44 *(3) The date of the payment;*

45 *(4) The amount paid;*

1 (5) *An itemization of interest, charges and fees;*

2 (6) *A statement that the loan is paid in full; and*

3 *was outstanding at the time the payment was made, a statement*
 4 *indicating to which loan the payment was applied.*

5 **Sec. 41. 1. A customer may make a partial payment on a loan, or**
 6 **any extension thereof, at any time without an additional charge or fee.**

7 **2. If a customer makes such a partial payment, the licensee shall**
 8 **give to the customer a receipt with the following information:**

9 (a) *The name and address of the licensee;*

10 (b) *The identification number assigned to the loan agreement or*
 11 *other information that identifies the loan;*

12 (c) *The date of the payment;*

13 (d) *The amount paid;*

14 (e) *An itemization of interest, charges and fees;*

15 (f) *The balance due on the loan; and*

16 (g) *If more than one loan made by the licensee to the customer was*
 17 *outstanding at the time the payment was made, a statement indicating to*
 18 *which loan the payment was applied.*

19 **Sec. 42. (1) Prior to commencing civil action, repossession, or any**
 20 **alternative dispute resolution process to collect a loan, the licensee shall:**

21 (a) offer the customer the opportunity to enter into a repayment plan within 30
 22 days of the date of default upon the original loan; and

23 (b) provide the customer written notice of the opportunity of a repayment plan
 24 within 15 days of default. The written notice shall:

25 (1) be in English, if the initial transaction was conducted in English, or in
 26 Spanish, if the initial transaction was conducted in Spanish;

27 (2) State that the customer has 30 days from the date of default to enter into the
 28 repayment plan by following the procedure contained in the notice and that the
 29 customer may be required to make an initial payment to enter into the
 30 repayment plan;

31 (3) State that the repayment plan shall extend at least 90 days from the date of
 32 default unless the customer agrees to a shorter term; and

33 (4) State the total of payments or remaining balance on the original loan, any
 34 payments made upon the loan, any charges added to the loan amount as
 35 allowed under this act, and the total amount to be repaid.

36 (2) If the licensee and customer enter into a repayment plan pursuant to this
 37 section, the licensee shall provide a written copy of the repayment plan to the
 38 customer. In addition, the repayment plan::

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

40 (b) May require that the customer provide for an initial payment, not in
 41 excess of 20% of the amount owed, within 30 days of the date of default,
 42 and must extend at least 90 days from the date of default;

(c) Allow licensee to accept checks or an electronic authorization for transfers for payments, not to exceed the amount owed and not to exceed the total amount owed in the aggregate;

(d) Shall prohibit the licensee from charging an additional NSF fee if one has already been charged. If the customer makes a payment in the amount of the check taken for that payment, licensee shall return the check to the customer or destroy it.

(3) 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) Unless otherwise authorized by this act, charge any other amount to a customer, including, without limitation, any amount or charge payable directly or indirectly by the customer and imposed directly or indirectly by the licensee as an incident to or as a condition of entering into a repayment plan. Such an amount includes without limitation:

(1) Any interest, other than the interest charged pursuant to the original loan agreement, regardless of the name given to the interest;

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

(b) Accept any other security or collateral except as otherwise allowed by this section;

(c) 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;

(d) Make any other loan to the customer, unless the customer is seeking multiple loans that do not exceed the limit set forth in subsection 1 or section 34 of this act; or

(e) Commence a civil action, repossession, or alternative dispute resolution process against the customer during the term of the repayment plan;

(f) Attempt to collect more than what is owed after all payments are credited

(4) 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 which 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.

(5) If the customer defaults upon the repayment plan, the licensee may commence a civil action, repossession, or alternative dispute resolution process to collect the outstanding balance as otherwise allowed under this act.

1. Prior to commencing civil action or any alternative dispute resolution process to collect a loan, the licensee shall

(a) Offer the customer the opportunity to enter into a repayment plan within 30 days of default or the end of any grace period, whichever occurs later, that is at least four (4) equal monthly installments.

(b) Provide the customer with written notice of the opportunity which must:

(1) Be in English, if the initial transaction was conducted in English, or in Spanish, if the initial transaction was conducted in Spanish;

(2) State that the customer has 30 days from the date the notice is postmarked to enter into the repayment plan and make his first payment;

(3) State that the customer can repay the amount owed in at least 4 equal monthly installments; and

(4) State:

(i) The original amount owed less all payments made before and after default;

(ii) Any charges permitted by this chapter; and

(iii) The total due and owing.

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. If the customer defaults on the original loan or any extension thereof, or indicates that he is unable to pay in full the original loan or any extension thereof, the licensee:

(a) Shall provide written notice in English, if the initial transaction was conducted in English, or in Spanish, if the initial transaction was conducted in Spanish, to the customer of his right to enter into a repayment plan; and

(b) Shall not commence any civil action to collect on the outstanding loan unless:

(1) Such a notice has been sent to the customer; and

(2) The customer fails to exercise his right to enter into a repayment plan within 15 days after receipt of the notice.

~~3. If the licensee and customer enter into a repayment plan pursuant to this section, the customer may pay the remaining balance on the outstanding loan:~~

~~(a) In four equal monthly installments; or~~

~~(b) Under any other terms negotiated and agreed to by the licensee and customer that comply with the provisions of this section.~~

~~4. 2. If the licensee and customer enter into a repayment plan pursuant to this section, the licensee shall, if:~~

~~(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."~~

~~5. 3. 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) Charge any other amount to a customer, including, without limitation, any amount or charge payable directly or indirectly by the customer and imposed directly or indirectly by the licensee as an incident to or as a condition of entering into a repayment plan. Such an amount includes, without limitation:~~

~~(1) Any interest, other than the interest charged pursuant to the original loan agreement, regardless of the name given to the interest; or~~

~~(2) Any origination fees, set-up fees, collection fees, transaction fees, negotiation fees, handling fees, processing fees, late fees, default fees or any other fees, regardless of the name given to the fee;~~

~~(b) Accept any security or collateral from the customer to enter into the repayment plan;~~

~~(c) 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;~~

~~(d) Make any other loan to the customer, unless the customer is seeking multiple loans that do not exceed the limit set forth in subsection 1 of section 34 of this act; or~~

~~(e) Commence a civil action or any alternative dispute resolution process against the customer during the term of the repayment plan.~~

~~6. 4. 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;~~

1 ~~—(d) The amount paid;~~
 2 ~~—(e) The balance due on the loan or, when the customer makes the~~
 3 ~~final payment, a statement that the loan is paid in full; and~~
 4 ~~—(f) If more than one loan made by the licensee to the customer was~~
 5 ~~outstanding at the time the payment was made, a statement indicating to~~
 6 ~~which loan the payment was applied.~~

7 **Sec. 43.** If a customer agrees to establish or extend the period for
 8 the repayment, renewal, refinancing or consolidation of an outstanding
 9 loan by using the proceeds of a new deferred deposit or short-term loan
 10 to pay the balance of the outstanding loan, the licensee shall not
 11 establish or extend such a period beyond ~~8 weeks~~ 2 months after the
 12 expiration of the initial loan period. This section does not apply to a
 13 licensee who lends according to all of the following criteria:

14 1. The licensee makes a loan with an annual percentage rate of less
 15 than 200 percent, to be repaid on a monthly basis in not less than
 16 5 months, and interest does not continue to accrue at the contract rate
 17 after the date of maturity if not paid in full;

18 3. A credit check is performed with a major consumer reporting
 19 agency prior to initiating the loan;

20 4. Loan experience information is reported to a major consumer
 21 reporting agency;

22 5. The customer is provided a 5-day right to rescind a loan without
 23 charge;

24 6. The licensee participates in good faith with a counseling agency
 25 that is accredited by the Council on Accreditation for Services for
 26 Families and Children, Inc.;

27 7. The licensee is a member of the National Foundation for Credit
 28 Counseling; and

29 8. The licensee does not initiate litigation or an alternative dispute
 30 resolution process on a defaulted loan, extension, or repayment plan.

31 **Sec. 44.** 1. If a customer defaults on a loan or on any extension
 32 or repayment plan relating to the loan, whichever is later, the licensee
 33 may collect only the following amounts from the customer:

34 (a) The principal amount of the loan, less all payments made
 35 before and after default.

36 (b) The interest accrued before the expiration of the initial loan
 37 period at the rate of interest set forth in the disclosure statement required
 38 by the federal Truth in Lending Act, 15 U.S.C. §§ 1601 et seq., that is
 39 provided to the customer. If there is an extension or repayment plan
 40 relating to the loan, the licensee may charge and collect interest
 41 pursuant to this paragraph for a period not to exceed 8 weeks after the
 42 expiration of the initial loan period, unless otherwise allowed by
 43 section 43.

44 (c) The interest accrued after the expiration of the initial loan period
 45 or after any extension or repayment plan that is allowed pursuant to

1 paragraph (b), whichever is later, at a rate of interest not to exceed the
 2 prime rate at the largest bank in Nevada, as ascertained by the
 3 Commissioner, on January 1 or July 1, as the case may be, immediately
 4 preceding the expiration of the initial loan period, plus 10 percent. ~~The~~
 5 ~~licensee may charge and collect interest pursuant to this paragraph for a~~
 6 ~~period not to exceed 12 weeks. After that period, the licensee shall not~~
 7 ~~charge or collect any interest on the loan.~~

8 (d) Any fees allowed pursuant to section 32 and 45 of this act for a
 9 check that is not paid upon presentment because the account of the
 10 customer contains insufficient funds or has been closed.

11 2. Except for the interest and fees permitted pursuant to subsection
 12 1, the licensee shall not charge any other amount to a customer,
 13 including, without limitation, any amount or charge payable directly or
 14 indirectly by the customer and imposed directly or indirectly by the
 15 licensee as an incident to or as a condition of the extension of the period
 16 for the payment of the loan or the extension of credit. Such an amount
 17 includes, without limitation:

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

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

23 **Sec. 45.** 1. A licensee may collect a fee of not more than \$25 if a
 24 check is not paid upon presentment because the account of the customer
 25 contains insufficient funds or has been closed.

26 2. If the account of the customer contains insufficient funds, the
 27 licensee may collect only two fees of \$25 each regardless of the number
 28 of times the check is presented for payment.

29 3. If the account of the customer has been closed, the licensee may
 30 collect only one fee of \$25 regardless of the number of times the check is
 31 presented for payment.

32 4. A customer is not liable for damages pursuant to NRS 41.620 or
 33 to criminal prosecution for a violation of chapter 205 of NRS unless the
 34 customer acted with criminal intent.

35 **Sec. 46.** In addition to any other provision in this chapter, each
 36 time a customer makes a payment to a licensee, the licensee shall give to
 37 the customer a receipt with the following information:

38 1. The name and address of the licensee;

39 2. The identification number assigned to the loan agreement or
 40 other information that identifies the loan;

41 3. The date of the payment;

42 4. The amount paid;

43 5. The balance due on the loan or, when the customer makes a final
 44 payment, a statement that the loan is paid in full; and

1 6. If more than one loan made by the licensee to the customer was
 2 outstanding at the time the payment was made, a statement indicating to
 3 which loan the payment was applied.

4 **Sec. 47.** 1. A person shall not act as an agent for or assist a
 5 licensee in the making of a loan unless the licensee complies with all
 6 applicable federal and state laws, regulations and guidelines.

7 2. The provisions of this section do not apply to the agent or
 8 assistant to a state or federally chartered bank, thrift company, savings
 9 and loan association or industrial loan company if the state or federally
 10 chartered bank, thrift company, savings and loan association or
 11 industrial loan company:

12 (a) Initially advances the loan proceeds to the customer; and

13 (b) Does not sell, assign or transfer a preponderant economic interest
 14 in the loan to the agent or assistant or an affiliate or subsidiary of the
 15 state or federally chartered bank, thrift company, savings and loan
 16 association or industrial loan company, unless selling, assigning or
 17 transferring a preponderant economic interest is expressly permitted by
 18 the primary regulator of the state or federally chartered bank, thrift
 19 company, savings and loan association or industrial loan company.

20 3. If a licensee acts as an agent for or assists a state or federally
 21 chartered bank, thrift company, savings and loan association or
 22 industrial loan company in the making of a loan and the licensee can
 23 show that the standards set forth in subsection 2 are satisfied, the
 24 licensee must comply with all other provisions in this chapter to the
 25 extent they are not preempted by other state or federal law.

26 **Sec. 48.** 1. An application for a license pursuant to the provisions
 27 of this chapter must be made in writing, under oath and on a form
 28 prescribed by the Commissioner. The application must include:

29 (a) If the applicant is a natural person, the name and address of the
 30 applicant.

31 (b) If the applicant is a business entity, the name and address of
 32 each:

33 (1) Partner;

34 (2) Officer;

35 (3) Director;

36 (4) Manager or member who acts in a managerial capacity; and

37 (5) Registered agent,

38 of the business entity.

39 (c) Such other information, as the Commissioner determines
 40 necessary, concerning the financial responsibility, background,
 41 experience and activities of the applicant and its:

42 (1) Partners;

43 (2) Officers;

44 (3) Directors; and

45 (4) Managers or members who act in a managerial capacity.

1 (d) The address of each location at which the applicant proposes to
2 do business, including, without limitation, each location where the
3 applicant will operate at a kiosk, through the Internet, through any
4 telephone, facsimile machine or other telecommunication device or
5 through any other machine, network, system, device or means.

6 (e) If the applicant is or intends to be licensed to provide more than
7 one type of service pursuant to the provisions of this chapter, a statement
8 of that intent and which services he provides or intends to provide.

9 2. Each application for a license must be accompanied by:

10 (a) A nonrefundable application fee;

11 (b) Such additional expenses incurred in the process of investigation
12 as the Commissioner deems necessary; and

13 (c) A fee of not less than \$100 or more than \$500, prorated on the
14 basis of the licensing year.

15 ~~☞~~ All money received by the Commissioner pursuant to this subsection
16 must be placed in the Investigative Account for Financial Institutions
17 created by NRS 232.545.

18 3. The Commissioner shall adopt regulations establishing the
19 amount of the fees required pursuant to this section.

20 **Sec. 49. 1.** Except as otherwise provided in section 50 of this act,
21 each application for a license pursuant to the provisions of this chapter
22 must be accompanied by a surety bond payable to the State of Nevada in
23 the amount of \$50,000 when filing for the first license and and
24 additional \$5000.00 for each location thereafter for the use and benefit
25 of any customer receiving the services of the licensee.

26 2. The bond must be in a form satisfactory to the Commissioner,
27 issued by a bonding company authorized to do business in this State and
28 must secure the faithful performance of the obligations of the licensee
29 respecting the provision of the services.

30 3. A licensee shall, within 10 days after the commencement of any
31 action or notice of entry of any judgment against him by any creditor or
32 claimant arising out of business regulated by this chapter give notice
33 thereof to the Commissioner by certified mail with details sufficient to
34 identify the action or judgment. The surety shall, within 10 days after it
35 pays any claim or judgment to a creditor or claimant, give notice thereof
36 to the Commissioner by certified mail with details sufficient to identify
37 the creditor or claimant and the claim or judgment so paid.

38 4. Whenever the principal sum of the bond is reduced by recoveries
39 or payments thereon, the licensee shall furnish:

40 (a) A new or additional bond so that the total or aggregate principal
41 sum of the bonds equals the sum required pursuant to subsection 1; or

42 (b) An endorsement, duly executed by the surety, reinstating the bond
43 to the required principal sum.

44 5. The liability of the surety on the bond to a creditor or claimant is
45 not affected by any misrepresentation, breach of warranty, failure to pay

1 a premium or other act or omission of the licensee, or by any insolvency
2 or bankruptcy of the licensee.

3 6. The liability of the surety continues as to all transactions entered
4 into in good faith by the creditors and claimants with the agents of the
5 licensee within 30 days after:

6 (a) The death of the licensee or the dissolution or liquidation of his
7 business; or

8 (b) The termination of the bond,
9 ⇨ whichever event occurs first.

10 7. A licensee or his surety shall not cancel or alter a bond except
11 after notice to the Commissioner by certified mail. The cancellation or
12 alteration is not effective until 10 days after
13 receipt of the notice by the Commissioner. A cancellation or alteration
14 does not affect any liability incurred or accrued on the bond before the
15 expiration of the 30-day period designated in subsection 6.

16 **Sec. 50. 1.** In lieu of any surety bond, or any portion of the
17 principal sum thereof as required pursuant to the provisions of this
18 chapter, a licensee may deposit with the State Treasurer or with any
19 bank, credit union or trust company authorized to do business in this
20 State as the licensee may select, with the approval of the Commissioner:

21 (a) Interest-bearing stocks;

22 (b) Bills, bonds, notes, debentures or other obligations of the United
23 States or any agency or instrumentality thereof, or guaranteed by the
24 United States; or

25 (c) Any obligation of this State or any city, county, town, township,
26 school district or other instrumentality of this State or guaranteed by this
27 State,

28 ⇨ in an aggregate amount of, based upon principal amount or market
29 value, whichever is lower, of not less than the amount of the required
30 surety bond or portion thereof.

31 2. The securities must be held to secure the same obligation as
32 would the surety bond, but the depositor may receive any interest or
33 dividends and, with the approval of the Commissioner, substitute other
34 suitable securities for those deposited.

35 **Sec. 51. 1.** A person may apply for a license for an office or other
36 place of business located outside this State from which the applicant will
37 conduct business in this State if the applicant or a subsidiary or affiliate
38 of the applicant has a license issued pursuant to this chapter for an
39 office or other place of business located in this State and if the applicant
40 submits with the application for a license a statement signed by the
41 applicant which states that the applicant agrees to:

42 (a) Make available at a location within this State the books, accounts,
43 papers, records and files of the office or place of business located outside
44 this State to the Commissioner or a representative of the Commissioner;
45 or

1 (b) Pay the reasonable expenses for travel, meals and lodging of the
2 Commissioner or a representative of the Commissioner incurred during
3 any investigation or examination made at the office or place of business
4 located outside this State.

5 ➤ The person must be allowed to choose between the provisions of
6 paragraph (a) or (b) in complying with the provisions of this subsection.

7 2. This section applies, without limitation, to any office or other
8 place of business located outside this State from which the applicant will
9 conduct business in this State at a kiosk, through the Internet, through
10 any telephone, facsimile machine or other telecommunication device or
11 through any other machine, network, system, device or means.

12 **Sec. 52.** 1. Upon the filing of the application and the payment of
13 the fees required pursuant to section 48 of this act,
14 the Commissioner shall investigate the facts concerning the application
15 and the requirements provided for in section 54 of this act.

16 2. The Commissioner may hold a hearing on the application at a
17 time not less than 30 days after the date the application was filed or not
18 more than 60 days after that date. The hearing must be held in the Office
19 of the Commissioner or such other place as he may designate. Notice in
20 writing of the hearing must be sent to the applicant and to any licensee to
21 which a notice of the application has been given and to such other
22 persons as the Commissioner may see fit, at least 10 days before the date
23 set for the hearing.

24 3. The Commissioner shall make his order granting or denying the
25 application within 10 days after the date of the closing of the hearing,
26 unless the period is extended by written agreement between the applicant
27 and the Commissioner.

28 **Sec. 53.** If the Commissioner finds that any applicant does not
29 possess the requirements specified in this chapter, he shall:

30 1. Enter an order denying the application and notify the applicant
31 of the denial.

32 2. Within 10 days after the entry of such an order, file his findings
33 and a summary of the evidence supporting those findings and deliver a
34 copy thereof to the applicant.

35 **Sec. 54.** 1. The Commissioner shall enter an order granting an
36 application if he finds that the financial responsibility, experience,
37 character and general fitness of the applicant are such as to command
38 the confidence of the public and to warrant belief that the business will
39 be operated lawfully, honestly, fairly and efficiently.

40 2. If the Commissioner grants an application, the Commissioner
41 shall:

42 (a) File his findings of fact together with the transcript of any
43 hearing held pursuant to the provisions of this chapter; and

1 (b) Issue to the licensee a license in such form and size as is
2 prescribed by the Commissioner for each location at which the licensee
3 proposes to do business.

4 3. Each licensee shall prominently display his license at the location
5 where he does business. The Commissioner may issue additional licenses
6 to the same licensee for each branch location at which the licensee is
7 authorized to operate under the license, including, without limitation,
8 each branch location where the licensee is authorized to operate at a
9 kiosk, through the Internet, through any telephone, facsimile machine or
10 other telecommunication device or through any other machine, network,
11 system, device or means. Nothing in this subsection requires a license for
12 any place of business devoted to accounting, recordkeeping or
13 administrative purposes only.

14 4. Each license shall:

15 (a) State the address at which the business is to be conducted; and

16 (b) State fully:

17 (1) The name and address of the licensee;

18 (2) If the licensee is a copartnership or association, the names of
19 its members; and

20 (3) If the licensee is a corporation, the date and place of its
21 incorporation.

22 5. A license is not transferable or assignable.

23 **Sec. 55.** 1. A license issued pursuant to the provisions of this
24 chapter expires annually on the anniversary of the issuance of the
25 license. A licensee must renew his license on or before the date on which
26 the license expires by paying:

27 (a) A renewal fee; and

28 (b) An additional fee for each branch location at which the licensee
29 is authorized to operate under the license.

30 2. A licensee who fails to renew his license within the time required
31 by this section is not licensed pursuant to the provisions of this chapter.

32 3. The Commissioner may reinstate an expired license upon receipt
33 of the renewal fee and a fee for reinstatement.

34 4. The Commissioner shall adopt regulations establishing the
35 amount of the fees required pursuant to this section.

36 **Sec. 56.** 1. A licensee shall immediately notify the Commissioner
37 of any change of control of the licensee.

38 2. A person who acquires stock, partnership or member interests
39 resulting in a change of control of the licensee shall apply to the
40 Commissioner for approval of the transfer. The application must contain
41 information which shows that the requirements for obtaining a license
42 pursuant to the provisions of this chapter will be satisfied after the
43 change of control. If the Commissioner determines that those
44 requirements will not be satisfied, he may deny the application and
45 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. 57. A licensee shall not conduct the business of making loans under any name, at any place 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.

Sec. 58. 1. Except as otherwise provided in this section, a licensee may not conduct the business of making loans within any office, suite, room or place of business in which any other lending 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) Maintain separate accounts, books and records;

(II) Are subsidiaries of the same parent corporation; and

(III) 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) Maintain separate accounts, books and records;

(II) Are subsidiaries of the same parent corporation; and

(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.

3. If a pawnbroker is licensed to operate a check-cashing service, deferred deposit loan service, short-term loan service or title loan service, the pawnbroker may operate that service at the same office or place of business from which he conducts business as a pawnbroker pursuant to chapter 646 of NRS.

1 **Sec. 59.** 1. A licensee who wishes to change the address of an
2 office or other place of business for which he has a license pursuant to
3 the provisions of this chapter must, at least 10 days before changing the
4 address, give written notice of the proposed change to the Commissioner.

5 2. Upon receipt of the proposed change of address pursuant to
6 subsection 1, the Commissioner shall provide written approval of the
7 change and the date of the approval.

8 3. If a licensee fails to provide notice as required pursuant to
9 subsection 1, the Commissioner may impose a fine in an amount not to
10 exceed \$500.

11 4. This section applies, without limitation, to any office or other
12 place of business at which the licensee intends to operate a kiosk,
13 through the Internet, through any telephone, facsimile machine or other
14 telecommunication device or through any other machine, network,
15 system, device or means.

16 **Sec. 60.** 1. Each licensee shall keep and use in his business such
17 books and accounting records as are in accord with generally accepted
18 accounting practices.

19 2. Each licensee shall maintain a separate electronic record or
20 ledger card for the account of each customer and shall set forth
21 separately the amount of cash advance and the total amount of interest
22 and charges, but such a record may set forth precomputed declining
23 balances based on the scheduled payments, without a separation of
24 principal and charges.

25 3. Each licensee shall preserve all such books and accounting
26 records for at least 2 years after making the final entry therein.

27 4. Each licensee who operates outside this State an office or other
28 place of business that is licensed pursuant to provisions of this chapter
29 shall:

30 (a) Make available at a location within this State the books, accounts,
31 papers, records and files of the office or place of business located outside
32 this State to the Commissioner or a representative of the Commissioner;
33 or

34 (b) Pay the reasonable expenses for travel, meals and lodging of the
35 Commissioner or a representative of the Commissioner incurred during
36 any investigation or examination made at the office or place of business
37 located outside this State.

38 ↪ The licensee must be allowed to choose between the provisions of
39 paragraph (a) or (b) in complying with this subsection.

40 5. As used in this section, "amount of cash advance" means the
41 amount of cash or its equivalent actually received by a customer or paid
42 out at his direction or in his behalf.

43 **Sec. 61.** 1. Except as otherwise provided in subsection 3, an
44 officer or employee of the Division of Financial Institutions of the
45 Department of Business and Industry shall not:

- 1 (a) Be directly or indirectly interested in or act on behalf of any
2 licensee;
3 (b) Receive, directly or indirectly, any payment from any licensee;
4 (c) Be indebted to any licensee;
5 (d) Engage in the negotiation of loans for others with any licensee;
6 or
7 (e) Obtain credit or services from a licensee conditioned upon a
8 fraudulent practice or undue or unfair preference over other customers.
9 2. An employee of the Division of Financial Institutions in the
10 unclassified service of the State shall not obtain new extensions of credit
11 from a licensee while in office.
12 3. Any officer or employee of the Division of Financial Institutions
13 may be indebted to a licensee on the same terms as are available to the
14 public generally.
15 4. If an officer or employee of the Division of Financial Institutions
16 has a service, a preferred consideration, an interest or a relationship
17 prohibited by this section at the time of his appointment or employment,
18 or obtains it during his employment, he shall terminate it within 120 days
19 after the date of his appointment or employment or the discovery of the
20 prohibited act.
21 **Sec. 62.** 1. For the purpose of discovering violations of this
22 chapter or of securing information lawfully required under this chapter,
23 the Commissioner or his duly authorized representatives may at any time
24 investigate the business and examine the books, accounts, papers and
25 records used therein of:
26 (a) Any licensee;
27 (b) Any other person engaged in the business of making loans or
28 participating in such business as principal, agent, broker or otherwise;
29 and
30 (c) Any person who the Commissioner has reasonable cause to
31 believe is violating or is about to violate any provision of this chapter,
32 whether or not the person claims to be within the authority or beyond the
33 scope of this chapter.
34 2. For the purpose of examination, the Commissioner or his
35 authorized representatives shall have and be given free access to the
36 offices and places of business, and the files, safes and vaults of such
37 persons.
38 3. For the purposes of this section, any person who advertises for,
39 solicits or holds himself out as willing to make any deferred deposit loan,
40 short-term loan or title loan is presumed to be engaged in the business of
41 making loans.
42 **Sec. 63.** 1. The Commissioner may require the attendance of any
43 person and examine him under oath regarding:
44 (a) Any check-cashing service or loan service regulated pursuant to
45 the provisions of this chapter; or

1 (b) The subject matter of any audit, examination, investigation or
2 hearing.

3 2. The Commissioner may require the production of books,
4 accounts, papers and records for any audit, examination, investigation or
5 hearing.

6 **Sec. 64.** At least once each year, the Commissioner or his
7 authorized representatives shall make an examination of the place of
8 business of each licensee and of the loans, transactions, books, accounts,
9 papers and records of the licensee so far as they pertain to the business
10 for which he is licensed pursuant to the provisions of this chapter. If the
11 Commissioner or his authorized representatives conclude, that after
12 auditing one or more branches of a licensee, that the loans, computer
13 processes, disclosures, loan practices, filing systems, and records are
14 identical at each location, then the Commissioner has the authority to
15 only review those branches that are deemed necessary.

16 **Sec. 65.** 1. The Commissioner shall charge and collect from each
17 licensee a fee of \$40 per hour for any supervision, audit, examination,
18 investigation or hearing conducted pursuant to this chapter or any
19 regulations adopted pursuant thereto.

20 2. The Commissioner shall bill each licensee upon the completion
21 of the activity for the fee established pursuant to subsection 1. The
22 licensee shall pay the fee within 30 days after the date the bill is received.
23 Except as otherwise provided in this subsection, any payment received
24 after the date due must include a penalty of 10 percent of the fee plus an
25 additional 1 percent of the fee for each month, or portion of a month,
26 that the fee is not paid. The Commissioner may waive the penalty for
27 good cause.

28 3. The failure of a licensee to pay the fee required pursuant to
29 subsection 1 as provided in this section constitutes grounds for
30 revocation of the license of the licensee.

31 **Sec. 66.** If the Commissioner finds that probable cause for
32 revocation of any license exists and that enforcement of the provisions of
33 this chapter requires immediate suspension of a license pending
34 investigation, he may, upon 5 days' written notice and a hearing, enter
35 an order suspending a license for a period not exceeding 20 days,
36 pending a hearing upon the revocation.

37 **Sec. 67.** 1. Whenever the Commissioner has reasonable cause to
38 believe that any person is violating or is threatening to or intends to
39 violate any provision of this chapter, he may, in addition to all actions
40 provided for in this chapter and without prejudice thereto, enter an order
41 requiring the person to desist or to refrain from such violation.

42 2. The Attorney General or the Commissioner may bring an action
43 to enjoin a person from engaging in or continuing a violation or from
44 doing any act or acts in furtherance thereof. In any such action, an

1 order or judgment may be entered awarding a preliminary or final
2 injunction as may be deemed proper.

3 3. In addition to all other means provided by law for the
4 enforcement of a restraining order or injunction, the court in which an
5 action is brought may impound, and appoint a receiver for, the property
6 and business of the defendant, including books, papers, documents and
7 records pertaining thereto, or so much thereof as the court may deem
8 reasonably necessary to prevent violations of this chapter through or by
9 means of the use of property and business. A receiver, when appointed
10 and qualified, has such powers and duties as to custody, collection,
11 administration, winding up and liquidation of such property and
12 business as may from time to time be conferred upon him by the court.

13 **Sec. 68.** 1. If the Commissioner has reason to believe that
14 grounds for revocation or suspension of a license exist, he shall give 20
15 days' written notice to the licensee stating the contemplated action and,
16 in general, the grounds therefor and set a date for a hearing.

17 2. At the conclusion of a hearing, the Commissioner shall:

18 (a) Enter a written order either dismissing the charges, revoking the
19 license or suspending the license for a period of not more than 60 days,
20 which period must include any prior temporary suspension. The
21 Commissioner shall send a copy of the order to the licensee by registered
22 or certified mail.

23 (b) Impose upon the licensee a fine of \$500 for each violation by the
24 licensee of any provision of this chapter or any regulation adopted
25 pursuant thereto.

26 (c) If a fine is imposed pursuant to this section, enter such order as is
27 necessary to recover the costs of the proceeding, including his
28 investigative costs and attorney's fees.

29 3. The grounds for revocation or suspension of a license are that:

30 (a) The licensee has failed to pay the annual license fee;

31 (b) The licensee, either knowingly or without any exercise of due
32 care to prevent it, has violated any provision of this chapter or any lawful
33 regulation adopted pursuant thereto;

34 (c) The licensee has failed to pay a tax as required pursuant to the
35 provisions of chapter 363A of NRS;

36 (d) Any fact or condition exists which would have justified the
37 Commissioner in denying the licensee's original application for a license
38 pursuant to the provisions of this chapter; or

39 (e) The licensee:

40 (1) Failed to open an office for the conduct of the business
41 authorized by his license within 180 days after the date his license was
42 issued; or

43 (2) Has failed to remain open for the conduct of the business for a
44 period of 180 days without good cause therefor.

1 4. Any revocation or suspension applies only to the license granted
2 to a person for the particular office for which grounds for revocation or
3 suspension exist.

4 5. An order suspending or revoking a license becomes effective 5
5 days after being entered unless the order specifies otherwise or a stay is
6 granted.

7 **Sec. 69.** A licensee may surrender any license issued pursuant to
8 the provisions of this chapter by delivering it to the Commissioner with
9 written notice of its surrender, but a surrender does not affect his civil or
10 criminal liability for acts committed prior thereto.

11 **Sec. 70.** A revocation, suspension, expiration or surrender of any
12 license does not impair or affect the obligation of any preexisting lawful
13 loan agreement between the licensee and any customer. Such a loan
14 agreement and all lawful charges thereon may be collected by the
15 licensee, its successors or assigns.

16 **Sec. 71.** 1. Annually, on or before April 15, each licensee shall
17 file with the Commissioner a report of operations of the licensed
18 business for the preceding calendar year.

19 2. The licensee shall make the report under oath and on a form
20 prescribed by the Commissioner.

21 3. If any person or affiliated group holds more than one license in
22 this State, it may file a composite annual report.

23 **Sec. 72.** 1. A court of this State may exercise jurisdiction over a
24 party to a civil action arising under the provisions of this chapter on any
25 basis not inconsistent with the Constitution of the State of Nevada or the
26 Constitution of the United States.

27 2. Personal service of summons upon a party outside this State is
28 sufficient to confer upon a court of this State jurisdiction over the party
29 so served if the service is made by delivering a copy of the summons,
30 together with a copy of the complaint, to the party served in the manner
31 provided by statute or rule of court for service upon a person of like kind
32 within this State.

33 3. In all cases of such service, the defendant has 40 days, exclusive
34 of the day of service, within which to answer or plead.

35 4. This section provides an additional manner of serving process
36 and does not invalidate any other service.

37 **Sec. 73.** 1. Except as otherwise provided in this section, if a
38 licensee willfully:

39 (a) Enters into a loan agreement for an amount of interest or any
40 other charge or fee that violates the provisions of this chapter or any
41 regulation adopted pursuant thereto;

42 (b) Demands, collects or receives an amount of interest or any other
43 charge or fee that violates the provisions of this chapter or any
44 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:

(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 after 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. 74. (1) In addition to any other remedy or penalty, if a licensee violates any provision of section 29, 31 to 47, inclusive, 49, 50, 57 or 58 of this act 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, which are subject to the provisions of NRS 42.005;

4. Reasonable attorney's fees and costs; and

5. Any other legal or equitable relief that the court deems appropriate

(2) The licensee shall not be liable for statutory or punitive damages as a consequence of any violation or violations of any provisions of sections 29, 31 to 47, 49, 50, 57 or 58 resulting from a bona fide error, a technical error, or a computational error, or any combination of these types of errors, where the customer has experienced no material impact as a result of the error or errors and the licensee has taken action to correct the error or errors within 60 days of knowledge of the error or errors.

Sec. 75. 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. 76. NRS 232.545 is hereby amended to read as follows:

1 232.545 1. An Investigative Account for Financial Institutions is
 2 hereby created in the State General Fund. The Account consists of money
 3 which is:

4 (a) Received by the Department of Business and Industry in connection
 5 with the licensing of financial institutions and the investigation of persons
 6 associated with those institutions; and

7 (b) Required by law to be placed therein.

8 2. The Director of the Department of Business and Industry or his
 9 designee may authorize expenditures from the Investigative Account to
 10 pay the expenses incurred:

11 (a) In investigating applications for licensing of financial institutions
 12 and in investigating persons associated with those institutions;

13 (b) In conducting special investigations relating to financial institutions
 14 and persons associated with those institutions; and

15 (c) In connection with mergers, consolidations, conversions,
 16 receiverships and liquidations of financial institutions.

17 3. As used in this section, "financial institution" means an institution
 18 for which licensing or registration is required by the provisions of titles 55
 19 and 56 ~~and chapters 604 and 649~~ of NRS ~~[-]~~, *chapter 649 of NRS and*
 20 *sections 2 to 74, inclusive, of this act.*

21 **Sec. 77.** NRS 363A.050 is hereby amended to read as follows:

22 363A.050 1. Except as otherwise provided in subsection 2,
 23 "financial institution" means:

24 (a) An institution licensed, registered or otherwise authorized to do
 25 business in this State pursuant to the provisions of *title 55 or 56 of NRS or*
 26 *chapter [604,] 645B, 645E or 649 of NRS or [title 55 or 56 of NRS,]*
 27 *sections 2 to 74, inclusive, of this act,* or a similar institution chartered or
 28 licensed pursuant to federal law and doing business in this State;

29 (b) Any person primarily engaged in:

30 (1) The purchase, sale and brokerage of securities;

31 (2) Originating, underwriting and distributing issues of securities;

32 (3) Buying and selling commodity contracts on either a spot or
 33 future basis for the person's own account or for the account of others, if
 34 the person is a member or is associated with a member of a recognized
 35 commodity exchange;

36 (4) Furnishing space and other facilities to members for the purpose
 37 of buying, selling or otherwise trading in stocks, stock options, bonds or
 38 commodity contracts;

39 (5) Furnishing investment information and advice to others
 40 concerning securities on a contract or fee basis;

41 (6) Furnishing services to holders of or brokers or dealers in
 42 securities or commodities;

43 (7) Holding or owning the securities of banks for the sole purpose
 44 of exercising some degree of control over the activities of the banks whose
 45 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;

(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. 78. 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 74, inclusive, of this act.*

1 **Sec. 79.** NRS 658.098 is hereby amended to read as follows:

2 658.098 1. On a quarterly or other regular basis, the Commissioner
3 shall collect an assessment pursuant to this section from each:

4 (a) Check-cashing service or deferred deposit *loan* service that is
5 supervised pursuant to ~~chapter 604 of NRS;~~ *sections 2 to 74, inclusive,*
6 *of this act;*

7 (b) Collection agency that is supervised pursuant to chapter 649 of
8 NRS;

9 (c) Bank that is supervised pursuant to chapters 657 to 668, inclusive,
10 of NRS;

11 (d) Trust company that is supervised pursuant to chapter 669 of NRS;

12 (e) Development corporation that is supervised pursuant to chapter 670
13 of NRS;

14 (f) Corporation for economic revitalization and diversification that is
15 supervised pursuant to chapter 670A of NRS;

16 (g) Person engaged in the business of selling or issuing checks or of
17 receiving for transmission or transmitting money or credits that is
18 supervised pursuant to chapter 671 of NRS;

19 (h) Savings and loan association that is supervised pursuant to chapter
20 673 of NRS;

21 (i) Person engaged in the business of lending that is supervised
22 pursuant to chapter 675 of NRS;

23 (j) Person engaged in the business of debt adjusting that is supervised
24 pursuant to chapter 676 of NRS;

25 (k) Thrift company that is supervised pursuant to chapter 677 of NRS;
26 and

27 (l) Credit union that is supervised pursuant to chapter 678 of NRS.

28 2. The Commissioner shall determine the total amount of all
29 assessments to be collected from the entities identified in subsection 1, but
30 that amount must not exceed the amount necessary to recover the cost of
31 legal services provided by the Attorney General to the Commissioner and
32 to the Division of Financial Institutions. The total amount of all
33 assessments collected must be reduced by any amounts collected by the
34 Commissioner from an entity for the recovery of the costs of legal services
35 provided by the Attorney General in a specific case.

36 3. The Commissioner shall collect from each entity identified in
37 subsection 1 an assessment that is based on:

38 (a) A portion of the total amount of all assessments as determined
39 pursuant to subsection 2, such that the assessment collected from an entity
40 identified in subsection 1 shall bear the same relation to the total amount of
41 all assessments as the total assets of that entity bear to the total of all assets
42 of all entities identified in subsection 1; or

43 (b) Any other reasonable basis adopted by the Commissioner.

1 4. The assessment required by this section is in addition to any other
2 assessment, fee or cost required by law to be paid by an entity identified in
3 subsection 1.

4 5. Money collected by the Commissioner pursuant to this section
5 must be deposited in the State Treasury pursuant to the provisions of NRS
6 658.091.

7 **Sec. 80.** NRS 675.040 is hereby amended to read as follows:

8 675.040 This chapter does not apply to:

9 1. A person doing business under the authority of any law of this
10 State or of the United States relating to banks, savings banks, trust
11 companies, savings and loan associations, credit unions, development
12 corporations, mortgage brokers, mortgage bankers, thrift companies,
13 pawnbrokers or insurance companies.

14 2. A real estate investment trust, as defined in 26 U.S.C. § 856.

15 3. An employee benefit plan, as defined in 29 U.S.C. § 1002(3), if the
16 loan is made directly from money in the plan by the plan's trustee.

17 4. An attorney at law rendering services in the performance of his
18 duties as an attorney at law if the loan is secured by real property.

19 5. A real estate broker rendering services in the performance of his
20 duties as a real estate broker if the loan is secured by real property.

21 6. Except as otherwise provided in this subsection, any firm or
22 corporation:

23 (a) Whose principal purpose or activity is lending money on real
24 property which is secured by a mortgage;

25 (b) Approved by the Federal National Mortgage Association as a seller
26 or servicer; and

27 (c) Approved by the Department of Housing and Urban Development
28 and the Department of Veterans Affairs.

29 7. A person who provides money for investment in loans secured by a
30 lien on real property, on his own account.

31 8. A seller of real property who offers credit secured by a mortgage of
32 the property sold.

33 9. A person holding a nonrestricted state gaming license issued
34 pursuant to the provisions of chapter 463 of NRS.

35 10. *A person licensed to do business pursuant to sections 2 to 74,*
36 *inclusive, of this act.*

37 **Sec. 81.** NRS 675.060 is hereby amended to read as follows:

38 675.060 1. No person may engage in the business of lending in this
39 State without first having obtained a license from the Commissioner
40 *pursuant to this chapter* for each office or other place of business at which
41 the person engages in such business ~~+~~, *except that if a person intends to*
42 *engage in the business of lending in this State as a deferred deposit loan*
43 *service, short-term loan service or title loan service, as those terms are*
44 *defined in sections 2 to 74, inclusive, of this act, the person must obtain a*

1 *license from the Commissioner pursuant to sections 2 to 74, inclusive, of*
 2 *this act before the person may engage in any such business.*

3 2. For the purpose of this section, a person engages in the business of
 4 lending in this State if he:

5 (a) Solicits loans in this State or makes loans to persons in this State,
 6 unless these are isolated, incidental or occasional transactions; or

7 (b) Is located in this State and solicits loans outside of this State or
 8 makes loans to persons located outside of this State, unless these are
 9 isolated, incidental or occasional transactions.

10 **Sec. 82.** NRS 604.010, 604.020, 604.030, 604.040, 604.050,
 11 604.060, 604.070, 604.080, 604.090, 604.100, 604.110, 604.120, 604.130,
 12 604.140, 604.150, 604.160, 604.162, 604.164, 604.166, 604.170, 604.180
 13 and 604.190 are hereby repealed.

14 **Sec. 83.** 1. If a person:

15 (a) On July 1, 2005, holds a valid certificate of registration or license
 16 that was issued by the Commissioner of Financial Institutions pursuant to
 17 chapter 604 or 675 of NRS before July 1, 2005; and

18 (b) Operates a check-cashing service, deferred deposit loan service,
 19 short-term loan service or title loan service, as those terms are defined in
 20 the provisions of sections 2 to 74, inclusive, of this act,

21 → the person's certificate of registration or license shall be deemed to be a
 22 license issued by the Commissioner of Financial Institutions pursuant to
 23 the provisions of sections 2 to 74, inclusive, of this act until the date on
 24 which the person would have been required to renew his certificate of
 25 registration or license pursuant to chapter 604 or 675 of NRS.

26 2. A person described in subsection 1 shall:

27 (a) On and after July 1, 2005, comply with all provisions of sections 2
 28 to 74, inclusive, of this act relating to transactions with customers,
 29 including, without limitation, all provisions relating to loans, extensions,
 30 repayment plans, interest, fees, charges and collections; and

31 (b) On and after October 1, 2005, comply with all other provisions of
 32 sections 2 to 74 which include software changes, Spanish disclosure
 33 requirements and any related process requiring major modifications to
 34 existing business processes. If a licensee is unable to make the necessary
 35 changes by October 1, 2005 the licensee may request from the
 36 commissioner with appropriate justification, an extension to January 1,
 37 2006, inclusive, of this act, except that the person does not have to renew
 38 his certificate of registration or license until the date on which the person
 39 would have been required to renew his certificate of registration or license
 40 pursuant to chapter 604 or 675 of NRS.

41 **Sec. 84.** This act becomes effective on July 1, 2005.

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.

H

**MINUTES OF THE
SENATE COMMITTEE ON COMMERCE AND LABOR**

**Seventy-third Session
May 16, 2005**

The Senate Committee on Commerce and Labor was called to order by Chair Randolph J. Townsend at 9:00 a.m. on Monday, May 16, 2005, in Room 2135 of the Legislative Building, Carson City, 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

GUEST LEGISLATORS PRESENT:

Assemblywoman Barbara E. Buckley, Assembly District No. 8

STAFF MEMBERS PRESENT:

Kevin Powers, Committee Counsel
Jane Tetherton, Committee Secretary
Scott Young, Committee Policy Analyst
Lynn Hendricks, Committee Secretary

OTHERS PRESENT:

Robert A. Ostrovsky, Employers Insurance Company of Nevada, A Mutual Company

CHAIR TOWNSEND:

I will open the hearing on Assembly Bill (A.B.) 340.

Senate Committee on Commerce and Labor
May 16, 2005
Page 2

ASSEMBLY BILL 340 (1st Reprint): Revises provisions relating to certain short-term, high interest loans. (BDR 52-126)

CHAIR TOWNSEND:

I have a revised mock-up of the bill (Exhibit C). Please review it for discussion at our meeting on Wednesday.

I will close the hearing on A.B. 340 and 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 revised mock-up of the bill (Exhibit D). In addition, I have a document with technical amendments (Exhibit E) to reflect the understanding that has been reached. This document was e-mailed to all those involved in the discussion.

CHAIR TOWNSEND:

The Committee has also received written testimony on this bill from Carl Hull (Exhibit F), Sandra Perry (Exhibit G) and Mark Mowatt (Exhibit H).

I will close the hearing on A.B. 384 and open the hearing on A.B. 19.

ASSEMBLY BILL 19 (1st Reprint): Prohibits, under certain circumstances, issuance of gift certificate that contains expiration date and prohibits, under certain circumstances, issuer of gift certificate from charging certain fees to buyer or holder of gift certificate. (BDR 52-558)

SENATOR LEE:

Some of the changes we wanted to make have been incorporated into this bill. Other changes will be held over for the next Legislative Session. I will bring it back to the Committee on Wednesday.

CHAIR TOWNSEND:

I will close the hearing on A.B. 19 and open the hearing on A.B. 44.

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.

REVISED MOCK-UP

PROPOSED AMENDMENT TO ASSEMBLY BILL NO. 384 FIRST REPRINT

PREPARED FOR THE SENATE COMMITTEE ON COMMERCE AND LABOR
MAY 16, 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:

1 **Section 1.** Title 52 of NRS is hereby amended by adding thereto a
2 new chapter to consist of the provisions set forth as sections 2 to 74,
3 inclusive, of this act.

4 **Sec. 2.** *As used in this chapter, unless the context otherwise*
5 *requires, the words and terms defined in sections ~~2.5~~ to ~~24~~, 21.5,*
6 *inclusive, of this act have the meanings ascribed to them in those*
7 *sections.*

8 **Sec. 2.5.** *1. "Automated loan machine" means any machine or*
9 *other device, regardless of the name given to it or the technology used,*
10 *that:*

11 *(a) Is automated;*

12 *(b) Is designed or intended to allow a customer, without any*
13 *additional assistance from another person, to receive or attempt to*
14 *receive a deferred deposit loan or short-term loan through the machine*
15 *or other device; and*

16 *(c) Is set up, installed, operated or maintained by or on behalf of the*
17 *person making the loan or any agent, affiliate or subsidiary of the*
18 *person.*

19 *2. The term does not include any machine or other device used*
20 *directly by a customer to access the Internet unless the machine or other*
21 *device is made available to the customer by the person making the loan*
22 *or any agent, affiliate or subsidiary of the person.*

23 **Sec. 3.** "Cashing" means providing currency or a negotiable
24 instrument in exchange for a check.

25 **Sec. 4.** 1. "Check" means:

26 *(a) A draft, other than a documentary draft, payable on demand and*
27 *drawn on a bank; or*

28 *(b) A cashier's check or teller's check.*

29 *2. An instrument may be a check even though it is described on its*
30 *face by another term, such as "money order."*

Important Notes

The revisions in this Revised Mock-Up are shown in **Purple**.

The following sections have been revised: 15.5, 17, 27, 44.5, 74, 76.3, 76.6 and 83.

Sec. 2.5 is based on the intent of Sec. 2 of A.B. 340-R1 (Ms. Giunchigliani).

1 **Sec. 5.** "Check-cashing service" means any person engaged in the
2 business of cashing checks for a fee, service charge or other
3 consideration.

4 **Sec. 6.** "Commissioner" means the Commissioner of Financial
5 Institutions.

6 **Sec. 7.** "Customer" means any person who receives or attempts to
7 receive check-cashing services, deferred deposit loan services, short-term
8 loan services or title loan services from another person.

9 **Sec. 8.** 1. "Default" means the failure of a customer to:

10 (a) Make a scheduled payment on a loan on or before the due date
11 for the payment under the terms of a lawful loan agreement and any
12 grace period that complies with the provisions of section 23 of this act or
13 under the terms of any lawful extension or repayment plan relating to
14 the loan and any grace period that complies with the provisions of
15 section 23 of this act; or

16 (b) Pay a loan in full on or before:

17 (1) The expiration of the initial loan period as set forth in a lawful
18 loan agreement and any grace period that complies with the provisions
19 of section 23 of this act; or

20 (2) The due date of any lawful extension or repayment plan
21 relating to the loan and any grace period that complies with the
22 provisions of section 23 of this act, provided that the due date of the
23 extension or repayment plan ~~is not later than 8 weeks after the expiration~~
24 ~~of the initial loan period.~~ does not violate the provisions of this chapter.

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

27 **Sec. 9.** "Deferred deposit loan" means a transaction in which,
28 pursuant to a ~~written~~ loan agreement:

29 1. A customer tenders to another person:

30 (a) A personal check drawn upon the account of the customer; or

31 (b) Written authorization for an electronic transfer of money for a
32 specified amount from the account of the customer; and

33 2. The other person:

34 (a) Provides to the customer an amount of money that is equal to the
35 face value of the check or the amount specified in the written
36 authorization for an electronic transfer of money, less any fee charged
37 for the transaction; and

38 (b) Agrees, for a specified period, not to cash the check or execute
39 the electronic transfer of money for the amount specified in the written
40 authorization.

41 **Sec. 10.** "Deferred deposit loan service" means any person engaged
42 in the business of making deferred deposit loans for a fee, service charge
43 or other consideration.

44 **Sec. 11.** "Electronic transfer of money" means any transfer of
45 money, other than a transaction initiated by a check or other similar
46 instrument, that is initiated through an electronic terminal, telephone,
47 computer or magnetic tape for the purpose of ordering, instructing or
48 authorizing a financial institution to debit or credit an account.

49 **Sec. 12.** 1. "Extension" means any extension or rollover of a loan
50 beyond the date on which the loan is required to be paid in full under the
51 original terms of the loan agreement, regardless of the name given to the
52 extension or rollover.

53 2. The term does not include a grace period.

54 **Sec. 13.** "Grace period" means any period of deferment offered
55 gratuitously by a licensee to a customer if the licensee complies with the
56 provisions of section 23 of this act.

57 **Sec. 14.** "Licensee" means any person who has been issued one or
58 more licenses to operate a check-cashing service, deferred deposit loan

1 service, short-term loan service or title loan service pursuant to the
2 provisions of this chapter.

3 **Sec. 15.** "Loan" means any deferred deposit loan, short-term loan
4 or title loan, or any extension or repayment plan relating to such a loan,
5 made at any location or through any method, including, without
6 limitation, at a kiosk, through the Internet, through any telephone,
7 facsimile machine or other telecommunication device or through any
8 other machine, network, system, device or means.

9 **Sec. 15.5.** ~~"Loan which is secured by a tax refund" means a~~
10 ~~transaction in which, pursuant to a written agreement:~~

11 ~~1. The customer agrees to give to another person any amount due to~~
12 ~~the customer from a tax refund from the Internal Revenue Service of the~~
13 ~~United States Department of the Treasury or from any state or local~~
14 ~~governmental entity; and~~

15 ~~2. The person makes a loan to the customer in that amount, less any~~
16 ~~fees charged for the transaction.~~

17 **"Refund anticipation loan"** means a loan offered or made to a
18 taxpayer by a lender or through a facilitator based on the taxpayer's
19 anticipated federal income tax refund.

20 **Sec. 16.** ~~"Motor vehicle" has the meaning ascribed to it by the~~
21 ~~Commissioner pursuant to section 28 of this act.~~

22 **"Regulation Z"** means the federal regulations, as amended, 12 C.F.R.
23 Part 226, adopted pursuant to the Truth in Lending Act and commonly
24 known as Regulation Z.

25 **Sec. 17.** 1. "Short-term loan" means a loan made to a customer
26 pursuant to a loan agreement which, under its original terms:

27 (a) ~~Charges fees or a rate of interest, or any combination thereof,~~
28 ~~that when calculated as an annualized percentage rate is an annual~~
29 ~~percentage rate of more than 40 percent; and~~

30 (b) Requires the loan to be paid in full in less than ~~1 year,~~ 18 months.

31 2. The term does not include:

32 (a) A deferred deposit loan; or

33 (b) A title loan; or

34 (c) ~~A loan which is secured by a tax refund anticipation loan.~~

35 **Sec. 18.** "Short-term loan service" means any person engaged in
36 the business of providing short-term loans for a fee, service charge or
37 other consideration.

38 **Sec. 19.** 1. "Title loan" means a loan made to a customer ~~who~~
39 ~~secures the loan with the title to a motor vehicle and who gives pursuant~~
40 ~~to a loan agreement which, under its original terms:~~

41 (a) ~~Charges an annual percentage rate of more than 35 percent; and~~

42 (b) ~~Requires the customer to secure the loan by giving possession of~~
43 ~~the title to a vehicle legally owned by the customer to the person making~~
44 ~~the loan, or to any agent, affiliate or subsidiary of the person, whether or~~
45 ~~not the person making the loan or taking possession of the title perfects a~~
46 ~~security interest in the vehicle by having the person's name noted on the~~
47 ~~title as a lienholder.~~

48 2. The term does not include; ~~a loan which is secured by a lien or~~
49 ~~other security interest that attaches to a motor vehicle or appears on its~~
50 ~~title, including, without limitation, a loan to finance the purchase of the~~
51 ~~motor vehicle;~~

52 (a) ~~A loan which creates a purchase money security interest in a~~
53 ~~vehicle or the refinancing of any such loan; or~~

54 (b) ~~Any other loan for which a vehicle is used as security or~~
55 ~~collateral if the person making the loan, or any agent, affiliate or~~
56 ~~subsidiary of the person, does not take possession of the title.~~

Based on the testimony before the Committee, this bill is not intended to apply to refund anticipation loans. Thus, those loans are defined in Sec. 15.5 (a similar definition is used in Sec. 6 of the Revised Mock-Up for AB340-R1), and persons making such loans are exempted from the chapter in Sec. 17 and Sec. 27.

Sec. 20. "Title loan service" means any person engaged in the business of providing title loans for a fee, service charge or other consideration.

Sec. 21. "Title to a motor vehicle" or "title" means a certificate of title or ownership issued by the Department of Motor Vehicles pursuant to the laws of this State that identifies the legal owner of a motor vehicle or any similar document issued pursuant to the laws of another jurisdiction.

Sec. 21.2. "Truth in Lending Act" means the federal Truth in Lending Act, as amended, 15 U.S.C. §§ 1601 et seq.

Sec. 21.5. 1. "Vehicle" means any vehicle, whether or not self-propelled, that is designed or intended for land transportation if the legal owner of the vehicle is required to have a title.

2. The term includes, without limitation:

- (a) Passenger vehicles;
- (b) Recreational vehicles; and
- (c) House trailers and travel trailers.

3. The term does not include:

- (a) Farm vehicles;
- (b) Vehicles of a common or contract carrier;
- (c) Commercial vehicles;
- (d) Construction vehicles;
- (e) Military vehicles;
- (f) Vehicles used exclusively upon stationary rails or tracks; or
- (g) Any other vehicles which are similar in nature to the vehicles listed in paragraphs (a) to (f), inclusive, and which the Commissioner, by regulation, excludes from the definition of "vehicle."

Sec. 21.8. 1. As used in this chapter, unless the context otherwise requires, the following terms have the meanings ascribed to them in the Truth in Lending Act and Regulation Z:

- (a) "Amount financed,"
- (b) "Annual percentage rate,"
- (c) "Finance charge,"
- (d) "Payment schedule,"
- (e) "Total of payments."

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

Sec. 22. The provisions of this chapter apply to any person who seeks to evade its application by any device, subterfuge or pretense, including, without limitation, calling a loan by any other name or using any agents, affiliates or subsidiaries in an attempt to avoid the application of the provisions of this chapter.

Sec. 23. 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 additional fees or additional interest on the outstanding loan during such a grace period.

Sec. 24. 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.

Sec. 25. This chapter or any part thereof may be modified, amended or repealed by the Legislature so as to effect a cancellation or alteration of any license or right of a licensee under this chapter,

1 provided that such cancellation or alteration shall not impair or affect
2 the obligation of any preexisting lawful loan agreement between any
3 licensee and any customer.

4 **Sec. 26.** Any loan lawfully made outside this State as permitted by
5 the laws of the state in which the loan was made may be collected or
6 otherwise enforced in this State in accordance with its terms.

7 **Sec. 27.** The provisions of this chapter do not apply to:

8 1. A person doing business pursuant to the authority of any law of
9 this State or of the United States relating to banks, savings banks, trust
10 companies, savings and loan associations, credit unions, development
11 corporations, mortgage brokers, mortgage bankers, thrift companies or
12 insurance companies.

13 2. A person who is primarily engaged in the retail sale of goods or
14 services who:

15 (a) As an incident to or independently of a retail sale or service, from
16 time to time cashes checks for a fee or other consideration of not more
17 than \$2; and

18 (b) Does not hold himself out as a check-cashing service.

19 3. A person while performing any act authorized by a license issued
20 pursuant to chapter 671 of NRS.

21 4. A person who holds a nonrestricted gaming license issued
22 pursuant to chapter 463 of NRS while performing any act in the course
23 of that licensed operation.

24 5. A person who is exclusively engaged in a check-cashing service
25 relating to out-of-state checks.

26 6. A corporation organized pursuant to the laws of this State that
27 has been continuously and exclusively engaged in a check-cashing
28 service in this State since July 1, 1973.

29 7. A pawnbroker, unless the pawnbroker operates a check-cashing
30 service, deferred deposit loan service, short-term loan service or title loan
31 service.

32 8. A real estate investment trust, as defined in 26 U.S.C. § 856.

33 9. An employee benefit plan, as defined in 29 U.S.C. § 1002(3), if
34 the loan is made directly from money in the plan by the plan's trustee.

35 10. An attorney at law rendering services in the performance of his
36 duties as an attorney at law if the loan is secured by real property.

37 11. A real estate broker rendering services in the performance of his
38 duties as a real estate broker if the loan is secured by real property.

39 12. Any firm or corporation:

40 (a) Whose principal purpose or activity is lending money on real
41 property which is secured by a mortgage;

42 (b) Approved by the Federal National Mortgage Association as a
43 seller or servicer; and

44 (c) Approved by the Department of Housing and Urban Development
45 and the Department of Veterans Affairs.

46 13. A person who provides money for investment in loans secured
47 by a lien on real property, on his own account.

48 14. A seller of real property who offers credit secured by a mortgage
49 of the property sold.

50 15. A person who makes a loan which is secured by a tax refund
51 anticipation loan, unless the person operates a check-cashing service,
52 deferred deposit loan service, short-term loan service or title loan service.

53 **Sec. 28.** ~~The Commissioner shall adopt by regulation a~~
54 ~~definition of the term "motor vehicle" as that term is used in the~~
55 ~~definition of "title loan" for the purposes of this chapter.~~

56 ~~21.~~ The Commissioner may establish by regulation the fees that a
57 licensee who provides check-cashing services may impose for cashing
58 checks.

32. The Commissioner shall adopt any other regulations as are necessary to carry out the provisions of this chapter.

Sec. 29. 1. A person, including, without limitation, a person licensed pursuant to chapter 675 of NRS, 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, except that the person shall not operate such a service through any automated loan machine in violation of the provisions of subsection 3.

3. A person shall not operate a deferred deposit loan service or short-term loan service through any automated loan machine, and the Commissioner shall not issue a license that authorizes the licensee to do business through any automated loan machine.

Subsection 3 is based on the intent of Sec. 2 of A.B. 340-R1 (Ms. Giunchigliani).

Sec. 30. 1. A licensee shall post in a conspicuous place in every location at which he conducts business under his license ~~the following~~:

(a) A notice that states the fees he charges for providing check-cashing services, deferred deposit loan services, short-term loan services or title loan services.

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

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

Paragraph (b) is based on Sec. 1 and Sec. 6 of A.B. 340-R1 (Ms. Giunchigliani).

2. If a licensee offers loans to customers at a kiosk, through the Internet, through any telephone, facsimile machine or other telecommunication device or through any other machine, network, system, device or means, except for an automated loan machine prohibited by section 29 of this act, the licensee shall, as appropriate to the location or method for making the loan, post in a conspicuous place where customers will see it before they enter into a loan, or disclose in an open and obvious manner to customers before they enter into a loan, a notice that states:

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

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

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

Sec. 31. 1. Before making any loan to a customer, a licensee shall provide to the customer a written loan agreement which may be kept by the customer and which must be written in:

(a) English, if the transaction is conducted in English; or

(b) Spanish, if the transaction is conducted in Spanish.

2. The loan agreement must include, without limitation, the following information:

(a) The name and address of the licensee and the customer;

~~(b) The date of the loan;~~

~~(c) (b) The nature of the security for the loan, if any;~~

~~(d) (c) The date and 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, amount~~

financed, annual percentage rate, finance charge, total of payments, payment schedule, late fees and any other fees that are not required to be included in the finance charge under the Truth in Lending Act and Regulation Z;

~~(c) The description or schedule of payments on the loan;~~

~~(d) A disclosure of the right of the customer to rescind a loan pursuant to the provisions of this chapter;~~

~~(e) 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;~~

~~(f) Disclosures required for a similar transaction by the federal Truth in Lending Act, 15 U.S.C. §§ 1601 et seq., and~~

~~(g) Disclosures~~

(f) Any other disclosures required under the Truth in Lending Act and Regulation Z or under any other applicable federal or state statute or regulation.

Sec. 32. 1. If a customer defaults on a loan, the licensee may collect the debt owed to the licensee only in a professional, fair and lawful manner. When collecting such a debt, the licensee must act in accordance with and must not violate sections 803 to 812, inclusive, of the federal Fair Debt Collection Practices Act, as amended, 15 U.S.C. §§ 1692a to 1692j, inclusive, even if the licensee is not otherwise subject to the provisions of that Act.

2. If a licensee ~~initiates~~ commences a civil action against a customer to collect a debt, the court may award:

(a) Court costs;

(b) Costs of service of process, except that the costs must not exceed the amount of the fees charged by the sheriff or constable for service of process in the county where the action was brought or, if the customer ~~is~~ was not served in that county, in the county where the customer was served; and

(c) 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.

3. Notwithstanding any provision of NRS 66.010 to the contrary, if:

(a) A licensee intends to commence a civil action in a justice's court against a customer to collect a debt; and

(b) The customer resides in the county where the loan was made, the licensee is required to commence the civil action in the justice's court for the township where the loan was made unless, after the date of default and before the licensee commences the civil action, the customer signs an affidavit agreeing to try the action in another justice's court having jurisdiction over the subject matter and the parties. A licensee shall not, directly or indirectly, require, intimidate, threaten or coerce a customer to sign such an affidavit.

Sec. 33. 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 his property, including, without limitation, any community property in which the customer has an interest; 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 or threaten to garnish any wages or salary paid to a customer for active service in the military; or

(b) Contact or threaten to 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.

Sec. 34. A licensee shall not:

1. ~~Make a deferred deposit loan or short-term 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, when the loan is made.~~ A licensee is not in violation of the provisions of this subsection if the customer presents evidence of his 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.~~

2. Make more than one deferred deposit loan or short-term loan to the same customer at one time or before any outstanding balance is paid in full on an existing loan made by that licensee to the customer unless:

(a) The customer is seeking multiple loans that do not exceed the limit set forth in subsection 1;

(b) The licensee charges the same ~~rate of interest~~ or a lower annual percentage rate for any additional loans as he charged for the initial loan;

(c) ~~Except for the interest charged pursuant to paragraph (b), that part of the finance charge which consists of interest only, the licensee does not impose any other charge or fee to initiate any additional loans, except that a licensee who makes deferred deposit loans or short-term loans in accordance with the provisions of subsection 2 of section 43 of this act may charge a reasonable fee for preparing documents in an amount that does not exceed \$50, in the aggregate, for all the additional loans combined; and~~

(d) If the additional loans are deferred deposit loans and the customer provides one or more additional checks that are not paid upon presentment, the licensee does not charge any fees to the customer pursuant to section 45 of this act, except for the fees allowed pursuant to that section for the first check that is not paid upon presentment.

Sec. 35. A licensee shall not:

1. Accept:

(a) Collateral as security for a loan, 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.

(c) A check as security for a 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 of payments set forth in the disclosure statement required by the federal Truth in Lending Act, 15 U.S.C. §§ 1601 et seq., and Regulation Z that is provided to the customer.~~

2. 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.~~ amount financed, annual percentage rate, finance charge, total of payments, payment schedule, late fees and any other fees that are not required to be included in the finance charge under the Truth in Lending Act and Regulation Z. Compliance with the federal Truth in Lending Act, 15 U.S.C. §§ 1601 et seq., and Regulation Z constitutes compliance with this subsection.

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

4 4. Make any transaction contingent on the purchase of insurance or
5 any other goods or services or sell any insurance to the customer with
6 the loan.

7 5. Fail to comply with a payment plan which is negotiated and
8 agreed to by the licensee and customer.

9 6. Charge any fee to cash a check representing the proceeds of a
10 loan made by the licensee or any agent, affiliate or subsidiary of the
11 licensee.

12 **Sec. 36.** A licensee shall not:

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

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

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

25 4. Include in any written agreement:

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

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

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

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

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

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

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

40 **Sec. 36.5.** Notwithstanding any other provision of this chapter to
41 the contrary:

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

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

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

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

52 (c) No additional origination fees, set-up fees, collection fees,
53 transaction fees, negotiation fees, handling fees, processing fees, late
54 fees, default fees or any other fees, regardless of the name given to the
55 fees, are charged in connection with any extension of the title loan.

56 **Sec. 37.** A licensee who makes title loans shall not:

57 1. Make a title loan that exceeds the fair market value of the ~~motor~~
58 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 customer has provided the licensee with true and correct information concerning the customer's income, obligations, ~~and employment and ownership of the vehicle~~; and

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

Sec. 38. 1. Except where in conflict with the provisions of this chapter, the provisions of chapter 104 of NRS apply to any title loan between a licensee and a customer.

2. Except as otherwise provided in this section, if a customer defaults on a title loan, or on any extension or repayment plan relating to the 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, unless the licensee proves the customer prevented the repossession and sale of the ~~motor~~ vehicle by any means, including, without limitation, hiding the ~~motor~~ vehicle; or

(b) Any deficiency after repossession and sale of the ~~motor~~ vehicle which the customer used to secure the title loan, unless the licensee proves the customer damaged or otherwise committed or permitted waste on the ~~motor~~ vehicle. For the purposes of this paragraph, it shall not be deemed waste for the customer to continue to use the ~~motor~~ vehicle in the same manner it was used before he entered into the title loan, ~~or to make necessary repairs to the motor vehicle.~~

~~3. 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 vehicle is repossessed pursuant to this section:

(a) By the licensee or his employees, the licensee shall make reasonably available to the customer any personal property in or upon the vehicle; or

(b) By a third party acting on behalf of the licensee, the licensee shall instruct the third party to make reasonably available to the customer any personal property in or upon the vehicle.

4. If a customer uses fraud to secure a title loan or if the customer wrongfully transfers any interest in the vehicle to a third party before the title loan is repaid, the licensee may bring a civil action against the customer for any or all of the following relief:

(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 as permitted under this chapter, less any prior payments made by the customer;

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

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

5. 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, without limitation, giving to a licensee as security for a title loan the title to a ~~motor~~ vehicle which does not belong to the customer.

Sec. 39. 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:

1 (a) A sum of money equal to the face value of the loan, less any fee
2 charged to the customer to initiate the loan; or

3 (b) The original check, if any, which the licensee gave to the
4 customer pursuant to the loan. Upon receipt of the original check, the
5 licensee shall refund any fee charged to the customer to initiate the loan.

6 2. If a customer rescinds a loan pursuant to this section, the
7 licensee:

8 (a) Shall not charge the customer any fee for rescinding the loan;
9 and

10 (b) Upon receipt of the sum of money or check pursuant to
11 subsection 1, shall give to the customer a receipt showing the account
12 paid in full and:

13 (1) If the customer gave to the licensee a check or a written
14 authorization for an electronic transfer of money to initiate a deferred
15 deposit loan, the check or written authorization stamped "void";

16 (2) If the customer gave to the licensee a promissory note to
17 initiate a short-term loan, a copy of the promissory note stamped "void"
18 or the receipt stamped "paid in full"; or

19 (3) If the customer gave to the licensee a title to a ~~motor~~ vehicle to
20 initiate the title loan, the title.

21 **Sec. 40.** 1. A customer may pay a loan, or any extension thereof,
22 in full at any time, without an additional charge or fee, before the date
23 his final payment on the loan, or any extension thereof, is due.

24 2. If a customer pays the loan in full, including all interest, charges
25 and fees negotiated and agreed to by the licensee and customer as
26 permitted under this chapter, the licensee shall:

27 (a) Give to the customer:

28 (1) If the customer gave to the licensee a check or a written
29 authorization for an electronic transfer of money to initiate a deferred
30 deposit loan, the check or the written authorization stamped "void";

31 (2) If the customer gave to the licensee a promissory note to
32 initiate a short-term loan, the promissory note stamped "void" or a
33 receipt stamped "paid in full"; or

34 (3) If the customer gave to the licensee a title to a ~~motor~~ vehicle to
35 initiate a title loan, the title; and

36 (b) Give to the customer a receipt with the following information:

37 (1) The name and address of the licensee;

38 (2) The identification number assigned to the loan agreement or
39 other information that identifies the loan;

40 (3) The date of the payment;

41 (4) The amount paid;

42 (5) An itemization of interest, charges and fees;

43 (6) A statement that the loan is paid in full; and

44 (7) If more than one loan made by the licensee to the customer
45 was outstanding at the time the payment was made, a statement
46 indicating to which loan the payment was applied.

47 **Sec. 41.** 1. A customer may make a partial payment on a loan, or
48 any extension thereof, at any time without an additional charge or fee.

49 2. If a customer makes such a partial payment, the licensee shall
50 give to the customer a receipt with the following information:

51 (a) The name and address of the licensee;

52 (b) The identification number assigned to the loan agreement or
53 other information that identifies the loan;

54 (c) The date of the payment;

55 (d) The amount paid;

56 (e) An itemization of interest, charges and fees;

57 (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. 42. ~~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. If the customer defaults on the original loan or any extension thereof, or indicates that he is unable to pay in full the original loan or any extension thereof, the licensee:~~

~~(a) Shall provide written notice in English, if the initial transaction was conducted in English, or in Spanish, if the initial transaction was conducted in Spanish, to the customer of his right to enter into a repayment plan; and~~

~~(b) Shall not commence any civil action to collect on the outstanding loan unless:~~

~~(1) Such a notice has been sent to the customer; and~~

~~(2) The customer fails to exercise his right to enter into a repayment plan within 15 days after receipt of the notice.~~

~~3. If the licensee and customer enter into a repayment plan pursuant to this section, the customer may pay the remaining balance on the outstanding loan:~~

~~(a) In four equal monthly installments; or~~

~~(b) Under any other terms negotiated and agreed to by the licensee and customer that comply with the provisions of this section.~~

~~4. 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."~~

~~5. 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) Charge any other amount to a customer, including, without limitation, any amount or charge payable directly or indirectly by the customer and imposed directly or indirectly by the licensee as an incident to or as a condition of entering into a repayment plan. Such an amount includes, without limitation:~~

~~(1) Any interest, other than the interest charged pursuant to the original loan agreement, regardless of the name given to the interest; or~~

~~(2) Any origination fees, set up fees, collection fees, transaction fees, negotiation fees, handling fees, processing fees, late fees, default fees or any other fees, regardless of the name given to the fee;~~

~~(b) Accept any security or collateral from the customer to enter into the repayment plan;~~

~~(c) 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;~~

~~(d) Make any other loan to the customer, unless the customer is seeking multiple loans that do not exceed the limit set forth in subsection 1 of section 34 of this act; or~~

~~(e) Commence a civil action against the customer during the term of the repayment plan.~~

~~6. 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.~~

1. Before a licensee attempts to collect the outstanding balance on a loan in default by commencing a civil action or any process of alternative dispute resolution or by repossessing a vehicle, the licensee shall offer the customer an opportunity to enter into a repayment plan. The licensee:

(a) Is required to make the offer available to the customer for a period of at least 30 days after the date of default; and

(b) Is not required to make such an offer more than once for each loan.

2. Not later than 15 days after the date of default, the licensee shall provide to the customer written notice of the opportunity to enter into a repayment plan. The written notice must:

(a) Be in English, if the initial transaction was conducted in English, or in Spanish, if the initial transaction was conducted in Spanish;

(b) State the date by which the customer must act to enter into a repayment plan;

(c) Explain the procedures the customer must follow to enter into a repayment plan;

(d) If the licensee requires the customer to make an initial payment to enter into a repayment plan, explain the requirement and state the amount of the initial payment and the date the initial payment must be made;

(e) State that the customer has the opportunity to enter into a repayment plan with a term of at least 90 days from the date of default; and

(f) Include the following amounts:

(1) The total of payments or the remaining balance on the original loan;

(2) Any payments made on the loan;

(3) Any charges added to the loan amount allowed pursuant to the provisions of this chapter; and

(4) The total amount due if the customer enters a repayment plan.

3. Under the terms of any repayment plan pursuant to this section:

(a) The customer must enter into the repayment plan not later than 30 days from the date of default, unless the licensee allows a longer period;

(b) The licensee must allow the period for repayment to extend at least 90 days from the date of default, unless the customer agrees to a shorter term;

(c) The licensee may require the customer to make an initial payment of not more than 20 percent of the total amount due under the terms of the repayment plan;

(d) For a deferred deposit loan;

(1) The licensee may require a customer to provide, as security, one or more checks or written authorizations for the electronic transfer of money which equal the total amount due under the terms of the repayment plan;

(2) The licensee shall, if the customer makes a payment in the amount of a check or written authorization taken as security for that payment, return to the customer the check or written authorization stamped "void" or destroy the check or written authorization; and

(3) The licensee shall not charge any fee to the customer pursuant to section 45 for a check which is provided as security during the repayment plan and which is not paid upon presentment if, in connection with that loan, the licensee has previously charged at least one such fee.

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) Except as otherwise provided by this chapter, charge any other amount to a customer, including, without limitation, any amount or charge payable directly or indirectly by the customer and imposed directly or indirectly by the licensee as an incident to or as a condition of entering into a repayment plan. Such an amount includes, without limitation:

(1) Any interest, other than the interest charged pursuant to the original loan agreement, regardless of the name given to the interest; or

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

(b) Except as otherwise provided in this section, accept any security or collateral from the customer to enter into the repayment plan;

(c) 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;

(d) Make any other loan to the customer, unless the customer is seeking multiple loans that do not exceed the limit set forth in subsection 1 of section 34 of this act;

(e) During the term of the repayment plan, attempt to collect the outstanding balance by commencing a civil action or any process of alternative dispute resolution or by repossessing a vehicle, unless the customer defaults on the repayment plan; or

(f) Attempt to collect an amount that is greater than the amount owed under the terms of the repayment plan.

5. If the licensee and customer enter into a repayment plan pursuant to this section, the licensee shall:

(a) Prepare a written agreement establishing the repayment plan; and

(b) Give the customer a copy of the written agreement. The written agreement must:

(1) Be signed by the licensee and customer; and

(2) Contain all of the terms of the repayment plan, including, without limitation, the total amount due under the terms of the repayment plan.

6. 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.

7. If the customer defaults on the repayment plan, the licensee may, to collect the outstanding balance, commence a civil action or any process of alternative dispute resolution or repossess a vehicle as otherwise authorized pursuant to this chapter.

Sec. 43. ~~§~~ 1. Except as otherwise provided in subsection 2, 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 deferred deposit loan or short-term loan to pay the balance of the outstanding loan, the licensee shall not establish or extend such a period beyond ~~8 weeks~~ 60 days after the expiration of the initial loan period.

2. This section does not apply to a deferred deposit loan or short-term loan if the licensee:

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

(1) Charges an annual percentage rate of less than 200 percent;

(2) Requires the customer to make a payment on the loan at least once every 30 days;

(3) Requires the loan to be paid in full within 150 days; and

(4) Provides that interest does not accrue on the loan at the annual percentage rate set forth in the loan agreement after the date of maturity of the loan;

(b) Performs a credit check of the customer with a major consumer reporting agency before making the loan;

(c) Reports information relating to the loan experience of the customer to a major consumer reporting agency;

(d) Gives the customer the right to rescind the deferred deposit loan or short-term loan within 5 days after the loan is made without charging the customer any fee for rescinding the loan;

(e) Participates in good faith with a counseling agency that is accredited by the Council on Accreditation for Services for Families and Children, Inc., or its successor organization;

(f) Is a member of the National Foundation for Credit Counseling or its successor organization; and

(g) Does not commence a civil action or any process of alternative dispute resolution on a defaulted loan or any extension or repayment plan thereof.

Sec. 44. 1. ~~§~~ Except as otherwise provided in this chapter, if a customer defaults on a loan or on any extension or repayment plan relating to the loan, whichever is later, the licensee may collect only the following amounts from the customer:

(a) The principal amount of the loan.

(b) The interest accrued before the expiration of the initial loan period at the annual percentage rate ~~of interest~~ set forth in the disclosure statement required by the federal Truth in Lending Act, ~~15 U.S.C. §§ 1601 et seq.~~ and Regulation Z that is provided to the customer. If there is an extension or repayment plan relating to the loan, the licensee may charge and collect interest pursuant to this paragraph for a period not to exceed ~~8 weeks~~ 60 days after the expiration of the initial loan period.

(c) The interest accrued after the expiration of the initial loan period or after any extension or repayment plan that is allowed pursuant to paragraph (b), whichever is later, at ~~a rate of interest~~ an annual percentage rate not to exceed the prime rate at the largest bank in Nevada, as ascertained by the Commissioner, on January 1 or July 1, as

1 the case may be, immediately preceding the expiration of the initial loan
 2 period, plus 10 percent. The licensee may charge and collect interest
 3 pursuant to this paragraph for a period not to exceed ~~12 weeks~~ 90 days.
 4 After that period, the licensee shall not charge or collect any interest on
 5 the loan.

6 (d) Any fees allowed pursuant to section 45 of this act for a check
 7 that is not paid upon presentment because the account of the customer
 8 contains insufficient funds or has been closed.

9 2. Except for the interest and fees permitted pursuant to subsection
 10 1 and any other charges expressly permitted pursuant to this chapter, the
 11 licensee shall not charge any other amount to a customer, including,
 12 without limitation, any amount or charge payable directly or indirectly
 13 by the customer and imposed directly or indirectly by the licensee as an
 14 incident to or as a condition of the extension of the period for the
 15 payment of the loan or the extension of credit. Such an amount includes,
 16 without limitation:

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

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

22 **Sec. 44.5. If a customer defaults on a short-term loan, the licensee**
 23 **may charge a one-time late fee of not more than \$25.**

24 **Sec. 45. 1.** A licensee may collect a fee of not more than \$25 if a
 25 check is not paid upon presentment because the account of the customer
 26 contains insufficient funds or has been closed.

27 2. If the account of the customer contains insufficient funds, the
 28 licensee may collect only two fees of \$25 each regardless of the number
 29 of times the check is presented for payment.

30 3. If the account of the customer has been closed, the licensee may
 31 collect only one fee of \$25 regardless of the number of times the check is
 32 presented for payment.

33 4. A customer is not liable for damages pursuant to NRS 41.620 or
 34 to criminal prosecution for a violation of chapter 205 of NRS unless the
 35 customer acted with criminal intent.

36 **Sec. 46.** In addition to any other provision in this chapter, each
 37 time a customer makes a payment to a licensee, the licensee shall give to
 38 the customer a receipt with the following information:

39 1. The name and address of the licensee;

40 2. The identification number assigned to the loan agreement or
 41 other information that identifies the loan;

42 3. The date of the payment;

43 4. The amount paid;

44 5. The balance due on the loan or, when the customer makes a final
 45 payment, a statement that the loan is paid in full; and

46 6. If more than one loan made by the licensee to the customer was
 47 outstanding at the time the payment was made, a statement indicating to
 48 which loan the payment was applied.

49 **Sec. 47. 1.** A person shall not act as an agent for or assist a
 50 licensee in the making of a loan unless the licensee complies with all
 51 applicable federal and state laws, regulations and guidelines.

52 2. The provisions of this section do not apply to the agent or
 53 assistant to a state or federally chartered bank, thrift company, savings
 54 and loan association or industrial loan company if the state or federally
 55 chartered bank, thrift company, savings and loan association or
 56 industrial loan company:

57 (a) Initially advances the loan proceeds to the customer; and

58 (b) Does not sell, assign or transfer a preponderant economic interest
 59 in the loan to the agent or assistant or an affiliate or subsidiary of the

1 state or federally chartered bank, thrift company, savings and loan
2 association or industrial loan company, unless selling, assigning or
3 transferring a preponderant economic interest is expressly permitted by
4 the primary regulator of the state or federally chartered bank, thrift
5 company, savings and loan association or industrial loan company.

6 3. If a licensee acts as an agent for or assists a state or federally
7 chartered bank, thrift company, savings and loan association or
8 industrial loan company in the making of a loan and the licensee can
9 show that the standards set forth in subsection 2 are satisfied, the
10 licensee must comply with all other provisions in this chapter to the
11 extent they are not preempted by other state or federal law.

12 **Sec. 48.** 1. An application for a license pursuant to the provisions
13 of this chapter must be made in writing, under oath and on a form
14 prescribed by the Commissioner. The application must include:

15 (a) If the applicant is a natural person, the name and address of the
16 applicant.

17 (b) If the applicant is a business entity, the name and address of
18 each:

19 (1) Partner;

20 (2) Officer;

21 (3) Director;

22 (4) Manager or member who acts in a managerial capacity; and

23 (5) Registered agent,

24 ➡ of the business entity.

25 (c) Such other information, as the Commissioner determines
26 necessary, concerning the financial responsibility, background,
27 experience and activities of the applicant and its:

28 (1) Partners;

29 (2) Officers;

30 (3) Directors; and

31 (4) Managers or members who act in a managerial capacity.

32 (d) The address of each location at which the applicant proposes to
33 do business under the license, including, without limitation, each
34 location where the applicant will operate at a kiosk, through the Internet,
35 through any telephone, facsimile machine or other telecommunication
36 device or through any other machine, network, system, device or means,
37 except that the applicant shall not propose to do business through any
38 automated loan machine prohibited by section 29 of this act.

39 (e) If the applicant is or intends to be licensed to provide more than
40 one type of service pursuant to the provisions of this chapter, a statement
41 of that intent and which services he provides or intends to provide.

42 2. Each application for a license must be accompanied by:

43 (a) A nonrefundable application fee;

44 (b) Such additional expenses incurred in the process of investigation
45 as the Commissioner deems necessary; and

46 (c) A fee of not less than \$100 or more than \$500, prorated on the
47 basis of the licensing year.

48 ➡ All money received by the Commissioner pursuant to this subsection
49 must be placed in the Investigative Account for Financial Institutions
50 created by NRS 232.545.

51 3. The Commissioner shall adopt regulations establishing the
52 amount of the fees required pursuant to this section.

53 4. The Commissioner shall consider an application to be withdrawn
54 if the Commissioner has not received all information and fees required
55 to complete the application within 6 months from the date the application
56 is first submitted to the Commissioner or within such later period as the
57 Commissioner determines in accordance with any existing policies of
58 joint regulatory partners. If an application is deemed to be withdrawn
59 pursuant to this subsection or if an applicant otherwise withdraws an

The provisions of
subsection 4 are based
on language from Sec.
43 of S.B. 431-R1
(Division of Financial
Institutions).

application, the Commissioner may not issue a license to the applicant unless the applicant submits a new application and pays any required fees.

Sec. 49. 1. Except as otherwise provided in section 50 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 plus an additional \$5,000 for each branch location at which the applicant proposes to do business under the license. Thereafter, each licensee shall maintain the surety bond so that the amount of the surety bond is \$50,000 plus an additional \$5,000 for each branch location at which the licensee does business under the license. The surety bond required by this section is for the use and benefit of any customer receiving the services of the licensee at any location at which the licensee does business under the license.

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 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. 50. 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.

Sec. 51. 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:

(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 person must be allowed to choose between the provisions of paragraph (a) or (b) in complying with the provisions of this 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, except that the applicant shall not conduct business in this State through any automated loan machine prohibited by section 29 of this act.

Sec. 52. 1. Upon the filing of the application and the payment of the fees required pursuant to section 48 of this act, the Commissioner shall investigate the facts concerning the application and the requirements provided for in ~~section~~ sections 53.5 and 54 of this act.

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 not 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. 53. 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. 53.5. 1. In addition to any other requirements set forth in this chapter, each applicant must submit proof satisfactory to the Commissioner that the applicant:

(a) Has a good reputation for honesty, trustworthiness and integrity and is competent to transact the business for which the applicant seeks to be licensed in a manner which protects the interests of the general public.

(b) Has not made a false statement of material fact on the application for the license.

(c) Has not committed any of the acts specified in subsection 2.

(d) Has not had a license issued pursuant to this chapter suspended or revoked within the 10 years immediately preceding the date of the application.

(e) Has not been convicted of, or entered a plea of nolo contendere to, a felony or any crime involving fraud, misrepresentation or moral turpitude.

(f) If the applicant is a natural person:

(1) Is at least 21 years of age; and

(2) Is a citizen of the United States or lawfully entitled to remain and work in the United States.

2. In addition to any other lawful reasons, the Commissioner may refuse to issue a license to an applicant if the applicant:

(a) Has committed or participated in any act which, if committed or done by a holder of a license, would be grounds for the suspension or revocation of the license.

(b) Has previously been refused a license pursuant to this chapter or has had such a license suspended or revoked.

(c) Has participated in any act which was a basis for the refusal or revocation of a license pursuant to this chapter.

(d) Has falsified any of the information submitted to the Commissioner in support of the application for the license.

Sec. 54. 1. The Commissioner shall enter an order granting an application if he finds that the :

(a) 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;

(b) The applicant has satisfied the requirements set forth in section 53.5 of this act.

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. The Commissioner may issue additional licenses to the same licensee 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, except that the Commissioner shall not issue any license that would authorize the licensee to operate through any automated loan machine prohibited by section 29 of this act. Nothing in this subsection requires a license for any place of business devoted to accounting, recordkeeping or administrative purposes only.

4. Each license shall must:

The provisions of Sec. 53.5 are based on language from Sec. 36 of S.B. 431-R1 (Division of Financial Institutions).

(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. 55. 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. 56. 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. 57. 1. A licensee shall not conduct the business of making loans under any name, at any place 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. A licensee must obtain the approval of the Commissioner before using or changing a business name.

3. A licensee shall not:

(a) Use any business name which is identical or similar to a business name used by another licensee under this chapter or which may mislead or confuse the public.

(b) Use any printed forms which may mislead or confuse the public.

Sec. 58. 1. Except as otherwise provided in this section, a licensee may not conduct the business of making loans within any office, suite, room or place of business in which any other lending 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:

The provisions of subsections 2 and 3 are based on language from Sec. 38 of S.B. 431-R1 (Division of Financial Institutions).

(1) The licensee and the mortgage broker:

(I) Maintain separate accounts, books and records;

(II) Are subsidiaries of the same parent corporation; and

(III) 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) Maintain separate accounts, books and records;

(II) Are subsidiaries of the same parent corporation; and

(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.

3. If a pawnbroker is licensed to operate a check-cashing service, deferred deposit loan service, short-term loan service or title loan service, the pawnbroker may operate that service at the same office or place of business from which he conducts business as a pawnbroker pursuant to chapter 646 of NRS.

Sec. 59. 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, except that the licensee shall not operate any automated loan machine prohibited by section 29 of this act.

Sec. 60. 1. Each licensee shall keep and use in his business such books and accounting records as are in accord with generally accepted accounting practices.

2. Each licensee shall maintain a separate written or electronic 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:

(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

1 any investigation or examination made at the office or place of business
2 located outside this State.

3 ➡ The licensee must be allowed to choose between the provisions of
4 paragraph (a) or (b) in complying with this subsection.

5 5. As used in this section, "amount of cash advance" means the
6 amount of cash or its equivalent actually received by a customer or paid
7 out at his direction or in his behalf.

8 **Sec. 61.** 1. Except as otherwise provided in subsection 3, an
9 officer or employee of the Division of Financial Institutions of the
10 Department of Business and Industry shall not:

11 (a) Be directly or indirectly interested in or act on behalf of any
12 licensee;

13 (b) Receive, directly or indirectly, any payment from any licensee;

14 (c) Be indebted to any licensee;

15 (d) Engage in the negotiation of loans for others with any licensee;
16 or

17 (e) Obtain credit or services from a licensee conditioned upon a
18 fraudulent practice or undue or unfair preference over other customers.

19 2. An employee of the Division of Financial Institutions in the
20 unclassified service of the State shall not obtain new extensions of credit
21 from a licensee while in office.

22 3. Any officer or employee of the Division of Financial Institutions
23 may be indebted to a licensee on the same terms as are available to the
24 public generally.

25 4. If an officer or employee of the Division of Financial Institutions
26 has a service, a preferred consideration, an interest or a relationship
27 prohibited by this section at the time of his appointment or employment,
28 or obtains it during his employment, he shall terminate it within 120 days
29 after the date of his appointment or employment or the discovery of the
30 prohibited act.

31 **Sec. 62.** 1. For the purpose of discovering violations of this
32 chapter or of securing information lawfully required under this chapter,
33 the Commissioner or his duly authorized representatives may at any time
34 investigate the business and examine the books, accounts, papers and
35 records used therein of:

36 (a) Any licensee;

37 (b) Any other person engaged in the business of making loans or
38 participating in such business as principal, agent, broker or otherwise;
39 and

40 (c) Any person who the Commissioner has reasonable cause to
41 believe is violating or is about to violate any provision of this chapter,
42 whether or not the person claims to be within the authority or beyond the
43 scope of this chapter.

44 2. For the purpose of examination, the Commissioner or his
45 authorized representatives shall have and be given free access to the
46 offices and places of business, and the files, safes and vaults of such
47 persons.

48 3. For the purposes of this section, any person who advertises for,
49 solicits or holds himself out as willing to make any deferred deposit loan,
50 short-term loan or title loan is presumed to be engaged in the business of
51 making loans.

52 **Sec. 63.** 1. The Commissioner may require the attendance of any
53 person and examine him under oath regarding:

54 (a) Any check-cashing service or loan service regulated pursuant to
55 the provisions of this chapter; or

56 (b) The subject matter of any audit, examination, investigation or
57 hearing.

2. The Commissioner may require the production of books, accounts, papers and records for any audit, examination, investigation or hearing.

Sec. 64. 1. 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.

2. If, after auditing one or more branch locations of the licensee, the Commissioner or his authorized representatives conclude that the loans, disclosures, loan practices, computer processes, filing systems and records are identical at each branch location, the Commissioner may make an examination of only those branch locations he deems necessary.

Sec. 65. 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. 65.5. In addition to any other lawful reasons, the Commissioner may suspend or revoke a license if the licensee has engaged in any act that would be grounds for denying a license pursuant to this chapter.

Sec. 66. 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. 67. 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 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.

The provisions of Sec. 65.5 are based on language from Sec. 37 of S.B. 431-R1 (Division of Financial Institutions).

1 **Sec. 68. 1.** *If the Commissioner has reason to believe that*
2 *grounds for revocation or suspension of a license exist, he shall give 20*
3 *days' written notice to the licensee stating the contemplated action and,*
4 *in general, the grounds therefor and set a date for a hearing.*

5 2. *At the conclusion of a hearing, the Commissioner shall:*

6 (a) *Enter a written order either dismissing the charges, revoking the*
7 *license or suspending the license for a period of not more than 60 days,*
8 *which period must include any prior temporary suspension. The*
9 *Commissioner shall send a copy of the order to the licensee by registered*
10 *or certified mail.*

11 (b) *Impose upon the licensee a fine of \$500 for each violation by the*
12 *licensee of any provision of this chapter or any regulation adopted*
13 *pursuant thereto.*

14 (c) *If a fine is imposed pursuant to this section, enter such order as is*
15 *necessary to recover the costs of the proceeding, including his*
16 *investigative costs and attorney's fees.*

17 3. *The grounds for revocation or suspension of a license are that:*

18 (a) *The licensee has failed to pay the annual license fee;*

19 (b) *The licensee, either knowingly or without any exercise of due*
20 *care to prevent it, has violated any provision of this chapter or any lawful*
21 *regulation adopted pursuant thereto;*

22 (c) *The licensee has failed to pay a tax as required pursuant to the*
23 *provisions of chapter 363A of NRS;*

24 (d) *Any fact or condition exists which would have justified the*
25 *Commissioner in denying the licensee's original application for a license*
26 *pursuant to the provisions of this chapter; or*

27 (e) *The licensee:*

28 (1) *Failed to open an office for the conduct of the business*
29 *authorized by his license within 180 days after the date his license was*
30 *issued; or*

31 (2) *Has failed to remain open for the conduct of the business for a*
32 *period of 180 days without good cause therefor.*

33 4. *Any revocation or suspension applies only to the license granted*
34 *to a person for the particular office for which grounds for revocation or*
35 *suspension exist.*

36 5. *An order suspending or revoking a license becomes effective 5*
37 *days after being entered unless the order specifies otherwise or a stay is*
38 *granted.*

39 **Sec. 69.** *A licensee may surrender any license issued pursuant to*
40 *the provisions of this chapter by delivering it to the Commissioner with*
41 *written notice of its surrender, but a surrender does not affect his civil or*
42 *criminal liability for acts committed prior thereto.*

43 **Sec. 70.** *A revocation, suspension, expiration or surrender of any*
44 *license does not impair or affect the obligation of any preexisting lawful*
45 *loan agreement between the licensee and any customer. Such a loan*
46 *agreement and all lawful charges thereon may be collected by the*
47 *licensee, its successors or assigns.*

48 **Sec. 71. 1.** *Annually, on or before April 15, each licensee shall*
49 *file with the Commissioner a report of operations of the licensed*
50 *business for the preceding calendar year.*

51 2. *The licensee shall make the report under oath and on a form*
52 *prescribed by the Commissioner.*

53 3. *If any person or affiliated group holds more than one license in*
54 *this State, it may file a composite annual report.*

55 **Sec. 72. 1.** *A court of this State may exercise jurisdiction over a*
56 *party to a civil action arising under the provisions of this chapter on any*
57 *basis not inconsistent with the Constitution of the State of Nevada or the*
58 *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. 73. 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:

(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 after 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. 73.5. In addition to any other remedy or penalty, the Commissioner may impose an administrative fine of not more than \$10,000 upon a person who, without a license, conducts any business or activity for which a license is required pursuant to the provisions of this chapter.

Sec. 74. ~~1.~~ Except as otherwise provided in subsection 2 3, in addition to any other remedy or penalty, if a licensee person violates any provision of section 29, 31 to 47, inclusive, 49, 50, 57 or 58 of this act or any regulation adopted pursuant thereto, the customer may bring a civil action against the licensee person for any or all of the following relief:

~~1.~~ (a) Actual and consequential damages;

~~2.~~ (b) An additional amount, as statutory damages, which is equal to \$1,000 for each violation;

~~3.~~ (c) Punitive damages, which are subject to the provisions of NRS 42.005;

~~4.~~ (d) Reasonable attorney's fees and costs; and

~~5.~~ (e) Any other legal or equitable relief that the court deems appropriate.

2. Except as otherwise provided in subsection 3, in addition to any other remedy or penalty, if a customer brings a civil action pursuant to subsection 1 against a person who has committed a material violation of any provision of section 29 or 44 of this act, the customer is entitled to recover an additional amount, as statutory damages, which is equal to \$1,000 for each such violation.

3. A licensee person may not be held liable in any civil action brought pursuant to subsection 1 this section if the licensee person proves, by a preponderance of evidence, that the violation:

(a) Was not intentional;

The provisions of Sec. 73.5 are based on language from Sec. 40 of S.B. 431-R1 (Division of Financial Institutions).

Subsections 3 and 4 create an affirmative defense that is modeled after provisions in the federal Truth in Lending Act. See 15 U.S.C. § 1640(c).

1 (b) Was technical in nature; and
 2 (c) Resulted from a bona fide error, notwithstanding the
 3 maintenance of procedures reasonably adapted to avoid any such error.
 4 ~~3. 4. For the purposes of subsection 3, a bona fide error includes,~~
 5 ~~without limitation, clerical errors, calculation errors, computer~~
 6 ~~malfunction and programming errors and printing errors, except that an~~
 7 ~~error of legal judgment with respect to the licensee's obligations under~~
 8 ~~this chapter is not a bona fide error.~~

9 **Sec. 75.** NRS 598D.130 is hereby amended to read as follows:

10 598D.130 A mortgage, deed of trust or other instrument that
 11 encumbers home property as security for repayment of a home loan must
 12 expressly indicate in writing in a size equal to at least 14-point bold type
 13 on the front page of the mortgage, deed of trust or other instrument that
 14 the home loan is a home loan as defined in NRS 598D.040 ~~+~~ and is
 15 subject to the provisions of § 152 of the Home Ownership and Equity
 16 Protection Act of 1994, 15 U.S.C. § 1602(aa), and the regulations
 17 adopted by the Board of Governors of the Federal Reserve System
 18 pursuant thereto, including, without limitation, 12 C.F.R. § 226.32.

19 **Sec. 75.5.** NRS 41.620 is hereby amended to read as follows:

20 41.620 1. ~~Any~~ Except as otherwise provided in section 45 of this
 21 act, any person who:

22 (a) Makes, utters, draws or delivers a check or draft for the payment of
 23 money drawn upon any financial institution or other person, when he has
 24 no account with the drawee of the instrument or has insufficient money,
 25 property or credit with the drawee to pay; or

26 (b) Uses a credit card or debit card to obtain money, goods, property,
 27 services or anything of value, when he knows or should have known the
 28 credit card or debit card is no longer valid,

29 ~~➤~~ and who fails to pay the amount in cash to the payee, issuer or other
 30 creditor within 30 days after a demand therefor in writing is mailed to him
 31 by certified mail, is liable to the payee, issuer or other creditor for the
 32 amount of the check, draft or extension of credit, and damages equal to
 33 three times the amount of the check, draft or extension of credit, but not
 34 less than \$100 nor more than \$500.

35 2. As used in this section, unless the context otherwise requires:

36 (a) "Credit card" has the meaning ascribed to it in NRS 205.630;

37 (b) "Debit card" has the meaning ascribed to it in NRS 205.635; and

38 (c) "Issuer" has the meaning ascribed to it in NRS 205.650.

39 **Sec. 76.** NRS 232.545 is hereby amended to read as follows:

40 232.545 1. An Investigative Account for Financial Institutions is
 41 hereby created in the State General Fund. The Account consists of money
 42 which is:

43 (a) Received by the Department of Business and Industry in connection
 44 with the licensing of financial institutions and the investigation of persons
 45 associated with those institutions; and

46 (b) Required by law to be placed therein.

47 2. The Director of the Department of Business and Industry or his
 48 designee may authorize expenditures from the Investigative Account to
 49 pay the expenses incurred:

50 (a) In investigating applications for licensing of financial institutions
 51 and in investigating persons associated with those institutions;

52 (b) In conducting special investigations relating to financial institutions
 53 and persons associated with those institutions; and

54 (c) In connection with mergers, consolidations, conversions,
 55 receiverships and liquidations of financial institutions.

56 3. As used in this section, "financial institution" means an institution
 57 for which licensing or registration is required by the provisions of titles 55
 58 and 56 ~~[and chapters 604 and 649]~~ of NRS ~~+~~, chapter 649 of NRS and
 59 sections 2 to 74, inclusive, of this act.

Section 75.5 is added to
 further clarify that NRS
 41.620 does not apply to
 loan transactions governed
 by this bill.

1 Sec. 76.3. Chapter 278 of NRS is hereby amended by adding thereto
2 a new section to read as follows:

3 ~~1. Except as otherwise provided in this section, in a county whose~~
4 ~~population is less than 100,000, each governing body shall adopt zoning~~
5 ~~regulations which restrict to specific districts within the geographical~~
6 ~~jurisdiction of the governing body the construction, reconstruction,~~
7 ~~alteration, repair or use of buildings, structures or land of a business~~
8 ~~that operates a check-cashing service, deferred deposit loan service,~~
9 ~~short-term loan service or title loan service pursuant to sections 2 to 74,~~
10 ~~inclusive, of this act.~~

11 ~~2. The provisions of this section do not apply to any place of~~
12 ~~business devoted to accounting, recordkeeping or administrative~~
13 ~~purposes only.~~

14 ~~3. If, on July 1, 2005, a governing body has in effect zoning~~
15 ~~regulations which include the type of restrictions described in subsection~~
16 ~~1, the governing body shall be deemed to be in compliance with this~~
17 ~~section so long as those zoning regulations remain in effect and are not~~
18 ~~amended in manner that conflicts with this section.~~

19 Sec. 76.6. NRS 278.250 is hereby amended to read as follows:

20 ~~278.250 1. For the purposes of NRS 278.010 to 278.630, inclusive,~~
21 ~~and section 76.3 of this act, the governing body may divide the city,~~
22 ~~county or region into zoning districts of such number, shape and area as~~
23 ~~are best suited to carry out the purposes of NRS 278.010 to 278.630,~~
24 ~~inclusive [.] and section 76.3 of this act. Within the zoning district it may~~
25 ~~regulate and restrict the erection, construction, reconstruction, alteration,~~
26 ~~repair or use of buildings, structures or land.~~

27 ~~2. The zoning regulations must be adopted in accordance with the~~
28 ~~master plan for land use and be designed:~~

29 ~~(a) To preserve the quality of air and water resources;~~

30 ~~(b) To promote the conservation of open space and the protection of~~
31 ~~other natural and scenic resources from unreasonable impairment;~~

32 ~~(c) To provide for recreational needs;~~

33 ~~(d) To protect life and property in areas subject to floods, landslides~~
34 ~~and other natural disasters;~~

35 ~~(e) To conform to the adopted population plan, if required by NRS~~
36 ~~278.170;~~

37 ~~(f) To develop a timely, orderly and efficient arrangement of~~
38 ~~transportation and public facilities and services, including facilities and~~
39 ~~services for bicycles;~~

40 ~~(g) To ensure that the development on land is commensurate with the~~
41 ~~character and the physical limitations of the land;~~

42 ~~(h) To take into account the immediate and long-range financial impact~~
43 ~~of the application of particular land to particular kinds of development, and~~
44 ~~the relative suitability of the land for development;~~

45 ~~(i) To promote health and the general welfare;~~

46 ~~(j) To ensure the development of an adequate supply of housing for the~~
47 ~~community, including the development of affordable housing;~~

48 ~~(k) To ensure the protection of existing neighborhoods and~~
49 ~~communities, including the protection of rural preservation neighborhoods;~~

50 ~~3. The zoning regulations must be adopted with reasonable~~
51 ~~consideration, among other things, to the character of the area and its~~
52 ~~peculiar suitability for particular uses, and with a view to conserving the~~
53 ~~value of buildings and encouraging the most appropriate use of land~~
54 ~~throughout the city, county or region;~~

55 ~~4. In exercising the powers granted in this section, the governing~~
56 ~~body may use any controls relating to land use or principles of zoning that~~
57 ~~the governing body determines to be appropriate, including, without~~
58 ~~limitation, density bonuses, inclusionary zoning and minimum density~~
59 ~~zoning;~~

Sec. 76.3 and Sec. 76.6
are based on Sec. 2 and
Sec. 4 of A.B. 340-R1
(Ms. Giunchigliani).

~~5. As used in this section:~~

~~(a) "Density bonus" means an incentive granted by a governing body to a developer of real property that authorizes the developer to build at a greater density than would otherwise be allowed under the master plan, in exchange for an agreement by the developer to perform certain functions that the governing body determines to be socially desirable, including, without limitation, developing an area to include a certain proportion of affordable housing.~~

~~(b) "Inclusionary zoning" means a type of zoning pursuant to which a governing body requires or provides incentives to a developer who builds residential dwellings to build a certain percentage of those dwellings as affordable housing.~~

~~(c) "Minimum density zoning" means a type of zoning pursuant to which development must be carried out at or above a certain density to maintain conformance with the master plan.~~

Sec. 77. NRS 363A.050 is hereby amended to read as follows:

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 74, 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;

(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. 78. 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 74, inclusive, of this act.

Sec. 79. 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 74, 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 issuing 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;

(i) Person engaged in the business of lending 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

1 assessments collected must be reduced by any amounts collected by the
2 Commissioner from an entity for the recovery of the costs of legal services
3 provided by the Attorney General in a specific case.

4 3. The Commissioner shall collect from each entity identified in
5 subsection 1 an assessment that is based on:

6 (a) A portion of the total amount of all assessments as determined
7 pursuant to subsection 2, such that the assessment collected from an entity
8 identified in subsection 1 shall bear the same relation to the total amount of
9 all assessments as the total assets of that entity bear to the total of all assets
10 of all entities identified in subsection 1; or

11 (b) Any other reasonable basis adopted by the Commissioner.

12 4. The assessment required by this section is in addition to any other
13 assessment, fee or cost required by law to be paid by an entity identified in
14 subsection 1.

15 5. Money collected by the Commissioner pursuant to this section
16 must be deposited in the State Treasury pursuant to the provisions of NRS
17 658.091.

18 **Sec. 80.** NRS 675.040 is hereby amended to read as follows:

19 675.040 This chapter does not apply to:

20 1. A person doing business under the authority of any law of this
21 State or of the United States relating to banks, savings banks, trust
22 companies, savings and loan associations, credit unions, development
23 corporations, mortgage brokers, mortgage bankers, thrift companies,
24 pawnbrokers or insurance companies.

25 2. A real estate investment trust, as defined in 26 U.S.C. § 856.

26 3. An employee benefit plan, as defined in 29 U.S.C. § 1002(3), if the
27 loan is made directly from money in the plan by the plan's trustee.

28 4. An attorney at law rendering services in the performance of his
29 duties as an attorney at law if the loan is secured by real property.

30 5. A real estate broker rendering services in the performance of his
31 duties as a real estate broker if the loan is secured by real property.

32 6. Except as otherwise provided in this subsection, any firm or
33 corporation:

34 (a) Whose principal purpose or activity is lending money on real
35 property which is secured by a mortgage;

36 (b) Approved by the Federal National Mortgage Association as a seller
37 or servicer; and

38 (c) Approved by the Department of Housing and Urban Development
39 and the Department of Veterans Affairs.

40 7. A person who provides money for investment in loans secured by a
41 lien on real property, on his own account.

42 8. A seller of real property who offers credit secured by a mortgage of
43 the property sold.

44 9. A person holding a nonrestricted state gaming license issued
45 pursuant to the provisions of chapter 463 of NRS.

46 10. A person licensed to do business pursuant to sections 2 to 74,
47 inclusive, of this act with regard to those services regulated pursuant to
48 sections 2 to 74, inclusive, of this act.

49 **Sec. 81.** NRS 675.060 is hereby amended to read as follows:

50 675.060 1. No person may engage in the business of lending in this
51 State without first having obtained a license from the Commissioner
52 *pursuant to this chapter* for each office or other place of business at which
53 the person engages in such business ~~†~~, *except that if a person intends to*
54 *engage in the business of lending in this State as a deferred deposit loan*
55 *service, short-term loan service or title loan service, as those terms are*
56 *defined in sections 2 to 74, inclusive, of this act, the person must obtain a*
57 *license from the Commissioner pursuant to sections 2 to 74, inclusive, of*
58 *this act before the person may engage in any 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. 82. 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. 83. 1. If a person:

(a) On July 1, 2005, holds a valid certificate of registration or license that was issued by the Commissioner of Financial Institutions pursuant to chapter 604 or 675 of NRS before July 1, 2005; and

(b) Operates a check-cashing service, deferred deposit loan service, short-term loan service or title loan service, as those terms are defined in the provisions of sections 2 to 74, inclusive, of this act,

the person's certificate of registration or license shall be deemed to be a license issued by the Commissioner of Financial Institutions pursuant to the provisions of sections 2 to 74, inclusive, of this act until the date on which the person would have been required to renew his certificate of registration or license pursuant to chapter 604 or 675 of NRS.

2. ~~Except as otherwise provided in subsections 3 and 4, a~~ person described in subsection 1 shall:

(a) On and after July 1, 2005, comply with all provisions of sections 2 to 74, inclusive, of this act relating to transactions with customers, including, without limitation, all provisions relating to loans, extensions, repayment plans, interest, fees, charges and collections; and

(b) On and after October 1, 2005, comply with all other provisions of sections 2 to 74, inclusive, of this act, except that the person does not have to renew his certificate of registration or license until the date on which the person would have been required to renew his certificate of registration or license pursuant to chapter 604 or 675 of NRS.

3. A person described in subsection 1 is not required to comply with the following provisions of sections 2 to 74, inclusive, of this act sooner than October 1, 2005, or the date of any extension granted by the Commissioner of Financial Institutions pursuant to subsection 4:

(a) Any provision requiring the use of the Spanish language; and

(b) Any provision requiring changes to or replacement of existing computer software or major modifications to existing business processes, as determined by the Commissioner.

4. If the person is unable to comply with any provision described in paragraph (a) or (b) of subsection 3 by October 1, 2005, the person may request an extension from the Commissioner. The Commissioner may grant such an extension, to a date not later than January 1, 2006, if the person establishes that compliance by October 1, 2005:

(a) Is not economically feasible;

(b) Is prevented by factors beyond the control of the person; or

(c) Is prevented by any other factors that the Commissioner deems to be an appropriate justification for an extension.

Sec. 84. This act becomes effective on July 1, 2005.

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.

H

PROPOSED REVISIONS TO THE MOCK-UP FOR ASSEMBLY BILL NO. 384 FIRST REPRINT

PREPARED FOR ASSEMBLYWOMAN BUCKLEY
MAY 16, 2005

PREPARED BY THE LEGAL DIVISION

IMPORTANT NOTE: THE REVISIONS ARE SHOWN IN PURPLE

Sec. 23 of the Mock-Up would be further revised as follows:

Sec. 23. The provisions of this chapter do not prohibit a licensee from offering a customer a grace period on the repayment of a loan or an extension of a loan, except that the licensee shall not charge the customer:

1. Any fees for granting such a grace period; or
2. Any additional fees or additional interest on the outstanding loan during such a grace period.

Sec. 31 of the Mock-Up would be further revised as follows:

Sec. 31. 1. Before making any loan to a customer, a licensee shall provide to the customer a written loan agreement which may be kept by the customer and which must be written in:

- (a) English, if the transaction is conducted in English; or
- (b) Spanish, if the transaction is conducted in Spanish.

2. The loan agreement must include, without limitation, the following information:

- (a) The name and address of the licensee and the customer;
- ~~(b) The date of the loan;~~
- ~~(c) The nature of the security for the loan, if any;~~
- ~~(d) The date and 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, amount financed, annual percentage rate, finance charge, total of payments, payment schedule, late fees and any other fees that are not and a description and the amount of every fee charged, regardless of the name given to the fee and regardless of whether the fee is required to be included in the finance charge under the Truth in Lending Act and Regulation Z;~~
- ~~(e) The description or schedule of payments on the loan;~~
- ~~(f) (d) A disclosure of the right of the customer to rescind a loan pursuant to the provisions of this chapter;~~
- ~~(g) (e) 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~~
- (f) A disclosure stating that, if the customer defaults on the loan, the customer has the opportunity within 30 days of the date of default to enter into a repayment plan with a term of at least 90 days, and that the

1 licensee must offer the repayment plan to the customer before the
2 licensee commences any civil action or process of alternative dispute
3 resolution or, if appropriate for the loan, before the licensee repossesses
4 a vehicle; and

5 (g) Any other disclosures required under the Truth in Lending Act
6 and Regulation Z or under any other applicable federal or state statute
7 or regulation.

8
9
10 Sec. 34 of the Mock-Up would be further revised as follows:

11
12 Sec. 34. A licensee shall not:

13 1. Make a deferred deposit loan or short-term loan that exceeds 25
14 percent of the expected gross monthly income of the customer during the
15 term of the loan unless justified by particular circumstances, when the
16 loan is made. A licensee is not in violation of the provisions of this
17 subsection if the customer presents evidence of his gross monthly income
18 to the licensee and represents to the licensee in writing that the loan does
19 not exceed 25 percent of the expected gross monthly income of the
20 customer, during the term of the loan.

21 2. Make more than one deferred deposit loan or short-term loan to
22 the same customer at one time or before any outstanding balance is paid
23 in full on an existing loan made by that licensee to the customer unless:

24 (a) The customer is seeking multiple loans that do not exceed the
25 limit set forth in subsection 1;

26 (b) The licensee charges the same rate of interest or a lower annual
27 percentage rate for any additional loans as he charged for the initial
28 loan;

29 (c) Except for the interest charged pursuant to paragraph (b), that
30 part of the finance charge which consists of interest only, the licensee
31 does not impose any other charge or fee to initiate any additional loans,
32 except that a licensee who makes deferred deposit loans or short-term
33 loans in accordance with the provisions of subsection 2 of section 43 of
34 this act may charge a reasonable fee for preparing documents in an
35 amount that does not exceed \$50, in the aggregate, for all the additional
36 loans combined; and

37 (d) If the additional loans are deferred deposit loans and the
38 customer provides one or more additional checks that are not paid upon
39 presentment, the licensee does not charge any fees to the customer
40 pursuant to section 45 of this act, except for the fees allowed pursuant to
41 that section for the first check that is not paid upon presentment.

Sec. 35 of the Mock-Up would be further revised as follows:

Sec. 35. A licensee shall not:

1. Accept:

(a) Collateral as security for a loan, 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.

(c) A check as security for a 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 of payments set forth in the disclosure statement required by the federal Truth in Lending Act, 15 U.S.C. §§ 1601 et seq., and Regulation Z that is provided to the customer.

2. 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.~~ amount financed, annual percentage rate, finance charge, total of payments, payment schedule, late fees and any other fees that are not and a description and the amount of every fee charged, regardless of the name given to the fee and regardless of whether the fee is required to be included in the finance charge under the Truth in Lending Act and Regulation Z. ~~Compliance with the federal Truth in Lending Act, 15 U.S.C. §§ 1601 et seq., and Regulation Z constitutes compliance with this subsection.~~

3. 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.

4. 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.

5. Fail to comply with a payment plan which is negotiated and agreed to by the licensee and customer.

6. Charge any fee to cash a check representing the proceeds of a loan made by the licensee or any agent, affiliate or subsidiary of the licensee.

Sec. 43 of the Mock-Up would be further revised as follows:

Sec. 43. ~~¶~~ 1. Except as otherwise provided in subsection 2, 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 deferred deposit loan or short-term loan to pay the balance of the outstanding loan, the licensee shall not establish or extend such a period beyond ~~8 weeks~~ 60 days after the expiration of the initial loan period.

2. This section does not apply to a deferred deposit loan or short-term loan if the licensee:

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

(1) Charges an annual percentage rate of less than 200 percent;

(2) Requires the customer to make a payment on the loan at least once every 30 days;

(3) Requires the loan to be paid in full ~~within~~ in not less than 150 days; and

(4) Provides that interest does not accrue on the loan at the annual percentage rate set forth in the loan agreement after the date of maturity of the loan;

(b) Performs a credit check of the customer with a major consumer reporting agency before making the loan;

(c) Reports information relating to the loan experience of the customer to a major consumer reporting agency;

(d) Gives the customer the right to rescind the deferred deposit loan or short-term loan within 5 days after the loan is made without charging the customer any fee for rescinding the loan;

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

(1) Accredited by the Council on Accreditation for Services for Families and Children, Inc., or its successor organization; and

~~(f) Is a~~ (2) A member of the National Foundation for Credit Counseling, or its successor organization; and

~~(e)~~ (f) Does not commence a civil action or any process of alternative dispute resolution on a defaulted loan or any extension or repayment plan thereof.

Sec. 44 of the Mock-Up would be further revised as follows:

Sec. 44. 1. ~~If Except as otherwise provided in this chapter section 36.5 of this act, if a customer defaults on a loan or on any extension or repayment plan relating to the loan, whichever is later, the licensee may collect only the following amounts from the customer, less all payments made before and after default:~~

(a) The principal amount of the loan.

(b) The interest accrued before the expiration of the initial loan period at the annual percentage rate of interest set forth in the disclosure statement required by the federal Truth in Lending Act, ~~15 U.S.C. §§ 1601 et seq.~~ and Regulation Z that is provided to the customer. If there is an extension ~~or repayment plan~~ relating to the loan, the licensee may charge and collect interest pursuant to this paragraph for a period not to exceed ~~8 weeks~~ 60 days after the expiration of the initial loan period, unless otherwise allowed by section 43 of this act.

(c) The interest accrued after the expiration of the initial loan period or after any extension or repayment plan that is allowed pursuant to ~~paragraph (b) this chapter~~, whichever is later, at ~~a rate of interest~~ an annual percentage rate not to exceed the prime rate at the largest bank in Nevada, as ascertained by the Commissioner, on January 1 or July 1, as the case may be, immediately preceding the expiration of the initial loan period, plus 10 percent. The licensee may charge and collect interest pursuant to this paragraph for a period not to exceed ~~12 weeks~~ 90 days. After that period, the licensee shall not charge or collect any interest on the loan.

(d) Any fees allowed pursuant to section 45 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 and any other charges expressly permitted pursuant to ~~this chapter sections 34, 36.5 and 42 of this act~~, the licensee shall not charge any other amount to a customer, including, without limitation, any amount or charge payable directly or indirectly by the customer and imposed directly or indirectly by the licensee as an incident to or as a condition of the extension of the period for the payment of the loan or the extension of credit. Such an amount includes, without limitation:

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

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

E-5

Advanced Credit and Title Loans
955 West 5th Street
Reno, NV 89503
Phone: (775) 322-6788 Fax: (775) 322-2119

May 16, 2005

Chairman Townsend, Vice Chairman Hardy and
Members of the Senate Commerce and Labor Committee
Nevada Legislature
Carson City, Nevada

Re: AB 384

Dear Senators:

As an established 675 installment loan company in Northern Nevada, I seriously request that anything that relates to the installment loan industry be stricken from AB 384. I will give you particular reasons that affect not only my business, but also other 675 business entities that have not been considered by the convoluted legislation that comprises AB 384.

This Bill separates those businesses that charge under 40% interest from those that charge over 40%. I would like to ask why 40% became the determining factor. I am asking this question because AB 384 as presently written will eliminate many of the very good entities that serve a serious need to the people of the State of Nevada.

1. Let us consider Consolidation Loans for people to pay off various small loans at a greatly reduced Annual Percentage Rate (APR), which range from 79% and up, depending upon the risk evaluation. AB 384 does not allow people to have more than 25% of their net revenue applied. This would primarily inhibit this loan to pay off several other loans at a higher rate.

2. The second item I would like to bring up is Title Loans. Some of these loans are created at only 1% and up (52% APR). This would stop my business from putting together these kinds of loans because of the risk factors involved without being able to recover my principal, let alone my fees. For example, if I were to give someone a loan on a car for \$500 with an Actual Cash Value (ACV) of \$1,500 and then the transmission on the vehicle goes out, the value of the vehicle is \$0. If I am unable to sue to recover the monies I have loaned, it is not very likely that I will be making these types of loans. I cannot afford to do so and I do not know anyone in the business that can. Were the vehicle in question to sell for more than my costs, the difference would be returned to the debtor; conversely, if the vehicle sells for less than what I have invested, it is only right and fair that I be able to sue to recover those funds. If I cannot sue on the collateral, I am giving the loan for free.

Chairman Townsend, Vice Chairman Hardy and
Members of the Senate Commerce and Labor Committee
Page Two
May 16, 2005

3. This will also affect small auto dealers who are making title loans on the sale of their vehicles and create a domino effect with regards to selling their paper. In other words, the small auto dealer industry is able to carry its own paper for a short term in order to season their paper and then re-sell that paper to another lender. This could not occur under AB 384 as presently written. To purchase their paper and not be able to collect on my collateral would stop me from servicing this particular industry.

4. This would also eliminate my company from doing Inventory Financing for the same auto dealer because the APR would be 5% per month and would not allow me to recover in the event I had to sue the individual on a personal basis. Other similar businesses would likewise be affected.

5. Receivable Financing is an issue that we would have to eliminate. Receivable financing is helping individuals with small businesses that need Receivable Financing in order to give them the necessary finances to continue their business operations. The same principles apply as in the other examples above.

6. With respect to Equipment Financing, AB 384 will primarily eliminate our ability to do Equipment Financing for individuals that have small businesses that need this help in order to expand their businesses.

7. This also affects Retail Installment Sales of Goods and Services as defined in NRS Chapter 97 and impacts our businesses in a negative fashion.

8. AB 384 would not allow 675 lenders the security afforded under Chapter 104 of the Uniform Commercial Code. It would entirely eliminate the financing availability for those individuals and companies that need this type of financing to continue, grow and expand their businesses and thereby would create a large void in this industry.

AB 384 could have a devastating effect on indefinite term financing which is not even addressed by the Bill. AB 384 would also have an opposite effect on the spirit of NRS 675 according to NRS 675.030 Legislative Declaration, which reads in part:

NRS 675.030 Legislative declaration. The legislature finds as fact and determines that:

1. There exists in this state a widespread demand for loans repayable in installments, which loans may or may not be made on substantial security. This demand has been steadily increased by many social and economic factors.
2. The expense of making and collecting installment loans are necessarily high in relation to the amounts lent.
3. It is the purpose of this chapter to:
 - (d) Ensure the availability in this state of adequate, efficient and competitive financial services.

Chairman Townsend, Vice Chairman Hardy and
Members of the Senate Commerce and Labor Committee
Page Three
May 16, 2005

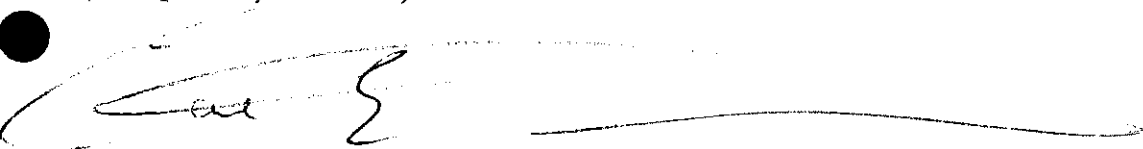
NRS 675.300 in relation to AB 384 would also be drastically altered as written, to wit:

NRS 675.300 Insurance as security for loans: Conditions, limitations.

2. A licensee may require that a borrower provide title insurance on real property offered as security for a loan under this chapter. The title insurance must be placed through a title insurance company authorized to do business in this state.
3. A licensee may provide, obtain or take as security for a loan:
 - (c) Insurance which protects his interest in the collateral pledged for the loan;
 - (d) Single interest non-filing insurance; or
 - (e) Any other credit-related insurance approved by the Commissioner.

In conclusion, AB 384 needs to be considered in its totality with all the domino effects it creates as related to NRS 675, as well as all the ancillary issues and results that have not been addressed or even considered by AB 384. If all of the issues are not adequately addressed or, alternatively, if all references to 675 installment loan businesses are not removed from the bill, then AB 384 should be abolished in its entirety.

Respectfully submitted,



CARL E. HULL
President

cc: Committee Members
Assemblywoman Barbara Buckley

CEH/djs

MOCK-UP

PROPOSED AMENDMENT TO
ASSEMBLY BILL NO. 384
FIRST REPRINT

PREPARED FOR THE SENATE COMMITTEE ON COMMERCE AND LABOR
MAY 12, 2005

PREPARED BY THE LEGAL DIVISION

PLEASE OBSERVE the
34 separate numbered
items with circled
lines and stricken
text that should be
removed from the bill.

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:

1 **Section 1.** Title 52 of NRS is hereby amended by adding thereto a
2 new chapter to consist of the provisions set forth as sections 2 to 74.,
3 inclusive, of this act.

4 **Sec. 2.** *As used in this chapter, unless the context otherwise*
5 *requires, the words and terms defined in sections 3 2.5 to 21.5,*
6 *inclusive, of this act have the meanings ascribed to them in those*
7 *sections.*

8 **Sec. 2.5. 1.** "Automated loan machine" means any machine or
9 other device, regardless of the name given to it or the technology used,
10 that:

11 (a) Is automated;

12 (b) Is designed or intended to allow a customer, without any
13 additional assistance from another person, to receive or attempt to
14 receive a deferred deposit loan or short-term loan through the machine
15 or other device; and

16 (c) Is set up, installed, operated or maintained by or on behalf of the
17 person making the loan or any agent, affiliate or subsidiary of the
18 person.

19 **2.** The term does not include any machine or other device used
20 directly by a customer to access the Internet unless the machine or other
21 device is made available to the customer by the person making the loan
22 or any agent, affiliate or subsidiary of the person.

23 **Sec. 3.** "Cashing" means providing currency or a negotiable
24 instrument in exchange for a check.

25 **Sec. 4. 1.** "Check" means:

26 (a) A draft, other than a documentary draft, payable on demand and
27 drawn on a bank; or

28 (b) A cashier's check or teller's check.

29 **2.** An instrument may be a check even though it is described on its
30 face by another term, such as "money order."

Sec. 2.5 is based on the intent
of Sec. 2 of A.B. 340-R1 (Ms.
Giunchigliani).

1 Sec. 5. "Check-cashing service" means any person engaged in the
2 business of cashing checks for a fee, service charge or other
3 consideration.

4 Sec. 6. "Commissioner" means the Commissioner of Financial
5 Institutions.

6 Sec. 7. "Customer" means any person who receives or attempts to
7 receive check-cashing services, deferred deposit loan services, ~~short-term~~
8 ~~loan services or title loan services from another person.~~

9 Sec. 8. 1. "Default" means the failure of a customer to:

10 (a) Make a scheduled payment ~~on a loan~~ on or before the due date
11 for the payment under the terms of a lawful loan agreement and any
12 grace period that complies with the provisions of section 23 of this act or
13 under the terms of any lawful extension or repayment plan relating to
14 the loan and any grace period that complies with the provisions of
15 section 23 of this act; or

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

17 (1) ~~The expiration of the initial loan period as set forth in a lawful~~
18 ~~loan agreement and any grace period that complies with the provisions~~
19 ~~of section 23 of this act; or~~

20 (2) The due date of any lawful extension or repayment plan
21 relating to the loan and any grace period that complies with the
22 provisions of section 23 of this act, provided that the due date of the
23 extension or repayment plan ~~is not later than 8 weeks after the expiration~~
24 ~~of the initial loan period~~ does not violate the provisions of this chapter.

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

27 Sec. 9. "Deferred deposit loan" means a transaction in which,
28 pursuant to a ~~written~~ loan agreement:

29 1. A customer tenders to another person:

30 (a) A personal check drawn upon the account of the customer; or

31 (b) Written authorization for an electronic transfer of money for a
32 specified amount from the account of the customer; and

33 2. The other person:

34 (a) Provides to the customer an amount of money that is equal to the
35 face value of the check or the amount specified in the written
36 authorization for an electronic transfer of money, less any fee charged
37 for the transaction; and

38 (b) Agrees, for a specified period, not to cash the check or execute
39 the electronic transfer of money for the amount specified in the written
40 authorization.

41 Sec. 10. "Deferred deposit loan service" means any person engaged
42 in the business of making deferred deposit loans for a fee, service charge
43 or other consideration.

44 Sec. 11. "Electronic transfer of money" means any transfer of
45 money, other than a transaction initiated by a check or other similar
46 instrument, that is initiated through an electronic terminal, telephone,
47 computer or magnetic tape for the purpose of ordering, instructing or
48 authorizing a financial institution to debit or credit an account.

49 Sec. 12. 1. "Extension" means any extension or rollover of a loan
50 beyond the date on which the loan is required to be paid in full under the
51 original terms of the loan agreement, regardless of the name given to the
52 extension or rollover.

53 2. The term does not include a grace period.

54 Sec. 13. "Grace period" means any period of deferment offered
55 gratuitously by a licensee to a customer if the licensee complies with the
56 provisions of section 23 of this act.

57 Sec. 14. "Licensee" means any person who has been issued one or
58 more licenses to operate a check-cashing service, deferred deposit loan