

In the
Supreme Court of the State of Nevada

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Elizabeth A. Brown
Clerk of Supreme Court

KATE FELDMAN, an individual;
STOP PREDATORY LENDING NV,
a Nevada nonprofit corporation,

Appellants,

vs.

NEVADANS FOR FINANCIAL
CHOICE, a Nevada Political Action
Committee; CHRISTINA BAUER,
an individual; FRANCISCO V.
AGUILAR, in his official capacity as
Nevada Secretary of State;
DAILYPAY, INC., a Delaware
Corporation; PREFERRED
CAPITAL FUNDING-NEVADA,
LLC, a Nevada limited liability
company; ALLIANCE FOR
RESPONSIBLE CONSUMER
LEGAL FUNDING, an Illinois
nonprofit corporation;
ACTIVEHOURS, INC., a Delaware
corporation; and STACY PRESS, an
individual,

Respondents.

Case No.: 88526

District Court Case No.:
Lead Case No.: 24 OC 00018 1B

Consolidated with:

Case No.: 24 OC 00021 1B

Case No.: 24 OC 00023 1B

Case No.: 24 OC 00029 1B

APPELLANTS' APPENDIX Vol. 1 of 4

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DATED this 1st day of May, 2024.

BRAVO SCHRAGER LLP

By: /s/ Bradley Schrager

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CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of May, 2024, a true and correct copy of **APPELLANTS' APPENDIX** was served upon all counsel of record by electronically filing the document using the Nevada Supreme Court's electronic filing system:

By: /s/ Dannielle Fresquez
Dannielle Fresquez, an Employee of
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IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

NEVADANS FOR FINANCIAL CHOICE, a
Nevada Political Action Committee, and
CHRISTINA BAUER, an Individual,

Plaintiffs,

v.

KATE FELDMAN, an individual, and
FRANCISCO AGUILAR, in his official
capacity as Nevada Secretary of State,

Defendants.

Case No.: 24 OC 0001 P18
Dept. No.: II

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF
CONCERNING STATEWIDE BALLOT
INITIATIVE**

(Priority Matter Under NRS 295.061)

**Arbitration Exemption: Declaratory and
Injunctive Relief**

Plaintiffs Nevadans For Financial Choice, PAC and Christina Bauer bring this complaint for declaratory and injunctive relief against Defendants Kate Feldman and Francisco Aguilar, in his official capacity as the Nevada Secretary of State, pursuant to NRS 295.009, 30.030 and 33.010. Plaintiffs allege as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction pursuant to NRS 295.061 as this is a challenge to a statewide ballot initiative. Furthermore, the Court has jurisdiction to grant declaratory and injunctive relief under NRS 30.030 and 33.010.

2. Venue is proper under NRS 295.061(1) which specifies that this challenge shall be filed in the First Judicial District Court.

REC'D & FILED

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WILLIAM SCOTT HOEN
CLERK
BY K. PETERSON
DEPUTY

PARTIES

3. Plaintiff Nevadans For Financial Choice is a Nevada Political Action Committee duly registered in the State of Nevada.

4. Plaintiff Christina Bauer is a registered voter and resident of the State of Nevada.

5. Defendant Kate Feldman is, upon information and belief, a resident of the State of Nevada and on January 5, 2024, filed with the Nevada Secretary of State a statewide ballot measure which she deceptively characterized as "Preventing Predatory Payday and Other Loans Act" (the "Initiative").

6. Defendant Francisco Aguilar is the Nevada Secretary of State and is named in his official capacity. As the Secretary, Mr. Aguilar is responsible for the execution and enforcement of Nevada's election laws. His duties include qualifying initiatives for submission to the Nevada Legislature and to disqualify those that are invalid under Nevada law.

COMMON FACTUAL ALLEGATIONS

7. On January 5, 2024, Defendant Feldman filed the Initiative S-01-2024 with the Nevada Secretary of State. A true and correct copy of the Notice of Intent to Circulate Statewide Initiative associated with S-01-2024 is attached hereto as Exhibit 1.

8. The Initiative seeks to add a new Chapter 604D to the Nevada Revised Statutes amending a multitude of existing statutory chapters.

9. While the Initiative purports to be focused upon what it characterizes as "payday loans," in actuality its sweeping breadth covers a wide range of financial transactions. Indeed, the Initiative's Section 8 lists nearly ten different distinct categories of financial transactions with a final catch-all provision declaring that it also applies to any "loans made by a bank, savings bank, savings and loan association, or credit union organized, chartered, or holding a certificate of authorization to do business under the laws of this State."

10. Without ever using the term, what the Initiative really seeks to impose is a "usury" law – contrary to existing Nevada law – on wholly distinct and different financial transactions. On top of that, it purports to have Nevada opt out of the "Depository Institutions Deregulation and Monetary Control Act of 1980."

1 11. Then, in Section 15, the Initiative creates an exemption until January 1, 2030, for
2 "entities licensed under the laws of this State to provide earn wage access services, as defined in
3 Senate Bill No. 290 of the 82nd Regular Session of the Nevada Legislature (2023)"

4 12. Of course, none of these discreet subjects is disclosed anywhere in the Initiative's
5 statutory-mandated description of effect.

6 13. Rather, the very first paragraph of the Initiative misleads Nevada citizens, declaring:

7 Section 2. *Liberal Construction.* *The provisions of this Chapter shall be liberally*
8 *construed to achieve its purpose, which are combating predatory payday lending*
9 *and other high cost loans; ensuring that out-of-state lenders cannot flout Nevada*
10 *law by making payday loans, other loans, or transactions subject to this chapter at*
11 *unlawful rates on Nevada residents; and protecting law-abiding lenders from unfair*
12 *competition by predatory, out-of-state entities.*

13 14. In actuality, this assertion is deceptive. The Initiative applies to virtually all types
14 of loans and has nothing to do with protecting Nevada lenders from out-of-state entities or
15 competition. This Initiative misleads the public by pretending that it is directed at what it
16 characterizes as only certain "predatory payday" loans: - whatever that is supposed to mean – when
17 in fact it is designed to apply to wide swaths and distinct forms of financial transactions throughout
18 the State.

19 15. On top of that, the Initiative's Section 17 would provide a wholesale change to
20 NRS 21.105, which governs writs of execution and writs of garnishment in the State of Nevada.
21 This distinct aspect of the Initiative purports to eliminate a number of specific exemptions for these
22 writ proceedings, and then proposes to increase the financial size of a singular exemption by more
23 than ten times the existing level adopted by the Nevada Legislature.

24 16. In Section 18, the Initiative would then amend NRS 21.090 to increase the amount
25 of the statutory exemption for disposable earnings, and then adjust that exemption for inflation.

26 17. The various distinct forms of financial transactions within the reach of this Initiative,
27 and the specified exemptions to it, are not related to or germane to a single subject matter as
28 NRS 295.009(1)(a) requires.

1 18. Nor are the provisions dealing with changing Nevada's laws governing writs of
2 execution or garnishment related to or germane to the other provisions of the Initiative. Rather,
3 each is a separate and distinct subject matter under NRS 295.009(1)(a).

4 19. This last point is confirmed by the Initiative's proposed description of effect under
5 NRS 295.009(1)(b), which confesses the single-subject violation:

6 **DESCRIPTION OF EFFECT**

7 This measure addresses high-interest lending practices by establishing maximum
8 interest rates charged to consumers, and shields more of people's savings and
earnings from garnishment than under current law.

9 Currently, most consumer loans have no interest rate cap. The proposed cap would
10 set a maximum interest rate of 36% annually on the unpaid balance of the amount
financed, and would apply to consumer loans; deferred-deposit transactions
11 (payday loans"); title loans; and other loan types dependent on future earnings and
income.

12 The initiative also prohibits evading the interest rate cap by structuring transactions
13 to mask their nature as loans covered by this measure, or partnering with
out-of-state lenders to violate the rate cap. The initiative voids transactions that
14 violate the cap, and establishes civil penalties.

15 Additionally, the initiative automatically protects \$5,000 of savings in a personal
bank account (up from \$400 now), and \$850 of wages in any workweek (up from
16 \$369), as well as a portion of disposable earnings above that amount, from seizure
for a debt. Those amounts would be indexed to increase periodically with inflation.

17 20. As the first sentence makes clear, the Initiative embraces more than one subject "by
18 establishing maximum interest rates charged to consumers, *and* shields more of people's savings
19 and earnings from garnishment than under current law." (Emphasis added.)

20 21. The Initiative's description is also deficient in that it fails to accurately describe for
21 voters just what the Initiative would actually do if enacted. Tellingly, it omits many of its
22 provisions, including its proposal for opting out of federal law.

23 **FIRST CAUSE OF ACTION**

24 **(NRS 295.009(1)(a))**

25 22. Plaintiff incorporates the allegations of Paragraph 1 through 21 as though fully set
26 forth herein.

27 23. Pursuant to NRS 295.009(1)(a), an initiative petition must embrace "but one subject
28 and matters necessarily connected therewith and pertaining thereto." To satisfy this requirement,

1 the parts of the proposed initiative must be "functionally related and germane to each other in a way
2 that provides efficient notice of the general subject of, and the interest likely to be effected by, the
3 proposed initiative or referendum." NRS 295.009(2).

4 24. The Initiative violates Nevada's single-subject rule by incorporating more than one
5 subject matter.

6 25. Accordingly, the Initiative is invalid and must be stricken, and the Secretary of State
7 should be enjoined from taking any further action upon it.

8 SECOND CAUSE OF ACTION

9 (NRS 295.009(1)(b))

10 26. Plaintiff incorporates the allegations of Paragraph 1 through 25 as though fully set
11 forth herein.

12 27. NRS 295.009(1)(b) specifies that an initiative must "set forth, in no more than
13 200 words, a description of effect of the initiative or referendum if the initiative or referendum is
14 approved by the voters." Nevada law precludes any description that is deceptive or misleading.
15 Nevada law mandates that the description explain the ramifications of the purposed initiative so
16 that voters can make an informed decision.

17 28. Beyond embracing more than one subject matter, the Initiative's description is
18 deficient because it is deceptive and misleading, and fails to inform voters of essential information
19 regarding the Initiative's effects. It purports to impose a sweeping "usury" provision into Nevada
20 law without ever so specifying. It furthermore deceptively tells voters that it concerns so-called
21 "payday loans," when in fact the Initiative is much broader and includes a host of various and
22 common financing arrangements.

23 29. The description of the Initiative also fails to inform voters of the exemptions to
24 federal law and similar effects of the Initiative.

25 30. Accordingly, the Initiative is invalid and should be stricken, with the Secretary of
26 State and Defendant Feldman enjoined from taking any further action upon it.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

1. A declaration that the Initiative is invalid under NRS 295.009 by violating the single-subject rule;
2. A declaration that the Initiative is invalid and does not comply with NRS 295.009(1)(b) because the description of effect is deficient;
3. An injunction prohibiting the Secretary of State from taking further action on the Initiative;
4. An injunction prohibiting Defendant Feldman and her agents from circulating this defective petition for verification; and
5. Such further and additional relief that this Court deems appropriate.

6. AFFIRMATION

The undersigned does hereby affirm that this document does not contain the social security number of any person.

DATED this 26th day of January, 2024.

PISANELLI BICE PLLC

By: 

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EXHIBIT 1

State of Nevada
Secretary of State
Francisco V. Aguilar



Notice of Intent
Statewide Initiative or
Referendum Petition
NRS 295.009 and 295.015

Pursuant to NRS 295.015, before a petition for initiative or referendum may be presented to registered voters for signatures, the person who intends to circulate the petition must provide the following information:

NAME OF PERSON FILING THE PETITION

Kate Feldman

NAME(S) OF PERSON(S) AUTHORIZED TO WITHDRAW OR AMEND THE PETITION (provide up to three)

1. Kate Feldman

2.

3.

NAME OF THE POLITICAL ACTION COMMITTEE (PAC) ADVOCATING FOR THE PASSAGE OF THE INITIATIVE OR REFERENDUM (if none, leave blank)

Please note, if you are creating a Political Action Committee for the purpose of advocating for the passage of the initiative or referendum, you must complete a separate PAC registration form.

Additionally, a copy of the initiative or referendum, including the description of effect, must be filed with the Secretary of State's office at the time you submit this form.

X Kate Feldman
Signature of Petition Filer

1/4/2024
Date

Explanation - Matter in *italics* is new; matter between brackets [~~omitted material~~] is material to be omitted.

THE PEOPLE OF THE STATE OF NEVADA DO ENACT AS FOLLOWS

Section 1. The Nevada Revised Statutes are hereby amended by adding thereto a new Chapter, to be designated Chapter 604D: Preventing Predatory Payday and Other Loans Act, to read as follows:

Section 2. *Liberal construction. The provisions of this chapter shall be liberally construed to achieve its purposes, which are combatting predatory payday lending and other high-cost loans; ensuring that out-of-state lenders cannot flout Nevada law by making payday loans, other loans, or transactions subject to this chapter at unlawful rates to Nevada residents; and protecting law-abiding lenders from unfair competition by predatory, out-of-state entities.*

Section 3. *Definitions. As used in this chapter, the words and terms defined in sections 4 to 6, inclusive, of this chapter have the meanings ascribed to them in those sections.*

Section 4. *Annual percentage rate defined. The term “Annual percentage rate” or APR means an annual rate calculated including all amounts, charges, and payments made directly or indirectly, incident to, ancillary to, or as a condition of a loan or other transaction subject to this chapter, whether voluntary, optional or required, including any amount paid to a broker or credit services organization. The APR shall include, but is not limited to, all interest, fees, charges and other payments as set forth in the regulations issued by the United States Secretary of Defense on July 22, 2015 to implement the Military Lending Act, 10 USC sec. 987, except that credit card fees may be excluded only if the card is network-branded and the fees collectively each year do not exceed 15% of the credit line. The annual percentage rate shall be calculated as specified in such regulations.*

Section 5. *Loan defined.*

1. For purposes of this chapter, “loan” means and includes:

(a) Money or credit provided to a consumer in exchange for the consumer’s agreement to a certain set of terms, including, but not limited to, provisions for direct or indirect repayment, interest, fees, charges or other payments, or other conditions;

(b) Any deferred deposit transaction or payday loan, installment loan, line of credit, retail installment sales contract, and motor vehicle retail installment sales contract, and other closed-end or open-end credit; and

(c) Any sale, assignment, order, or agreement for the payment of unpaid wages, salary, commissions, compensation, or other income, or any portion or amount thereof, whether earned, to be earned, or contingent upon future earnings, that is made in consideration for goods or services, credit, or the payment of money to or for the account of the person earning or receiving, or potentially earning or receiving, the wages, salary, commissions, compensation, or other income.

2. Any transaction that satisfies any definition in this section is a “loan” for purposes of this chapter without regard to the means of collection, without regard to whether the payday lender or other lender has legal recourse against the borrower in the event of non-repayment, and without regard to whether the transaction carries required charges or payments.

Section 6. *Network-branded defined.* *“Network-branded” means branded with and available for use on the Visa, MasterCard, American Express or Discover networks or a similar widely-accepted card network that is accepted upon presentation for purchases of goods and services at multiple, unaffiliated merchants.*

Section 7. *Application of chapter.* *This chapter applies to any payday lender or other person that:*

1. Markets, offers, brokers, arranges, facilitates, makes or services a loan as defined in Section 5 of this chapter or other transaction as defined in Section 8 of this chapter, including a credit service organization that obtains an extension of credit for a borrower;

2. Is a bank, savings bank, savings and loan association, or credit union organized, chartered or holding a certificate of authority to do business under the laws of this state, another state, or the United States. However, banks, savings banks, savings and loan associations, and credit unions organized, chartered or holding a certificate of authority to do business under the laws of another state or under the laws of the United States are exempt from this chapter only to the extent this chapter is preempted by federal law;

3. Is an agent of a person subject this chapter or of any affiliate, subsidiary or other entity that is related to, that controls, or that is controlled by a person subject to this chapter;

- 4. Acquires a whole or partial interest in a loan or transaction subject to this chapter;*
- 5. Is deemed to be subject to this chapter under section 11 of this chapter or is engaged in a transaction that is in substance a disguised loan or other transaction subject to this chapter or is a device, subterfuge or pretense to evade this chapter.*
- 6. Markets, offers, brokers, arranges, facilitates, makes or services any transaction that is otherwise subject to this chapter and that is offered or made to a person residing in this state, whether the transaction is conducted in person, by telephone, via the Internet, or by any other means.*

Section 8. *Specific transactions subject to this chapter. Notwithstanding any other provision of law, transactions subject to this chapter shall include, but shall not be limited to, the following:*

- 1. Deferred deposit loans (also known as payday loans), as defined in NRS 604A.050. A deferred deposit loan is subject to this chapter notwithstanding NRS 604A.220 or any other provision of law.*
- 2. High-interest loans, as defined in NRS 604A.0703. A high-interest loan is subject to this chapter notwithstanding NRS 604A.220 or any other provision of law.*
- 3. Title loans, as defined in NRS 604A.105. A title loan is subject to this chapter notwithstanding NRS 604A.220 or any other provision of law.*
- 4. Refund anticipation loans, as defined in NRS 604B.060.*
- 5. Consumer litigation funding transactions, as defined in NRS 604C.100. A consumer litigation funding transaction is subject to this chapter notwithstanding NRS 604C.220 or any other provision of law.*
- 7. Installment loans, as regulated by Chapter 675 of the Nevada Revised Statutes;*
- 8. Retail installment transactions, as defined in NRS 97.115. A retail installment transaction is subject to this chapter notwithstanding NRS 97.285 or any other provision of law;*
- 9. Loans secured by a life insurance or annuity contract, as regulated by NRS 688A.110; and*
- 10. Loans made by a bank, savings bank, savings and loan association, or credit union organized, chartered or holding a certificate of authority to do business*

under the laws of this state. This chapter shall apply to loans made by those entities notwithstanding NRS 662.015, NRS 672.370, NRS 672.460, NRS 672.710, NRS 673.225, NRS 673.3272, NRS 677.730 or any other provision of law.

Section 9. *Maximum interest rate permitted.* *For any loan or other transaction subject to this chapter made or renewed on or after the effective date of this chapter, no payday lender or other person shall market, offer, charge, contract for, collect or receive, directly or indirectly, charges or amounts exceeding a 36% annual percentage rate on the unpaid balance of the amount financed. This section shall apply notwithstanding any other provision of the laws of this state, including but not limited to any provision of NRS 604A.0703, NRS 604A.5029, NRS 604A.5052, or NRS 604A.5057 or any other law that refers to or allows an annual percentage rate that exceeds 36%.*

Section 10. *Prohibited acts to evade application of chapter.* *For any loan or other transaction subject to this chapter, no payday lender or other person shall engage in any device, subterfuge, or pretense to evade the requirements of this chapter, including, but not limited to:*

- 1. Making a loan or other transaction disguised as a personal property sale and leaseback transaction;*
- 2. Disguising proceeds of a loan or other transaction as a cash rebate for the pretextual sale of goods or services;*
- 3. Disguising a loan or other transaction as the sale of goods, services or things in action or disguising charges for a loan or other transaction in the price of goods, services or things in action;*
- 4. Making, contracting for, offering, assisting, or arranging for a borrower to obtain a loan or other transaction with a higher rate or amount of interest, consideration, charge or other payment received incident to the loan than is permitted by Section 9 of this chapter through any method including mail, telephone, internet or any electronic means, regardless of whether the person has a physical location in the state;*
- 5. Structuring the transaction in a manner to obscure the fact that it is a loan; or*
- 6. Charging, contracting for or receiving interest, fees, charges or other payments in excess of those permitted, regardless whether the payment purports to be voluntary.*

Section 11. *Application of chapter to agents and service providers of exempt entities.* *If the annual percentage rate of the loan or other transaction exceeds the rate permitted by Section 9*

of this chapter, a person shall be subject to the requirements of this chapter notwithstanding the fact that the person purports to act as an agent or service provider or in another capacity for a person that is exempt from this chapter, if, among other things:

- 1. The person holds, acquires, or maintains, directly or indirectly, the predominant economic interest, risk or reward, in the loan or transaction;*
- 2. The person (a) markets, solicits, brokers, arranges, facilitates or services loans or transactions and (b) holds, or has the right, requirement or first right of refusal to acquire, the loans, transactions, a share of receivables or another direct or indirect interest in the loans or loan program; or*
- 3. The totality of the circumstances indicate that the person is engaging in transactions subject to this chapter and that the transaction is structured to evade the requirements of this chapter. Circumstances that weigh in favor of a person being subject to this chapter include, without limitation, when the person:*
 - (a) indemnifies, insures or protects an exempt entity from costs or risks related to the loan or transaction;*
 - (b) predominantly designs, controls or operates the loan program or transaction;*
 - (c) holds the trademark or intellectual property rights in the brand, underwriting system, or other core aspects of the loan program or transaction; or*
 - (d) purports to act as an agent or service provider or in another capacity for an exempt entity while acting directly as a lender in other states.*

Section 12. *Prohibition against facilitation of payday loans or other transactions in violation of chapter.* *No person shall solicit, broker, or engage in any other activity intended to facilitate or result in, or that in fact facilitates or results in, a loan or transaction that violates this chapter.*

Section 13. *Remedies for payday loans or other transactions made in violation of this chapter.*

- 1. A loan or other transaction made in violation of this chapter shall be void and uncollectible as to any principal, fee, interest, charge or payment.*
- 2. An action for violation of this chapter may be brought in any court of competent jurisdiction.*
- 3. Any person who violates this chapter is liable to the borrower for:*

- (a) Actual and consequential damages;*
- (b) Restitution of any amounts paid;*
- (c) Treble the amount of any excess fee, interest, charge, or payment;*
- (d) Statutory damages, at an amount that the court considers just, of at least \$250 and no more than \$1,000 per violation;*
- (e) Injunctive or declaratory relief;*
- (f) Reasonable attorney's fees and costs; and*
- (g) Any other legal or equitable relief that the court deems appropriate in addition to any other remedies provided at law.*

4. The remedies provided for in this section are cumulative to any other remedies that apply to a loan or other transaction made in violation of other laws of this State.

Section 14. Declaration of intent to opt out of DIDMCA. *In accordance with section 525 of the federal "Depository Institutions Deregulation and Monetary Control Act of 1980", Pub.L. 96-221, the voters of the State of Nevada declare that the State of Nevada does not want the amendments to the "Federal Deposit Insurance Act", 12 U.S.C. sec. 1811 et seq.; the federal "National Housing Act", 12 U.S.C. sec. 1701 et seq.; and the "Federal Credit Union Act", 12 U.S.C. sec. 1757, made by sections 521 to 523 of the federal "Depository Institutions Deregulation and Monetary Control Act of 1980", Pub.L. 96-221, prescribing interest rates and preempting state interest rates to apply to loans as defined in Section 5 of this chapter or specific transactions as defined in Section 8 of this chapter. The rates established in this chapter shall apply to payday loans and other loans as defined in Section 5 of this chapter and specific transactions as defined in Section 8 of this chapter.*

Section 15. Application of chapter to earned wage access services. *Prior to January 1, 2030, section 9 of this chapter shall not apply to entities licensed under the laws of this State to provide earned wage access services, as defined in Senate Bill No. 290 of the 82nd Regular Session of the Nevada Legislature (2023), 2023 Nev. Stat., ch. 400. Beginning on January 1, 2030, section 9 shall apply to any provider of earned wage access services, regardless of whether the provider is licensed under the laws of this State, including any provider of transactions that satisfy the definition of earned wage access services currently set forth in Senate Bill No. 290 of the 82nd Regular Session of the Nevada Legislature (2023), 2023 Nev. Stat., ch. 400.*

Section 16. NRS 99.050 is hereby amended to read as follows:

1. Except as otherwise provided in subsection 2, parties may agree for the payment of any rate of interest on money due or to become due on any contract, for the compounding of interest if they choose, and for any other charges or fees, *provided, however, that parties cannot agree to any arrangement that violates the requirements of Chapter 604D of the Nevada Revised Statutes*. The parties shall specify in writing the rate upon which they agree, that interest is to be compounded if so agreed, and any other charges or fees to which they have agreed.

2. A creditor shall not charge an annual percentage rate that is greater than the lesser of 36 percent or the maximum annual percentage rate authorized under any federal law or regulation with respect to the consumer credit extended to a covered service member or a dependent of a covered service member. Any contract or agreement in violation of this subsection is void and unenforceable.

3. As used in this section:

(a) "Annual percentage rate" has the meaning ascribed to it in the federal Truth in Lending Act, as amended, 15 U.S.C. §§ 1601 et seq., and the federal regulations adopted pursuant thereto.

(b) "Consumer credit":

(1) Except as otherwise provided in subparagraph (2), means credit offered or extended to a covered service member or dependent of a covered service member primarily for personal, family or household purposes, and that is:

(I) Subject to a finance charge; or

(II) Payable by a written agreement in more than four installments.

(2) Does not include:

(I) A residential mortgage, which is any credit transaction secured by an interest in a dwelling, including a transaction to finance the purchase or initial construction of the dwelling, any refinance transaction, home equity loan or line of credit or reverse mortgage;

(II) Any credit transaction that is expressly intended to finance the purchase of a motor vehicle when the credit is secured by the vehicle being purchased;

(III) Any credit transaction that is expressly intended to finance the purchase of personal property when the credit is secured by the property being purchased;

(IV) Any credit transaction that is an exempt transaction for the purposes of 12 C.F.R. Part 1026, commonly known as Regulation Z, other than a transaction exempt under 12 C.F.R. § 1026.29, or otherwise is not subject to disclosure requirements under 12 C.F.R. Part 1026, commonly known as Regulation Z; and

(V) Any credit transaction or account for credit for which a creditor determines that a natural person is not a covered borrower by using a method and by complying with the recordkeeping requirement set forth in 32 C.F.R. § 232.5(b).

(c) “Covered service member”:

(1) Except as otherwise provided in subparagraph (2), means a member of the armed forces who is serving on:

(I) Active duty pursuant to title 10, title 14 or title 32 of the United States Code, under a call or order that does not specify a period of 30 days or fewer; or

(II) Active Guard and Reserve duty, as that term is defined in 10 U.S.C. § 101(d)(6).

(2) Does not include a consumer who was a covered service member pursuant to subparagraph (1) at the time he or she became obligated on a consumer credit transaction or established an account for consumer credit but is no longer a covered service member pursuant to subparagraph (1) or a dependent of a person who is a covered service member pursuant to subparagraph (1).

(d) “Credit” means the right granted to a natural person by a person engaged in the business of extending consumer credit, or an assignee of such a person with respect to any consumer credit extended, to defer payment or to incur debt and defer its payment.

(e) “Dependent” with respect to a covered service member means:

(1) The spouse;

(2) A child who:

(I) Has not attained the age of 21;

(II) Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, as defined in 10 U.S.C. § 1072(3), and is, or was at the time of the covered service

member's or former covered service member's death, in fact dependent on the covered service member or former covered service member for over one-half of the child's support; or

(III) Is incapable of self-support because of a mental or physical incapacity that occurs while a dependent of a covered service member or former covered service member under sub-subparagraph (I) or (II) and is, or was at the time of the covered service member's or former covered service member's death, in fact dependent on the member or former member for over one-half of the child's support;

(3) A parent or parent-in-law who is, or was at the time of the covered service member's or former covered service member's death, in fact dependent on him or her for over one-half of his or her support and residing in his or her household;

(4) An unmarried person who:

(I) Is placed in the legal custody of the covered service member or former covered service member as a result of an order of a court of competent jurisdiction in the United States, or possession of the United States, for a period of at least 12 consecutive months;

(II) Has not attained the age of 21, has not attained the age of 23 and is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, as defined in 10 U.S.C. § 1072(3), or is incapable of self-support because of a mental or physical incapacity that occurred while the person was considered a dependent of the covered service member or former covered service member pursuant to this paragraph;

(III) Is dependent on the covered service member or former covered service member for over one-half of the person's support;

(IV) Resides with the covered service member or former covered service member unless separated by the necessity of military service or to receive institutional care as a result of disability or incapacitation or under such other circumstances as the administering Secretary, as defined in 10 U.S.C. § 1072(3), may by regulation prescribe; and

(V) Is not a dependent of a covered service member or a former covered service member pursuant to subparagraph (1), (2) or (3).

(f) “Dwelling” means a residential structure that contains one to four units, whether or not the structure is attached to real property. The term includes, without limitation, an individual condominium unit, cooperative unit, mobile home and manufactured home.

Section 17. NRS 21.105 is hereby amended to read as follows:

~~[1.—If a writ of execution or garnishment is levied on the personal bank account of the judgment debtor and money has been deposited into the account electronically within the immediately preceding 45 days from the date on which the writ was served which is reasonably identifiable as exempt from execution, notwithstanding any other deposits of money into the account, \$2,000 or the entire amount in the account, whichever is less, is not subject to execution and must remain accessible to the judgment debtor. For the purposes of this section, money is reasonably identifiable as exempt from execution if the money is deposited in the bank account by the United States Department of the Treasury, including, without limitation, money deposited as:~~

~~(a) Benefits provided pursuant to the Social Security Act which are exempt from execution pursuant to 42 U.S.C. §§ 407 and 1383, including, without limitation, retirement and survivors’ benefits, supplemental security income benefits, disability insurance benefits and child support payments that are processed pursuant to Part D of Title IV of the Social Security Act;~~

~~(b) Veterans’ benefits which are exempt from execution pursuant to 38 U.S.C. § 5301;~~

~~(c) Annuities payable to retired railroad employees which are exempt from execution pursuant to 45 U.S.C. § 231m;~~

~~(d) Benefits provided for retirement or disability of federal employees which are exempt from execution pursuant to 5 U.S.C. §§ 8346 and 8470;~~

~~(e) Annuities payable to retired members of the Armed Forces of the United States and to any surviving spouse or children of such members which are exempt from execution pursuant to 10 U.S.C. §§ 1440 and 1450;~~

~~(f) Payments and allowances to members of the Armed Forces of the United States which are exempt from execution pursuant to 37 U.S.C. § 701;~~

~~(g) Federal student loan payments which are exempt from execution pursuant to 20 U.S.C. § 1095a;~~

- ~~(h) Wages due or accruing to merchant seamen which are exempt from execution pursuant to 46 U.S.C. § 11109;~~
- ~~(i) Compensation or benefits due or payable to longshore and harbor workers which are exempt from execution pursuant to 33 U.S.C. § 916;~~
- ~~(j) Annuities and benefits for retirement and disability of members of the foreign service which are exempt from execution pursuant to 22 U.S.C. § 4060;~~
- ~~(k) Compensation for injury, death or detention of employees of contractors with the United States outside the United States which is exempt from execution pursuant to 42 U.S.C. § 1717;~~
- ~~(l) Assistance for a disaster from the Federal Emergency Management Agency which is exempt from execution pursuant to 44 C.F.R. § 206.110;~~
- ~~(m) Black lung benefits paid to a miner or a miner's surviving spouse or children pursuant to 30 U.S.C. § 922 or 931 which are exempt from execution; and~~
- ~~(n) Benefits provided pursuant to any other federal law;~~

~~1~~**[2]**. If a writ of execution or garnishment is levied on the personal bank account of the judgment debtor ~~[and the provisions of subsection 1 do not apply,]~~ **\$5,000** ~~[400]~~ or the entire amount in the account, whichever is less, is not subject to execution and must remain accessible to the judgment debtor, unless the writ of execution or garnishment is for the recovery of money owed for the support of any person.

~~2~~**[3]**. If a judgment debtor has more than one personal bank account with the bank to which a writ is issued, the amount that is not subject to execution must not in the aggregate exceed the amount specified in subsection 1 ~~[or 2, as applicable]~~.

~~3~~**[4]**. A judgment debtor may apply to a court to claim an exemption for any amount subject to a writ levied on a personal bank account which exceeds the amount that is not subject to execution pursuant to subsection 1 ~~[or 2]~~.

~~4~~**[5]**. If money in the personal account of the judgment debtor which exceeds the amount that is not subject to execution pursuant to subsection ~~[1 or 2]~~ includes exempt and nonexempt money, the judgment debtor may claim an exemption for the exempt money in the manner set forth in NRS 21.112. To determine whether such money in the account is exempt, the judgment creditor must use the method of accounting which applies the standard that the first money deposited in the account is the first money withdrawn from the account. The court may require a judgment debtor to provide statements from the bank which include all deposits into and withdrawals from the account for the immediately preceding 90 days.

~~5[6].~~ A financial institution which makes a reasonable effort to determine whether money in the account of a judgment debtor is subject to execution for the purposes of this section is immune from civil liability for any act or omission with respect to that determination. ~~[,including, without limitation, when the financial institution makes an incorrect determination after applying commercially reasonable methods for determining whether money in an account is exempt because the source of the money was not clearly identifiable or because the financial institution inadvertently misidentified the source of the money.]~~ If a court determines that a financial institution failed to identify that money in an account was not subject to execution pursuant to this section, the financial institution must adjust its actions with respect to a writ of execution as soon as possible but may not be held liable for damages.

~~6[7].~~ Nothing in this section requires a financial institution to revise its determination about whether money is exempt, except by an order of a court.

Section 18. NRS 21.090 is hereby amended to read as follows:

1. The following property is exempt from execution, except as otherwise specifically provided in this section or required by federal law:

- (a) Private libraries, works of art, musical instruments and jewelry not to exceed \$5,000 in value, belonging to the judgment debtor or a dependent of the judgment debtor, to be selected by the judgment debtor, and all family pictures and keepsakes.
- (b) Necessary household goods, furnishings, electronics, wearing apparel, other personal effects and yard equipment, not to exceed \$12,000 in value, belonging to the judgment debtor or a dependent of the judgment debtor, to be selected by the judgment debtor.
- (c) Farm trucks, farm stock, farm tools, farm equipment, supplies and seed not to exceed \$4,500 in value, belonging to the judgment debtor to be selected by the judgment debtor.
- (d) Professional libraries, equipment, supplies, and the tools, inventory, instruments and materials used to carry on the trade or business of the judgment debtor for the support of the judgment debtor and his or her family not to exceed \$10,000 in value.
- (e) The cabin or dwelling of a miner or prospector, the miner's or prospector's cars, implements and appliances necessary for carrying on any mining operations and the mining claim actually worked by the miner or prospector, not exceeding \$4,500 in total value.

(f) Except as otherwise provided in paragraph (p), one vehicle if the judgment debtor's equity does not exceed \$15,000 or the creditor is paid an amount equal to any excess above that equity.

(g) For any workweek, *\$850 of disposable earnings. If the debtor's weekly disposable earnings exceed \$850, 90% of disposable earnings in excess of \$850 shall be exempt from garnishment unless the weekly disposable earnings of the debtor exceed \$1,200, in which case 85% of the disposable earnings in excess of \$850 shall be exempt from garnishment. The amount not subject to garnishment is exempt.*~~82 percent of the disposable earnings of a judgment debtor during that week if the gross weekly salary or wage of the judgment debtor on the date the most recent writ of garnishment was issued was \$770 or less, 75 percent of the disposable earnings of a judgment debtor during that week if the gross weekly salary or wage of the judgment debtor on the date the most recent writ of garnishment was issued exceeded \$770, or 50 times the minimum hourly wage prescribed by section 206(a)(1) of the federal Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201 et seq., and in effect at the time the earnings are payable, whichever is greater.~~ Except as otherwise provided in paragraphs (o), (s) and (t), the exemption provided in this paragraph does not apply in the case of any order of a court of competent jurisdiction for the support of any person, any order of a court of bankruptcy or of any debt due for any state or federal tax. As used in this paragraph:

(1) "Disposable earnings" means that part of the earnings of a judgment debtor remaining after the deduction from those earnings of any amounts required by law to be withheld.

(2) "Earnings" means compensation paid or payable for personal services performed by a judgment debtor in the regular course of business, including, without limitation, compensation designated as income, wages, tips, a salary, a commission or a bonus. The term includes compensation received by a judgment debtor that is in the possession of the judgment debtor, compensation held in accounts maintained in a bank or any other financial institution or, in the case of a receivable, compensation that is due the judgment debtor. *Compensation paid or payable for personal services is earnings regardless of whether the judgment debtor is classified as an independent contractor or an employee.*

(h) All fire engines, hooks and ladders, with the carts, trucks and carriages, hose, buckets, implements and apparatus thereunto appertaining, and all

furniture and uniforms of any fire company or department organized under the laws of this State.

(i) All arms, uniforms and accouterments required by law to be kept by any person, and also one gun, to be selected by the debtor.

(j) All courthouses, jails, public offices and buildings, lots, grounds and personal property, the fixtures, furniture, books, papers and appurtenances belonging and pertaining to the courthouse, jail and public offices belonging to any county of this State, all cemeteries, public squares, parks and places, public buildings, town halls, markets, buildings for the use of fire departments and military organizations, and the lots and grounds thereto belonging and appertaining, owned or held by any town or incorporated city, or dedicated by the town or city to health, ornament or public use, or for the use of any fire or military company organized under the laws of this State and all lots, buildings and other school property owned by a school district and devoted to public school purposes.

(k) All money, benefits, privileges or immunities accruing or in any manner growing out of any life insurance.

(l) The homestead as provided for by law, including:

(1) Subject to the provisions of NRS 115.055, the sum of \$605,000 that is paid to the defendant in execution pursuant to subsection 2 of NRS 115.050 or to a spouse pursuant to subsection 3 of NRS 115.050; and

(2) A homestead for which allodial title has been established and not relinquished and for which a waiver executed pursuant to NRS 115.010 is not applicable.

(m) The dwelling of the judgment debtor occupied as a home for himself or herself and family, where the amount of equity held by the judgment debtor in the home does not exceed \$605,000 in value and the dwelling is situated upon lands not owned by the judgment debtor.

(n) All money reasonably deposited with a landlord by the judgment debtor to secure an agreement to rent or lease a dwelling that is used by the judgment debtor as his or her primary residence, except that such money is not exempt with respect to a landlord or the landlord's successor in interest who seeks to enforce the terms of the agreement to rent or lease the dwelling.

(o) All property in this State of the judgment debtor where the judgment is in favor of any state for failure to pay that state's income tax on benefits received from a pension or other retirement plan.

(p) Any vehicle owned by the judgment debtor for use by the judgment debtor or the judgment debtor's dependent that is equipped or modified to provide mobility for a person with a permanent disability.

(q) Any prosthesis or equipment prescribed by a physician or dentist for the judgment debtor or a dependent of the debtor.

(r) Money, not to exceed \$1,000,000 in present value, held in:

(1) An individual retirement arrangement which conforms with or is maintained pursuant to the applicable limitations and requirements of section 408 or 408A of the Internal Revenue Code, 26 U.S.C. §§ 408 and 408A, including, without limitation, an inherited individual retirement arrangement;

(2) A written simplified employee pension plan which conforms with or is maintained pursuant to the applicable limitations and requirements of section 408 of the Internal Revenue Code, 26 U.S.C. § 408, including, without limitation, an inherited simplified employee pension plan;

(3) A cash or deferred arrangement plan which is qualified and maintained pursuant to the Internal Revenue Code, including, without limitation, an inherited cash or deferred arrangement plan;

(4) A trust forming part of a stock bonus, pension or profit-sharing plan which is qualified and maintained pursuant to sections 401 et seq. of the Internal Revenue Code, 26 U.S.C. §§ 401 et seq.; and

(5) A trust forming part of a qualified tuition program pursuant to chapter 353B of NRS, any applicable regulations adopted pursuant to chapter 353B of NRS and section 529 of the Internal Revenue Code, 26 U.S.C. § 529, unless the money is deposited after the entry of a judgment against the purchaser or account owner or the money will not be used by any beneficiary to attend a college or university.

(s) All money and other benefits paid pursuant to the order of a court of competent jurisdiction for the support, education and maintenance of a child, whether collected by the judgment debtor or the State.

(t) All money and other benefits paid pursuant to the order of a court of competent jurisdiction for the support and maintenance of a former

spouse, including the amount of any arrearages in the payment of such support and maintenance to which the former spouse may be entitled.

(u) Payments, in an amount not to exceed \$16,150, received as compensation for personal injury, not including compensation for pain and suffering or actual pecuniary loss, by the judgment debtor or by a person upon whom the judgment debtor is dependent at the time the payment is received.

(v) Payments received as compensation for the wrongful death of a person upon whom the judgment debtor was dependent at the time of the wrongful death, to the extent reasonably necessary for the support of the judgment debtor and any dependent of the judgment debtor.

(w) Payments received as compensation for the loss of future earnings of the judgment debtor or of a person upon whom the judgment debtor is dependent at the time the payment is received, to the extent reasonably necessary for the support of the judgment debtor and any dependent of the judgment debtor.

(x) Payments received as restitution for a criminal act.

(y) Payments received pursuant to the federal Social Security Act, including, without limitation, retirement and survivors' benefits, supplemental security income benefits and disability insurance benefits.

(z) Any personal property not otherwise exempt from execution pursuant to this subsection belonging to the judgment debtor, including, without limitation, the judgment debtor's equity in any property, money, stocks, bonds or other funds on deposit with a financial institution, not to exceed \$10,000 in total value, to be selected by the judgment debtor.

(aa) Any tax refund received by the judgment debtor that is derived from the earned income credit described in section 32 of the Internal Revenue Code, 26 U.S.C. § 32, or a similar credit provided pursuant to a state law.

(bb) Stock of a corporation described in subsection 2 of NRS 78.746 except as set forth in that section.

(cc) Regardless of whether a trust contains a spendthrift provision:

(1) A distribution interest in the trust as defined in NRS 163.4155 that is a contingent interest, if the contingency has not been satisfied or removed;

- (2) A distribution interest in the trust as defined in NRS 163.4155 that is a discretionary interest as described in NRS 163.4185, if the interest has not been distributed;
- (3) A power of appointment in the trust as defined in NRS 163.4157 regardless of whether the power has been exercised;
- (4) A power listed in NRS 163.5553 that is held by a trust protector as defined in NRS 163.5547 or any other person regardless of whether the power has been exercised; and
- (5) A reserved power in the trust as defined in NRS 163.4165 regardless of whether the power has been exercised.

(dd) If a trust contains a spendthrift provision:

- (1) A distribution interest in the trust as defined in NRS 163.4155 that is a mandatory interest as described in NRS 163.4185, if the interest has not been distributed; and
- (2) Notwithstanding a beneficiary's right to enforce a support interest, a distribution interest in the trust as defined in NRS 163.4155 that is a support interest as described in NRS 163.4185, if the interest has not been distributed.

(ee) Proceeds received from a private disability insurance plan.

(ff) Money in a trust fund for funeral or burial services pursuant to NRS 689.700.

(gg) Compensation that was payable or paid pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS as provided in NRS 616C.205.

(hh) Unemployment compensation benefits received pursuant to NRS 612.710.

(ii) Benefits or refunds payable or paid from the Public Employees' Retirement System pursuant to NRS 286.670.

(jj) Money paid or rights existing for vocational rehabilitation pursuant to NRS 615.270.

(kk) Public assistance provided through the Department of Health and Human Services pursuant to NRS 422.291 and 422A.325.

(ll) Child welfare assistance provided pursuant to NRS 432.036.

2. Except as otherwise provided in NRS 115.010, no article or species of property mentioned in this section is exempt from execution issued upon a judgment to recover for its price, or upon a judgment of foreclosure of a mortgage or other lien thereon.

3. Any exemptions specified in subsection (d) of section 522 of the Bankruptcy Reform Act of 1978, 11 U.S.C. §§ 101 et seq., do not apply to property owned by a resident of this State unless conferred also by subsection 1, as limited by subsection 2.

4. The exemptions set forth in this section and NRS 21.105 shall be automatically adjusted to reflect changes by the percentage change, if any, from January 1st to December 31st of the preceding year in the Consumer Price Index for All Urban Consumers, Annual City Average, for the Western Region, or its successor index, as published by the United States Department of Labor, Bureau of Labor Statistics or its successor agency, beginning the April 1 following enactment and every 3 years thereafter. The Nevada Department of Business & Industry shall publish the 1-year adjustment for an effective date of April 1st for the following year. Adjustments made pursuant to this paragraph must be rounded up to the next \$10.

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DESCRIPTION OF EFFECT

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Currently, most consumer loans have no interest rate cap. The proposed cap would set a maximum interest rate of 36% annually on the unpaid balance of the amount financed, and would apply to consumer loans; deferred-deposit transactions ("payday loans"); title loans; and other loan types dependent on future earnings and income.

The initiative also prohibits evading the interest rate cap by structuring transactions to mask their nature as loans covered by this measure, or partnering with out-of-state lenders to violate the rate cap. The initiative voids transactions that violate the cap, and establishes civil penalties.

Additionally, the initiative automatically protects \$5,000 of savings in a personal bank account (up from \$400 now), and \$850 of wages in any workweek (up from \$369), as well as a portion of disposable earnings above that amount, from seizure for a debt. Those amounts would be indexed to increase periodically with inflation.

County of _____ (**Only** registered voters of this county may sign below)

Petition District: _____ (**Only** registered voters of this petition district may sign below)

			Office Use
1	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE - DATE / /	CITY COUNTY	
2	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
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13	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
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14	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
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15	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
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This measure addresses high-interest lending practices by establishing maximum interest rates charged to consumers, and shields more of people's savings and earnings from garnishment than under current law.

Currently, most consumer loans have no interest rate cap. The proposed cap would set a maximum interest rate of 36% annually on the unpaid balance of the amount financed, and would apply to consumer loans; deferred-deposit transactions ("payday loans"); title loans; and other loan types dependent on future earnings and income.

The initiative also prohibits evading the interest rate cap by structuring transactions to mask their nature as loans covered by this measure, or partnering with out-of-state lenders to violate the rate cap. The initiative voids transactions that violate the cap, and establishes civil penalties.

Additionally, the initiative automatically protects \$5,000 of savings in a personal bank account (up from \$400 now), and \$850 of wages in any workweek (up from \$369), as well as a portion of disposable earnings above that amount, from seizure for a debt. Those amounts would be indexed to increase periodically with inflation.

County of _____ (**Only** registered voters of this county may sign below)

Petition District: _____ (**Only** registered voters of this petition district may sign below)

			Office Use
17	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE - DATE / /	CITY COUNTY	
18	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE - DATE / /	CITY COUNTY	
19	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE - DATE / /	CITY COUNTY	
20	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE - DATE / /	CITY COUNTY	

AFFIDAVIT OF CIRCULATOR

(TO BE SIGNED BY CIRCULATOR)

STATE OF NEVADA)

)

COUNTY OF _____)

I, _____, (print name), being first duly sworn under penalty of perjury, depose and say: (1) that I reside at

_____ (print street, city and state); (2) that I am 18 years of age or older; (3) that I personally circulated this document; (4) that all signatures were affixed in my presence; (5) that the number of signatures affixed thereon is _____; and (6) that each person who signed had an opportunity before signing to read the full text of the act or resolution on which the initiative or referendum is demanded.

Signature of Circulator

Subscribed and sworn to or affirmed before me this

_____ day of _____, _____, by _____.

Notary Public or person authorized to administer oath

1 Todd L. Bice, Esq., Bar No. 4534
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8 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

9 **IN AND FOR CARSON CITY**

10 NEVADANS FOR FINANCIAL CHOICE, a
Nevada Political Action Committee, and
11 CHRISTINA BAUER, an Individual,

12 Plaintiffs,

13 v.

14 KATE FELDMAN, an individual, and
FRANCISCO AGUILAR, in his official
15 capacity as Nevada Secretary of State,

16 Defendants.

REC'D & FILED

2024 JAN 26 PM 12:07

WILLIAM SCOTT HOEN
K. PETERSON
BY _____ DEPUTY

Case No.: 24 OC 00018 10

Dept. No.: IV

**BRIEF IN SUPPORT OF COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF CONCERNING
STATE-WIDE BALLOT INITIATIVE**

18 **I. INTRODUCTION**

19 Pursuant to NRS 295.061, Plaintiffs Nevadans for Financial Choice and Christina Bauer
20 submit this brief in support of their challenge to the proposed state-wide ballot initiative styled as
21 "Preventing Predatory Payday and Other Loans Act" (the "Initiative") filed with the Nevada
22 Secretary of State as S-01-2024 on January 5, 2024. The Initiative is invalid as it violates the
23 procedural requirements under NRS 295.009(1)(a) by embracing more than a single subject. The
24 Initiative also violates NRS 295.009(1)(b) because it proposes a description of effect that is
25 misleading and fails to inform voters of essential information. Both of these fatal defects render
26 the Initiative invalid, and Nevada law directs the issuance of declaratory and injunctive relief to
27 preclude the Secretary of State and the Initiative's proponent, Defendant Kate Feldman
28 ("Feldman"), from taking any further action on this defective initiative.

II. THE PROPOSED INITIATIVE

On January 5, 2024, Defendant Feldman filed the Initiative S-01-2024 with the Nevada Secretary of State. A true and correct copy of the Notice of Intent to Circulate Statewide Initiative associated with S-01-2024 is attached hereto as Exhibit 1. The Initiative seeks to add a new Chapter 604D to the Nevada Revised Statutes amending a multitude of existing statutory chapters.

While the Initiative purports to be focused upon what it characterizes as "payday loans," in actuality its sweeping breadth covers a wide range of different financial transactions. Indeed, the Initiative's Section 8 lists nearly ten distinct categories of financial transactions with a final catch-all provision declaring that it also applies to any "loans made by a bank, savings bank, savings and loan association, or credit union organized, chartered, or holding a certificate of authorization to do business under the laws of this State." (Ex. 1 at § 8.)

Without ever using the term, what the Initiative really proposes is a sweeping "usury" law – contrary to existing Nevada law – on wholly distinct and different financial transactions. On top of that, it purports to have Nevada opt out of the federal "Depository Institutions Deregulation and Monetary Control Act of 1980." Then, in Section 15, the Initiative creates an exemption until January 1, 2030, for "entities licensed under the laws of this State to provide earn wage access services, as defined in Senate Bill No. 290 of the 82nd Regular Session of the Nevada Legislature (2023)" Of course, none of these discreet subjects are disclosed anywhere in the Initiative's statutory-mandated description of effect.

Rather, the very first paragraph of the Initiative misleads Nevada citizens, declaring:

Section 2. Liberal Construction. The provisions of this Chapter shall be liberally construed to achieve its purpose, which are combating predatory payday lending and other high cost loans; ensuring that out-of-state lenders cannot flout Nevada law by making payday loans, other loans, or transactions subject to this chapter at unlawful rates on Nevada residents; and protecting law-abiding lenders from unfair competition by predatory, out-of-state entities.

(Ex. 1 at § 2.) In reality, this assertion is deceptive. The Initiative applies to virtually all types of loans and has nothing to do with protecting Nevada lenders from out-of-state entities or competition. This Initiative misleads the public by pretending that it is directed at what it characterizes as only certain "predatory payday" loans – whatever that is supposed to mean – when

1 in fact it is designed to apply to wide swaths and distinct forms of financial transactions throughout
2 the State.

3 On top of that, the Initiative's Section 17 would provide a wholesale change to NRS 21.105,
4 which governs writs of execution and writs of garnishment in the State of Nevada. That statute has
5 nothing to do with any form of "loans." This distinct aspect of the Initiative purports to eliminate
6 a number of specific exemptions for these writ proceedings, and then proposes to increase the
7 financial size of a singular exemption by more than ten times the existing level adopted by the
8 Nevada Legislature. (Ex. 1, § 17.) In Section 18, the Initiative would then amend NRS 21.090 to
9 increase the amount of the statutory exemption for disposable earnings, and thereafter adjust that
10 exemption for inflation. *Id.* at § 18. The various distinct forms of financial transactions within the
11 reach of this Initiative, and the specified exemptions to it, are not related to or germane to a single
12 subject as NRS 295.009(1)(a) requires.

13 Nor are the provisions dealing with changing Nevada's laws governing writs of execution
14 or garnishment related to or germane to the Initiative's other provisions. Rather, the Initiative's
15 Section 17 is a separate and distinct subject matter under NRS 295.009(1)(a). The other sections
16 deal with varied and distinct types of loans while Section 17 deals with collection mechanisms for
17 debts or judgments. This last point is confirmed by the Initiative's proposed description of effect
18 under NRS 295.009(1)(b) which provides:

19 **DESCRIPTION OF EFFECT**

20 This measure addresses high-interest lending practices by establishing maximum
21 interest rates charged to consumers, and shields more of people's savings and
earnings from garnishment than under current law.

22 Currently, most consumer loans have no interest rate cap. The proposed cap would
23 set a maximum interest rate of 36% annually on the unpaid balance of the amount
24 financed, and would apply to consumer loans; deferred-deposit transactions
(payday loans"); title loans; and other loan types dependent on future earnings and
income.

25 The initiative also prohibits evading the interest rate cap by structuring transactions
26 to mask their nature as loans covered by this measure, or partnering with
27 out-of-state lenders to violate the rate cap. The initiative voids transactions that
28 violate the cap, and establishes civil penalties.

1 Additionally, the initiative automatically protects \$5,000 of savings in a personal
2 bank account (up from \$400 now), and \$850 of wages in any workweek (up from
3 \$369), as well as a portion of disposable earnings above that amount, from seizure
4 for a debt. Those amounts would be indexed to increase periodically with inflation.

5 (Ex. 1 at p. 19.) Again, as the first sentence makes clear, the Initiative embraces more than one
6 subject, "by establishing maximum interest rates charged to consumers, *and* shields more of
7 people's savings and earnings from garnishment than under current law." (*Id.* (emphasis added).)
8 The Initiative's description is also deficient in that it fails to accurately describe for voters just what
9 the Initiative would actually do, if enacted. Tellingly, it omits many of its provisions, including its
10 proposal for opting out of federal law.

11 **III. LEGAL ANALYSIS**

12 Nevada law authorizes challenges to any proposed initiative when it embraces more than
13 one subject and when the description of effect fails to comply with Nevada law. Specifically,
14 NRS 295.061 specifies that "whether an initiative or referendum embraces but one subject and
15 matters necessarily connected therewith and pertaining thereto, and the description of the effect of
16 an initiative or referendum required pursuant to NRS 295.009, may be challenged by filing a
17 complaint in the First Judicial District Court"

18 **A. The Initiative Violates Nevada's Single-Subject Rule.**

19 Nevada law mandates that any proposed initiative "[e]mbrace but one subject and matters
20 necessarily connected therewith and pertaining thereto." NRS 295.009(1)(a). As the Legislature
21 specifies, an initiative "embraces but one subject and matters necessarily connected therewith and
22 pertaining thereto if the parts of the proposed initiative or referendum are functionally related and
23 germane to each other in a way that provides sufficient notice of the general subject of, and of the
24 interest likely to be affected by, the proposed initiative or referendum." NRS 295.009(2).

25 In upholding this single-subject requirement, the Nevada Supreme Court has explained that
26 NRS 295.009 "facilitates the initiative process by preventing the petition drafters from circulating
27 confusing petitions that address multiple subjects." *Nevadans for the Prot. of Prop. Rights, Inc. v.*
28 *Heller*, 122 Nev. 894, 902, 141 P.3d 1235, 1240 (2006). The single-subject rule "helps both in
promoting informed decisions and in preventing the enactment of unpopular provisions by attaching

1 them to more attractive proposals or concealing them in lengthy, complex initiatives
2 (i.e., logrolling)." *Las Vegas Taxpayer Accountability Comm. v. City Council of Las Vegas*,
3 125 Nev. 165, 176-77, 208 P.3d 429, 437 (2009). After all, unlike other "means of enacting law,
4 the initiative process typically does not allow for input in drafting proposed laws." *Id.*, 125 Nev.
5 at 177 n. 6, 208 P.3d at 437 n.6 (citing *In Fine v. Firestone*, 448 So.2d 984, 988 (Fla.1984)).

6 "In considering single-subject challenges, the court must first determine the initiative's
7 purpose or subject and then determine if each provision is functionally related and germane to each
8 other and the initiative's purpose or subject." *Helton v. Nevada Voters First PAC*,
9 138 Nev. Adv. Op. 45, 512 P.3d 309, 314 (2022). To determine an initiative's "overall subject,"
10 this Court examines the text of the initiative on its face, as well as the arguments made by the
11 initiative's proponents. *Id.* If no single subject is ascertainable, the initiative necessarily violates
12 NRS 295.009(2). *Las Vegas Taxpayer*, 125 Nev. at 181-82, 208 P.3d at 439. And importantly, the
13 proponents of an initiative "may not circumvent the single-subject rule by phrasing the proposed
14 law's purpose or object in terms of 'excessive generality'" so as to group a number of unrelated
15 provisions together. *Id.*

16 Here, this Initiative violates Nevada's single-subject rule in multiple ways. Indeed, the very
17 first sentence of the description of effect admits as much. As it says, the Initiative embraces at least
18 two subjects "by establishing maximum interest rates charged to consumers, *and* shields more of
19 people's savings and earnings from garnishment than under current law." (Ex. 1 at p.19 (emphasis
20 added).) The Initiative's provisions concerning changing Nevada's laws for writs of execution and
21 garnishment – NRS Chapter 21 – have no nexus to the Initiative's other supposed purpose of
22 establishing maximum interest rates. One simply has nothing to do with the other and is certainly
23 not "functionally related and germane to each other in a way that provides sufficient notice of the
24 general subject of, and of the interest likely to be affected by," the proposed Initiative.
25 NRS 295.009(2). Tellingly, the Initiative's proposed new NRS Chapter 604D has no relationship
26 to NRS Chapter 21, nor does it say anything about it. The Initiative's proponent has simply joined
27 discreet subjects into a single initiative.

1 But that is hardly the end of the Initiative's single-subject violations. Even the Initiative's
2 other sections – proposing to add a new Chapter 604D to the Nevada Revised Statutes – actually
3 proposes to change a multitude of existing statutory chapters. Apparently hoping that it will garner
4 voter support, the Initiative purports to be focused on what it characterizes as payday loans.
5 (Ex. 1 at § 1.) Indeed, that is the focus of its title. (*Id.*) But, in actuality, the Initiative covers a
6 wide range of common financial transactions. Again, in Section 8, the Initiative lists nearly ten
7 different distinct categories of financial transactions, plus a catch-all provision declaring that it also
8 applies to any "loans made by a bank, savings bank, savings and loan association, or credit union
9 organized, chartered, or holding a certificate of authorization to do business under the laws of the
10 State." (*Id.* at § 8.) These distinct financial transactions are not functionally related and germane
11 to each other, as made clear by the Initiative's other provisions and its focus on so-called payday
12 loans/lenders.

13 Indeed, throughout the provisions, the Initiative makes clear that so-called "payday" loans
14 are distinct from the numerous other categories of financial transactions the Initiative purports to
15 reach. After all, the Initiative distinguishes between "payday" loans and other types of
16 loans/transactions, confirming their difference. (See Ex. 1 at § 7 ("This chapter applies to any
17 payday lender or other person . . ."); § 9 ("No payday lender or other person . . ."); § 10 ("No
18 payday lender or other person . . ."); § 12 ("Prohibition against facilitation of payday loans or
19 other transactions . . ."); § 13 ("Remedies for payday loans or other transactions . . .")
20 (emphasis added). And, as the Initiative's Section 8 specifies, it implicates a host of different
21 financial transactions governed by multiple different chapters of the Nevada Revised Statutes. See
22 Ex. 1 at § 8(7) (installment loans under Chapter 675); § 8(8) (retail installment transactions under
23 NRS Chapter 97); § 8(9) (life insurance or annuity contracts under NRS Chapter 688).) Plus, as
24 noted, the Initiative then includes the catch-all (§ 8(10)) for any "loans made by a bank, savings
25 bank, savings and loan association, or credit union organized, chartered or holding a certificate of
26 authority to do business under the laws of this state."

1 The Initiative misleads voters by joining a particular type of loan – so-called payday loans
2 – with all other types of financing transactions so as to logroll voters into supporting a sweeping
3 usury statute (without ever using that word) under the guise of regulating "payday" loans. This is
4 classic logrolling and misdirection. *See Nevadans for Prop. Rights*, 122 Nev. at 922, 141 P.3d
5 at 1254 (Hardesty, J., concurring and dissenting) (explaining that logrolling occurs when separate
6 provisions are combined into one petition because one or both may not have enough support to pass
7 without the others).

8 Further underscoring the multitude of subjects, the Initiative's proposed Section 14 provides
9 a declaration of intent to opt out of the federal "Depository Institutions Deregulation and Monetary
10 Control Act of 1980." (Ex. 1 at § 14.) Similarly, the Initiative's Section 15 creates an exemption
11 prior to January 1, 2030, for "entities licensed under the laws of this state to provide earned wage
12 access services. Again, these provisions are not functionally related to germane to each other on
13 the face of the Initiative. By all appearances, the Initiative's proponent has merely cobbled together
14 a wish list of wants under the generic subject of "financial transactions" which is too vague/general
15 to satisfy Nevada's single-subject requirement.

16 **B. The Initiative's Description of Effect Violates NRS 295.009(1)(b).**

17 Besides the single-subject violations, the Initiative's proposed description of effect is also
18 deficient. NRS 295.009(1)(b) mandates that every proposed initiative "[s]et forth, in no more than
19 200 words, a description of the effect of the initiative or referendum if the initiative or referendum
20 is approved by the voters." The purpose of this requirement is to "prevent voter confusion and
21 promote informed decisions." *Nevadans for Nev. v. Beers*, 122 Nev. 930, 939, 142 P.3d 339, 345
22 (2006). "The importance of the description of effect cannot be minimized, as it is what the voters
23 see when deciding whether to even sign a petition." *Coalition for Nevada's Future v.*
24 *RIP Commerce Tax, Inc.*, 132 Nev. 956 (2016) (unpublished disposition). Thus, the description
25 "must be a straightforward, succinct, and nonargumentative summary of what the initiative is
26 designed to achieve and how it intends to reach those goals." *Educ. Initiative PAC Comm. to*
27 *Protect Nev. Jobs*, 129 Nev. 35, 37, 293 P.3d 874, 876 (2013).

1 Here again, Plaintiffs easily meet their burden of showing that the description of effect is
2 statutorily inadequate. The proposed description is not a straightforward, succinct
3 nonargumentative summary. Rather, it is a campaign advertisement purporting to tout the virtues
4 of an usury law (conveniently never using that word), and then does so in a misleading and
5 non-forthright manner. For instance, it claims that "most consumer loans have no interest rate cap."
6 The purported basis for this representation is never cited. The next sentence goes on to falsely
7 claim that it applies to certain transactions "and other loan types dependent on future earnings and
8 income." (Ex. 1 at ¶. 19.) Yet, there is no such provision that the other loan types covered by this
9 Initiative are "dependent on future earnings and income." Again, that is simply false advertising.

10 But it is not just what the description of effect says that is misleading, voters are also mislead
11 by what the description omits. It does not disclose that a whole host of exemptions that currently
12 exist under NRS 21.105 – including for social security benefits, veterans' benefits, annuities for
13 retired railroad employees, disability for federal employees, and the like – are deleted. (Ex. 1, § 17
14 deleting all existing exemptions.) Similarly, the description does not identify how the Initiative
15 would constitute an election out of the federal "Depository Institution's Deregulation and Monetary
16 Control Act of 1980." *Id.* at § 14. Just like it omits disclosing an exemption until January 1, 2030,
17 for "entities licensed under the laws of this state to provide earned wage access services . . .").

18 Simply put, this description of effect is a campaign advertisement that highlights a number
19 of supposed benefits seeking to attract potential voters but omits the actual effect of provisions
20 which will undoubtedly not be so attractive. This description of effect is anything but a fair
21 summary of what the Initiative would do if enacted, as Nevada law requires. *Helton*,
22 138 Nev. Adv. Op. 45, 512 P.3d at 316.

23 IV. CONCLUSION

24 The Initiative is invalid under Nevada law and does not qualify for further consideration by
25 Nevada's voters. It violates the single-subject rule in multiple ways, and its proposed description
26 of effect is anything but straightforward and forthright. The description is misleading for both what
27 it contains as well as what it omits. The Initiative should be declared invalid and enjoined.

28

AFFIRMATION

The undersigned does hereby affirm that this document does not contain the social security number of any person.

DATED this 26th day of January, 2024.

PISANELLI BICE PLLC

By: 

Todd L. Bice, Esq., #4534
Jordan T. Smith, Esq., #12097
Daniel R. Brady, Esq., #15508
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101

Attorneys for Plaintiffs

EXHIBIT 1

State of Nevada
Secretary of State
Francisco V. Aguilar



Notice of Intent
Statewide Initiative or
Referendum Petition
NRS 295.009 and 295.015

Pursuant to NRS 295.015, before a petition for initiative or referendum may be presented to registered voters for signatures, the person who intends to circulate the petition must provide the following information:

NAME OF PERSON FILING THE PETITION

Kate Feldman

NAME(S) OF PERSON(S) AUTHORIZED TO WITHDRAW OR AMEND THE PETITION (provide up to three)

1. Kate Feldman

2.

3.

NAME OF THE POLITICAL ACTION COMMITTEE (PAC) ADVOCATING FOR THE PASSAGE OF THE INITIATIVE OR REFERENDUM (if none, leave blank)

Please note, if you are creating a Political Action Committee for the purpose of advocating for the passage of the initiative or referendum, you must complete a separate PAC registration form.

Additionally, a copy of the initiative or referendum, including the description of effect, must be filed with the Secretary of State's office at the time you submit this form.

X Kate Feldman

Signature of Petition Filer

1/4/2024

Date

Explanation - Matter in *italics* is new; matter between brackets [~~omitted material~~] is material to be omitted.

THE PEOPLE OF THE STATE OF NEVADA DO ENACT AS FOLLOWS

Section 1. The Nevada Revised Statutes are hereby amended by adding thereto a new Chapter, to be designated Chapter 604D: Preventing Predatory Payday and Other Loans Act, to read as follows:

Section 2. *Liberal construction. The provisions of this chapter shall be liberally construed to achieve its purposes, which are combatting predatory payday lending and other high-cost loans; ensuring that out-of-state lenders cannot flout Nevada law by making payday loans, other loans, or transactions subject to this chapter at unlawful rates to Nevada residents; and protecting law-abiding lenders from unfair competition by predatory, out-of-state entities.*

Section 3. *Definitions. As used in this chapter, the words and terms defined in sections 4 to 6, inclusive, of this chapter have the meanings ascribed to them in those sections.*

Section 4. *Annual percentage rate defined. The term “Annual percentage rate” or APR means an annual rate calculated including all amounts, charges, and payments made directly or indirectly, incident to, ancillary to, or as a condition of a loan or other transaction subject to this chapter, whether voluntary, optional or required, including any amount paid to a broker or credit services organization. The APR shall include, but is not limited to, all interest, fees, charges and other payments as set forth in the regulations issued by the United States Secretary of Defense on July 22, 2015 to implement the Military Lending Act, 10 USC sec. 987, except that credit card fees may be excluded only if the card is network-branded and the fees collectively each year do not exceed 15% of the credit line. The annual percentage rate shall be calculated as specified in such regulations.*

Section 5. *Loan defined.*

1. For purposes of this chapter, “loan” means and includes:

(a) Money or credit provided to a consumer in exchange for the consumer’s agreement to a certain set of terms, including, but not limited to, provisions for direct or indirect repayment, interest, fees, charges or other payments, or other conditions;

(b) Any deferred deposit transaction or payday loan, installment loan, line of credit, retail installment sales contract, and motor vehicle retail installment sales contract, and other closed-end or open-end credit; and

(c) Any sale, assignment, order, or agreement for the payment of unpaid wages, salary, commissions, compensation, or other income, or any portion or amount thereof, whether earned, to be earned, or contingent upon future earnings, that is made in consideration for goods or services, credit, or the payment of money to or for the account of the person earning or receiving, or potentially earning or receiving, the wages, salary, commissions, compensation, or other income.

2. Any transaction that satisfies any definition in this section is a “loan” for purposes of this chapter without regard to the means of collection, without regard to whether the payday lender or other lender has legal recourse against the borrower in the event of non-repayment, and without regard to whether the transaction carries required charges or payments.

Section 6. Network-branded defined. *“Network-branded” means branded with and available for use on the Visa, MasterCard, American Express or Discover networks or a similar widely-accepted card network that is accepted upon presentation for purchases of goods and services at multiple, unaffiliated merchants.*

Section 7. Application of chapter. *This chapter applies to any payday lender or other person that:*

1. Markets, offers, brokers, arranges, facilitates, makes or services a loan as defined in Section 5 of this chapter or other transaction as defined in Section 8 of this chapter, including a credit service organization that obtains an extension of credit for a borrower;

2. Is a bank, savings bank, savings and loan association, or credit union organized, chartered or holding a certificate of authority to do business under the laws of this state, another state, or the United States. However, banks, savings banks, savings and loan associations, and credit unions organized, chartered or holding a certificate of authority to do business under the laws of another state or under the laws of the United States are exempt from this chapter only to the extent this chapter is preempted by federal law;

3. Is an agent of a person subject this chapter or of any affiliate, subsidiary or other entity that is related to, that controls, or that is controlled by a person subject to this chapter;

4. *Acquires a whole or partial interest in a loan or transaction subject to this chapter;*

5. *Is deemed to be subject to this chapter under section 11 of this chapter or is engaged in a transaction that is in substance a disguised loan or other transaction subject to this chapter or is a device, subterfuge or pretense to evade this chapter.*

6. *Markets, offers, brokers, arranges, facilitates, makes or services any transaction that is otherwise subject to this chapter and that is offered or made to a person residing in this state, whether the transaction is conducted in person, by telephone, via the Internet, or by any other means.*

Section 8. *Specific transactions subject to this chapter. Notwithstanding any other provision of law, transactions subject to this chapter shall include, but shall not be limited to, the following:*

1. *Deferred deposit loans (also known as payday loans), as defined in NRS 604A.050. A deferred deposit loan is subject to this chapter notwithstanding NRS 604A.220 or any other provision of law.*

2. *High-interest loans, as defined in NRS 604A.0703. A high-interest loan is subject to this chapter notwithstanding NRS 604A.220 or any other provision of law.*

3. *Title loans, as defined in NRS 604A.105. A title loan is subject to this chapter notwithstanding NRS 604A.220 or any other provision of law.*

4. *Refund anticipation loans, as defined in NRS 604B.060.*

5. *Consumer litigation funding transactions, as defined in NRS 604C.100. A consumer litigation funding transaction is subject to this chapter notwithstanding NRS 604C.220 or any other provision of law.*

7. *Installment loans, as regulated by Chapter 675 of the Nevada Revised Statutes;*

8. *Retail installment transactions, as defined in NRS 97.115. A retail installment transaction is subject to this chapter notwithstanding NRS 97.285 or any other provision of law;*

9. *Loans secured by a life insurance or annuity contract, as regulated by NRS 688A.110; and*

10. *Loans made by a bank, savings bank, savings and loan association, or credit union organized, chartered or holding a certificate of authority to do business*

under the laws of this state. This chapter shall apply to loans made by those entities notwithstanding NRS 662.015, NRS 672.370, NRS 672.460, NRS 672.710, NRS 673.225, NRS 673.3272, NRS 677.730 or any other provision of law.

Section 9. Maximum interest rate permitted. *For any loan or other transaction subject to this chapter made or renewed on or after the effective date of this chapter, no payday lender or other person shall market, offer, charge, contract for, collect or receive, directly or indirectly, charges or amounts exceeding a 36% annual percentage rate on the unpaid balance of the amount financed. This section shall apply notwithstanding any other provision of the laws of this state, including but not limited to any provision of NRS 604A.0703, NRS 604A.5029, NRS 604A.5052, or NRS 604A.5057 or any other law that refers to or allows an annual percentage rate that exceeds 36%.*

Section 10. Prohibited acts to evade application of chapter. *For any loan or other transaction subject to this chapter, no payday lender or other person shall engage in any device, subterfuge, or pretense to evade the requirements of this chapter, including, but not limited to:*

- 1. Making a loan or other transaction disguised as a personal property sale and leaseback transaction;*
- 2. Disguising proceeds of a loan or other transaction as a cash rebate for the pretextual sale of goods or services;*
- 3. Disguising a loan or other transaction as the sale of goods, services or things in action or disguising charges for a loan or other transaction in the price of goods, services or things in action;*
- 4. Making, contracting for, offering, assisting, or arranging for a borrower to obtain a loan or other transaction with a higher rate or amount of interest, consideration, charge or other payment received incident to the loan than is permitted by Section 9 of this chapter through any method including mail, telephone, internet or any electronic means, regardless of whether the person has a physical location in the state;*
- 5. Structuring the transaction in a manner to obscure the fact that it is a loan; or*
- 6. Charging, contracting for or receiving interest, fees, charges or other payments in excess of those permitted, regardless whether the payment purports to be voluntary.*

Section 11. Application of chapter to agents and service providers of exempt entities. *If the annual percentage rate of the loan or other transaction exceeds the rate permitted by Section 9*

of this chapter, a person shall be subject to the requirements of this chapter notwithstanding the fact that the person purports to act as an agent or service provider or in another capacity for a person that is exempt from this chapter, if, among other things:

- 1. The person holds, acquires, or maintains, directly or indirectly, the predominant economic interest, risk or reward, in the loan or transaction;*
- 2. The person (a) markets, solicits, brokers, arranges, facilitates or services loans or transactions and (b) holds, or has the right, requirement or first right of refusal to acquire, the loans, transactions, a share of receivables or another direct or indirect interest in the loans or loan program; or*
- 3. The totality of the circumstances indicate that the person is engaging in transactions subject to this chapter and that the transaction is structured to evade the requirements of this chapter. Circumstances that weigh in favor of a person being subject to this chapter include, without limitation, when the person:*
 - (a) indemnifies, insures or protects an exempt entity from costs or risks related to the loan or transaction;*
 - (b) predominantly designs, controls or operates the loan program or transaction;*
 - (c) holds the trademark or intellectual property rights in the brand, underwriting system, or other core aspects of the loan program or transaction; or*
 - (d) purports to act as an agent or service provider or in another capacity for an exempt entity while acting directly as a lender in other states.*

Section 12. *Prohibition against facilitation of payday loans or other transactions in violation of chapter.* *No person shall solicit, broker, or engage in any other activity intended to facilitate or result in, or that in fact facilitates or results in, a loan or transaction that violates this chapter.*

Section 13. *Remedies for payday loans or other transactions made in violation of this chapter.*

- 1. A loan or other transaction made in violation of this chapter shall be void and uncollectible as to any principal, fee, interest, charge or payment.*
- 2. An action for violation of this chapter may be brought in any court of competent jurisdiction.*
- 3. Any person who violates this chapter is liable to the borrower for:*

- (a) Actual and consequential damages;*
- (b) Restitution of any amounts paid;*
- (c) Treble the amount of any excess fee, interest, charge, or payment;*
- (d) Statutory damages, at an amount that the court considers just, of at least \$250 and no more than \$1,000 per violation;*
- (e) Injunctive or declaratory relief;*
- (f) Reasonable attorney's fees and costs; and*
- (g) Any other legal or equitable relief that the court deems appropriate in addition to any other remedies provided at law.*

4. The remedies provided for in this section are cumulative to any other remedies that apply to a loan or other transaction made in violation of other laws of this State.

Section 14. Declaration of intent to opt out of DIDMCA. *In accordance with section 525 of the federal "Depository Institutions Deregulation and Monetary Control Act of 1980", Pub.L. 96-221, the voters of the State of Nevada declare that the State of Nevada does not want the amendments to the "Federal Deposit Insurance Act", 12 U.S.C. sec. 1811 et seq.; the federal "National Housing Act", 12 U.S.C. sec. 1701 et seq.; and the "Federal Credit Union Act", 12 U.S.C. sec. 1757, made by sections 521 to 523 of the federal "Depository Institutions Deregulation and Monetary Control Act of 1980", Pub.L. 96-221, prescribing interest rates and preempting state interest rates to apply to loans as defined in Section 5 of this chapter or specific transactions as defined in Section 8 of this chapter. The rates established in this chapter shall apply to payday loans and other loans as defined in Section 5 of this chapter and specific transactions as defined in Section 8 of this chapter.*

Section 15. Application of chapter to earned wage access services. *Prior to January 1, 2030, section 9 of this chapter shall not apply to entities licensed under the laws of this State to provide earned wage access services, as defined in Senate Bill No. 290 of the 82nd Regular Session of the Nevada Legislature (2023), 2023 Nev. Stat., ch. 400. Beginning on January 1, 2030, section 9 shall apply to any provider of earned wage access services, regardless of whether the provider is licensed under the laws of this State, including any provider of transactions that satisfy the definition of earned wage access services currently set forth in Senate Bill No. 290 of the 82nd Regular Session of the Nevada Legislature (2023), 2023 Nev. Stat., ch. 400.*

Section 16. NRS 99.050 is hereby amended to read as follows:

1. Except as otherwise provided in subsection 2, parties may agree for the payment of any rate of interest on money due or to become due on any contract, for the compounding of interest if they choose, and for any other charges or fees, *provided, however, that parties cannot agree to any arrangement that violates the requirements of Chapter 604D of the Nevada Revised Statutes*. The parties shall specify in writing the rate upon which they agree, that interest is to be compounded if so agreed, and any other charges or fees to which they have agreed.

2. A creditor shall not charge an annual percentage rate that is greater than the lesser of 36 percent or the maximum annual percentage rate authorized under any federal law or regulation with respect to the consumer credit extended to a covered service member or a dependent of a covered service member. Any contract or agreement in violation of this subsection is void and unenforceable.

3. As used in this section:

(a) "Annual percentage rate" has the meaning ascribed to it in the federal Truth in Lending Act, as amended, 15 U.S.C. §§ 1601 et seq., and the federal regulations adopted pursuant thereto.

(b) "Consumer credit":

(1) Except as otherwise provided in subparagraph (2), means credit offered or extended to a covered service member or dependent of a covered service member primarily for personal, family or household purposes, and that is:

(I) Subject to a finance charge; or

(II) Payable by a written agreement in more than four installments.

(2) Does not include:

(I) A residential mortgage, which is any credit transaction secured by an interest in a dwelling, including a transaction to finance the purchase or initial construction of the dwelling, any refinance transaction, home equity loan or line of credit or reverse mortgage;

(II) Any credit transaction that is expressly intended to finance the purchase of a motor vehicle when the credit is secured by the vehicle being purchased;

(III) Any credit transaction that is expressly intended to finance the purchase of personal property when the credit is secured by the property being purchased;

(IV) Any credit transaction that is an exempt transaction for the purposes of 12 C.F.R. Part 1026, commonly known as Regulation Z, other than a transaction exempt under 12 C.F.R. § 1026.29, or otherwise is not subject to disclosure requirements under 12 C.F.R. Part 1026, commonly known as Regulation Z; and

(V) Any credit transaction or account for credit for which a creditor determines that a natural person is not a covered borrower by using a method and by complying with the recordkeeping requirement set forth in 32 C.F.R. § 232.5(b).

(c) “Covered service member”:

(1) Except as otherwise provided in subparagraph (2), means a member of the armed forces who is serving on:

(I) Active duty pursuant to title 10, title 14 or title 32 of the United States Code, under a call or order that does not specify a period of 30 days or fewer; or

(II) Active Guard and Reserve duty, as that term is defined in 10 U.S.C. § 101(d)(6).

(2) Does not include a consumer who was a covered service member pursuant to subparagraph (1) at the time he or she became obligated on a consumer credit transaction or established an account for consumer credit but is no longer a covered service member pursuant to subparagraph (1) or a dependent of a person who is a covered service member pursuant to subparagraph (1).

(d) “Credit” means the right granted to a natural person by a person engaged in the business of extending consumer credit, or an assignee of such a person with respect to any consumer credit extended, to defer payment or to incur debt and defer its payment.

(e) “Dependent” with respect to a covered service member means:

(1) The spouse;

(2) A child who:

(I) Has not attained the age of 21;

(II) Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, as defined in 10 U.S.C. § 1072(3), and is, or was at the time of the covered service

member's or former covered service member's death, in fact dependent on the covered service member or former covered service member for over one-half of the child's support; or

(III) Is incapable of self-support because of a mental or physical incapacity that occurs while a dependent of a covered service member or former covered service member under sub-subparagraph (I) or (II) and is, or was at the time of the covered service member's or former covered service member's death, in fact dependent on the member or former member for over one-half of the child's support;

(3) A parent or parent-in-law who is, or was at the time of the covered service member's or former covered service member's death, in fact dependent on him or her for over one-half of his or her support and residing in his or her household;

(4) An unmarried person who:

(I) Is placed in the legal custody of the covered service member or former covered service member as a result of an order of a court of competent jurisdiction in the United States, or possession of the United States, for a period of at least 12 consecutive months;

(II) Has not attained the age of 21, has not attained the age of 23 and is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, as defined in 10 U.S.C. § 1072(3), or is incapable of self-support because of a mental or physical incapacity that occurred while the person was considered a dependent of the covered service member or former covered service member pursuant to this paragraph;

(III) Is dependent on the covered service member or former covered service member for over one-half of the person's support;

(IV) Resides with the covered service member or former covered service member unless separated by the necessity of military service or to receive institutional care as a result of disability or incapacitation or under such other circumstances as the administering Secretary, as defined in 10 U.S.C. § 1072(3), may by regulation prescribe; and

(V) Is not a dependent of a covered service member or a former covered service member pursuant to subparagraph (1), (2) or (3).

(f) “Dwelling” means a residential structure that contains one to four units, whether or not the structure is attached to real property. The term includes, without limitation, an individual condominium unit, cooperative unit, mobile home and manufactured home.

Section 17. NRS 21.105 is hereby amended to read as follows:

~~[1.—If a writ of execution or garnishment is levied on the personal bank account of the judgment debtor and money has been deposited into the account electronically within the immediately preceding 45 days from the date on which the writ was served which is reasonably identifiable as exempt from execution, notwithstanding any other deposits of money into the account, \$2,000 or the entire amount in the account, whichever is less, is not subject to execution and must remain accessible to the judgment debtor. For the purposes of this section, money is reasonably identifiable as exempt from execution if the money is deposited in the bank account by the United States Department of the Treasury, including, without limitation, money deposited as:~~

~~(a) Benefits provided pursuant to the Social Security Act which are exempt from execution pursuant to 42 U.S.C. §§ 407 and 1383, including, without limitation, retirement and survivors’ benefits, supplemental security income benefits, disability insurance benefits and child support payments that are processed pursuant to Part D of Title IV of the Social Security Act;~~

~~(b) Veterans’ benefits which are exempt from execution pursuant to 38 U.S.C. § 5301;~~

~~(c) Annuities payable to retired railroad employees which are exempt from execution pursuant to 45 U.S.C. § 231m;~~

~~(d) Benefits provided for retirement or disability of federal employees which are exempt from execution pursuant to 5 U.S.C. §§ 8346 and 8470;~~

~~(e) Annuities payable to retired members of the Armed Forces of the United States and to any surviving spouse or children of such members which are exempt from execution pursuant to 10 U.S.C. §§ 1440 and 1450;~~

~~(f) Payments and allowances to members of the Armed Forces of the United States which are exempt from execution pursuant to 37 U.S.C. § 701;~~

~~(g) Federal student loan payments which are exempt from execution pursuant to 20 U.S.C. § 1095a;~~

~~(h) Wages due or accruing to merchant seamen which are exempt from execution pursuant to 46 U.S.C. § 11109;~~

~~(i) Compensation or benefits due or payable to longshore and harbor workers which are exempt from execution pursuant to 33 U.S.C. § 916;~~

~~(j) Annuities and benefits for retirement and disability of members of the foreign service which are exempt from execution pursuant to 22 U.S.C. § 4060;~~

~~(k) Compensation for injury, death or detention of employees of contractors with the United States outside the United States which is exempt from execution pursuant to 42 U.S.C. § 1717;~~

~~(l) Assistance for a disaster from the Federal Emergency Management Agency which is exempt from execution pursuant to 44 C.F.R. § 206.110;~~

~~(m) Black lung benefits paid to a miner or a miner's surviving spouse or children pursuant to 30 U.S.C. § 922 or 931 which are exempt from execution; and~~

~~(n) Benefits provided pursuant to any other federal law.]~~

1[2]. If a writ of execution or garnishment is levied on the personal bank account of the judgment debtor ~~[and the provisions of subsection 1 do not apply,]~~ \$5,000 ~~[400]~~ or the entire amount in the account, whichever is less, is not subject to execution and must remain accessible to the judgment debtor, unless the writ of execution or garnishment is for the recovery of money owed for the support of any person.

2[3]. If a judgment debtor has more than one personal bank account with the bank to which a writ is issued, the amount that is not subject to execution must not in the aggregate exceed the amount specified in subsection 1 ~~[or 2, as applicable]~~.

3[4]. A judgment debtor may apply to a court to claim an exemption for any amount subject to a writ levied on a personal bank account which exceeds the amount that is not subject to execution pursuant to subsection 1 ~~[or 2]~~.

4[5]. If money in the personal account of the judgment debtor which exceeds the amount that is not subject to execution pursuant to subsection ~~[1 or 2]~~ includes exempt and nonexempt money, the judgment debtor may claim an exemption for the exempt money in the manner set forth in NRS 21.112. To determine whether such money in the account is exempt, the judgment creditor must use the method of accounting which applies the standard that the first money deposited in the account is the first money withdrawn from the account. The court may require a judgment debtor to provide statements from the bank which include all deposits into and withdrawals from the account for the immediately preceding 90 days.

~~5[6]. A financial institution which makes a reasonable effort to determine whether money in the account of a judgment debtor is subject to execution for the purposes of this section is immune from civil liability for any act or omission with respect to that determination. [including, without limitation, when the financial institution makes an incorrect determination after applying commercially reasonable methods for determining whether money in an account is exempt because the source of the money was not clearly identifiable or because the financial institution inadvertently misidentified the source of the money.]~~ If a court determines that a financial institution failed to identify that money in an account was not subject to execution pursuant to this section, the financial institution must adjust its actions with respect to a writ of execution as soon as possible but may not be held liable for damages.

~~6[7].~~ Nothing in this section requires a financial institution to revise its determination about whether money is exempt, except by an order of a court.

Section 18. NRS 21.090 is hereby amended to read as follows:

1. The following property is exempt from execution, except as otherwise specifically provided in this section or required by federal law:

- (a) Private libraries, works of art, musical instruments and jewelry not to exceed \$5,000 in value, belonging to the judgment debtor or a dependent of the judgment debtor, to be selected by the judgment debtor, and all family pictures and keepsakes.
- (b) Necessary household goods, furnishings, electronics, wearing apparel, other personal effects and yard equipment, not to exceed \$12,000 in value, belonging to the judgment debtor or a dependent of the judgment debtor, to be selected by the judgment debtor.
- (c) Farm trucks, farm stock, farm tools, farm equipment, supplies and seed not to exceed \$4,500 in value, belonging to the judgment debtor to be selected by the judgment debtor.
- (d) Professional libraries, equipment, supplies, and the tools, inventory, instruments and materials used to carry on the trade or business of the judgment debtor for the support of the judgment debtor and his or her family not to exceed \$10,000 in value.
- (e) The cabin or dwelling of a miner or prospector, the miner's or prospector's cars, implements and appliances necessary for carrying on any mining operations and the mining claim actually worked by the miner or prospector, not exceeding \$4,500 in total value.

(f) Except as otherwise provided in paragraph (p), one vehicle if the judgment debtor's equity does not exceed \$15,000 or the creditor is paid an amount equal to any excess above that equity.

(g) For any workweek, *\$850 of disposable earnings. If the debtor's weekly disposable earnings exceed \$850, 90% of disposable earnings in excess of \$850 shall be exempt from garnishment unless the weekly disposable earnings of the debtor exceed \$1,200, in which case 85% of the disposable earnings in excess of \$850 shall be exempt from garnishment. The amount not subject to garnishment is exempt.*~~82 percent of the disposable earnings of a judgment debtor during that week if the gross weekly salary or wage of the judgment debtor on the date the most recent writ of garnishment was issued was \$770 or less, 75 percent of the disposable earnings of a judgment debtor during that week if the gross weekly salary or wage of the judgment debtor on the date the most recent writ of garnishment was issued exceeded \$770, or 50 times the minimum hourly wage prescribed by section 206(a)(1) of the federal Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201 et seq., and in effect at the time the earnings are payable, whichever is greater.~~ Except as otherwise provided in paragraphs (o), (s) and (t), the exemption provided in this paragraph does not apply in the case of any order of a court of competent jurisdiction for the support of any person, any order of a court of bankruptcy or of any debt due for any state or federal tax. As used in this paragraph:

(1) "Disposable earnings" means that part of the earnings of a judgment debtor remaining after the deduction from those earnings of any amounts required by law to be withheld.

(2) "Earnings" means compensation paid or payable for personal services performed by a judgment debtor in the regular course of business, including, without limitation, compensation designated as income, wages, tips, a salary, a commission or a bonus. The term includes compensation received by a judgment debtor that is in the possession of the judgment debtor, compensation held in accounts maintained in a bank or any other financial institution or, in the case of a receivable, compensation that is due the judgment debtor. *Compensation paid or payable for personal services is earnings regardless of whether the judgment debtor is classified as an independent contractor or an employee.*

(h) All fire engines, hooks and ladders, with the carts, trucks and carriages, hose, buckets, implements and apparatus thereunto appertaining, and all

furniture and uniforms of any fire company or department organized under the laws of this State.

(i) All arms, uniforms and accouterments required by law to be kept by any person, and also one gun, to be selected by the debtor.

(j) All courthouses, jails, public offices and buildings, lots, grounds and personal property, the fixtures, furniture, books, papers and appurtenances belonging and pertaining to the courthouse, jail and public offices belonging to any county of this State, all cemeteries, public squares, parks and places, public buildings, town halls, markets, buildings for the use of fire departments and military organizations, and the lots and grounds thereto belonging and appertaining, owned or held by any town or incorporated city, or dedicated by the town or city to health, ornament or public use, or for the use of any fire or military company organized under the laws of this State and all lots, buildings and other school property owned by a school district and devoted to public school purposes.

(k) All money, benefits, privileges or immunities accruing or in any manner growing out of any life insurance.

(l) The homestead as provided for by law, including:

(1) Subject to the provisions of NRS 115.055, the sum of \$605,000 that is paid to the defendant in execution pursuant to subsection 2 of NRS 115.050 or to a spouse pursuant to subsection 3 of NRS 115.050; and

(2) A homestead for which allodial title has been established and not relinquished and for which a waiver executed pursuant to NRS 115.010 is not applicable.

(m) The dwelling of the judgment debtor occupied as a home for himself or herself and family, where the amount of equity held by the judgment debtor in the home does not exceed \$605,000 in value and the dwelling is situated upon lands not owned by the judgment debtor.

(n) All money reasonably deposited with a landlord by the judgment debtor to secure an agreement to rent or lease a dwelling that is used by the judgment debtor as his or her primary residence, except that such money is not exempt with respect to a landlord or the landlord's successor in interest who seeks to enforce the terms of the agreement to rent or lease the dwelling.

(o) All property in this State of the judgment debtor where the judgment is in favor of any state for failure to pay that state's income tax on benefits received from a pension or other retirement plan.

(p) Any vehicle owned by the judgment debtor for use by the judgment debtor or the judgment debtor's dependent that is equipped or modified to provide mobility for a person with a permanent disability.

(q) Any prosthesis or equipment prescribed by a physician or dentist for the judgment debtor or a dependent of the debtor.

(r) Money, not to exceed \$1,000,000 in present value, held in:

(1) An individual retirement arrangement which conforms with or is maintained pursuant to the applicable limitations and requirements of section 408 or 408A of the Internal Revenue Code, 26 U.S.C. §§ 408 and 408A, including, without limitation, an inherited individual retirement arrangement;

(2) A written simplified employee pension plan which conforms with or is maintained pursuant to the applicable limitations and requirements of section 408 of the Internal Revenue Code, 26 U.S.C. § 408, including, without limitation, an inherited simplified employee pension plan;

(3) A cash or deferred arrangement plan which is qualified and maintained pursuant to the Internal Revenue Code, including, without limitation, an inherited cash or deferred arrangement plan;

(4) A trust forming part of a stock bonus, pension or profit-sharing plan which is qualified and maintained pursuant to sections 401 et seq. of the Internal Revenue Code, 26 U.S.C. §§ 401 et seq.; and

(5) A trust forming part of a qualified tuition program pursuant to chapter 353B of NRS, any applicable regulations adopted pursuant to chapter 353B of NRS and section 529 of the Internal Revenue Code, 26 U.S.C. § 529, unless the money is deposited after the entry of a judgment against the purchaser or account owner or the money will not be used by any beneficiary to attend a college or university.

(s) All money and other benefits paid pursuant to the order of a court of competent jurisdiction for the support, education and maintenance of a child, whether collected by the judgment debtor or the State.

(t) All money and other benefits paid pursuant to the order of a court of competent jurisdiction for the support and maintenance of a former

spouse, including the amount of any arrearages in the payment of such support and maintenance to which the former spouse may be entitled.

(u) Payments, in an amount not to exceed \$16,150, received as compensation for personal injury, not including compensation for pain and suffering or actual pecuniary loss, by the judgment debtor or by a person upon whom the judgment debtor is dependent at the time the payment is received.

(v) Payments received as compensation for the wrongful death of a person upon whom the judgment debtor was dependent at the time of the wrongful death, to the extent reasonably necessary for the support of the judgment debtor and any dependent of the judgment debtor.

(w) Payments received as compensation for the loss of future earnings of the judgment debtor or of a person upon whom the judgment debtor is dependent at the time the payment is received, to the extent reasonably necessary for the support of the judgment debtor and any dependent of the judgment debtor.

(x) Payments received as restitution for a criminal act.

(y) Payments received pursuant to the federal Social Security Act, including, without limitation, retirement and survivors' benefits, supplemental security income benefits and disability insurance benefits.

(z) Any personal property not otherwise exempt from execution pursuant to this subsection belonging to the judgment debtor, including, without limitation, the judgment debtor's equity in any property, money, stocks, bonds or other funds on deposit with a financial institution, not to exceed \$10,000 in total value, to be selected by the judgment debtor.

(aa) Any tax refund received by the judgment debtor that is derived from the earned income credit described in section 32 of the Internal Revenue Code, 26 U.S.C. § 32, or a similar credit provided pursuant to a state law.

(bb) Stock of a corporation described in subsection 2 of NRS 78.746 except as set forth in that section.

(cc) Regardless of whether a trust contains a spendthrift provision:

(1) A distribution interest in the trust as defined in NRS 163.4155 that is a contingent interest, if the contingency has not been satisfied or removed;

- (2) A distribution interest in the trust as defined in NRS 163.4155 that is a discretionary interest as described in NRS 163.4185, if the interest has not been distributed;
- (3) A power of appointment in the trust as defined in NRS 163.4157 regardless of whether the power has been exercised;
- (4) A power listed in NRS 163.5553 that is held by a trust protector as defined in NRS 163.5547 or any other person regardless of whether the power has been exercised; and
- (5) A reserved power in the trust as defined in NRS 163.4165 regardless of whether the power has been exercised.

(dd) If a trust contains a spendthrift provision:

- (1) A distribution interest in the trust as defined in NRS 163.4155 that is a mandatory interest as described in NRS 163.4185, if the interest has not been distributed; and
- (2) Notwithstanding a beneficiary's right to enforce a support interest, a distribution interest in the trust as defined in NRS 163.4155 that is a support interest as described in NRS 163.4185, if the interest has not been distributed.

(ee) Proceeds received from a private disability insurance plan.

(ff) Money in a trust fund for funeral or burial services pursuant to NRS 689.700.

(gg) Compensation that was payable or paid pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS as provided in NRS 616C.205.

(hh) Unemployment compensation benefits received pursuant to NRS 612.710.

(ii) Benefits or refunds payable or paid from the Public Employees' Retirement System pursuant to NRS 286.670.

(jj) Money paid or rights existing for vocational rehabilitation pursuant to NRS 615.270.

(kk) Public assistance provided through the Department of Health and Human Services pursuant to NRS 422.291 and 422A.325.

(ll) Child welfare assistance provided pursuant to NRS 432.036.

2. Except as otherwise provided in NRS 115.010, no article or species of property mentioned in this section is exempt from execution issued upon a judgment to recover for its price, or upon a judgment of foreclosure of a mortgage or other lien thereon.

3. Any exemptions specified in subsection (d) of section 522 of the Bankruptcy Reform Act of 1978, 11 U.S.C. §§ 101 et seq., do not apply to property owned by a resident of this State unless conferred also by subsection 1, as limited by subsection 2.

4. The exemptions set forth in this section and NRS 21.105 shall be automatically adjusted to reflect changes by the percentage change, if any, from January 1st to December 31st of the preceding year in the Consumer Price Index for All Urban Consumers, Annual City Average, for the Western Region, or its successor index, as published by the United States Department of Labor, Bureau of Labor Statistics or its successor agency, beginning the April 1 following enactment and every 3 years thereafter. The Nevada Department of Business & Industry shall publish the 1-year adjustment for an effective date of April 1st for the following year. Adjustments made pursuant to this paragraph must be rounded up to the next \$10.

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DESCRIPTION OF EFFECT

This measure addresses high-interest lending practices by establishing maximum interest rates charged to consumers, and shields more of people's savings and earnings from garnishment than under current law.

Currently, most consumer loans have no interest rate cap. The proposed cap would set a maximum interest rate of 36% annually on the unpaid balance of the amount financed, and would apply to consumer loans; deferred-deposit transactions ("payday loans"); title loans; and other loan types dependent on future earnings and income.

The initiative also prohibits evading the interest rate cap by structuring transactions to mask their nature as loans covered by this measure, or partnering with out-of-state lenders to violate the rate cap. The initiative voids transactions that violate the cap, and establishes civil penalties.

Additionally, the initiative automatically protects \$5,000 of savings in a personal bank account (up from \$400 now), and \$850 of wages in any workweek (up from \$369), as well as a portion of disposable earnings above that amount, from seizure for a debt. Those amounts would be indexed to increase periodically with inflation.

County of _____ (Only registered voters of this county may sign below)
 Petition District: _____ (Only registered voters of this petition district may sign below)

			Office Use
1	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE - DATE / /	CITY COUNTY	
2	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE - DATE / /	CITY COUNTY	
3	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
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11	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
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Currently, most consumer loans have no interest rate cap. The proposed cap would set a maximum interest rate of 36% annually on the unpaid balance of the amount financed, and would apply to consumer loans; deferred-deposit transactions ("payday loans"); title loans; and other loan types dependent on future earnings and income.

The initiative also prohibits evading the interest rate cap by structuring transactions to mask their nature as loans covered by this measure, or partnering with out-of-state lenders to violate the rate cap. The initiative voids transactions that violate the cap, and establishes civil penalties.

Additionally, the initiative automatically protects \$5,000 of savings in a personal bank account (up from \$400 now), and \$850 of wages in any workweek (up from \$369), as well as a portion of disposable earnings above that amount, from seizure for a debt. Those amounts would be indexed to increase periodically with inflation.

County of _____ **(Only registered voters of this county may sign below)**

Petition District: _____ **(Only registered voters of this petition district may sign below)**

			Office Use
13	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE - DATE / /	CITY COUNTY	
14	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE - DATE / /	CITY COUNTY	
15	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE - DATE / /	CITY COUNTY	
16	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE - DATE / /	CITY COUNTY	

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County of _____ (**Only** registered voters of this county may sign below)

Petition District: _____ (**Only** registered voters of this petition district may sign below)

			Office Use
17	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE - DATE / /	CITY COUNTY	
18	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE - DATE / /	CITY COUNTY	
19	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE - DATE / /	CITY COUNTY	
20	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE - DATE / /	CITY COUNTY	

AFFIDAVIT OF CIRCULATOR

(TO BE SIGNED BY CIRCULATOR)

STATE OF NEVADA)
)
COUNTY OF _____)

I, _____, (print name), being first duly sworn under penalty of perjury, depose and say: (1) that I reside at _____ (print street, city and state); (2) that I am 18 years of age or older; (3) that I personally circulated this document; (4) that all signatures were affixed in my presence; (5) that the number of signatures affixed thereon is _____; and (6) that each person who signed had an opportunity before signing to read the full text of the act or resolution on which the initiative or referendum is demanded.

Signature of Circulator

Subscribed and sworn to or affirmed before me this

_____ day of _____, _____, by _____.

Notary Public or person authorized to administer oath

J. Malcolm DeVoy (NSBN 11950)
Matthew Morris (NSBN 15068)
HOLLAND & HART LLP
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Attorneys for Plaintiff DailyPay, Inc.

FIRST JUDICIAL DISTRICT COURT OF NEVADA
IN AND FOR CARSON CITY

DAILYPAY, INC., a Delaware Corporation

Plaintiff,

v.

The Honorable FRANCISCO V. AGUILAR,
in his official capacity as Secretary of State for
the State of Nevada;

Defendant.

Case No. 2400

Dept. No. #

2024 JAN 29 PM 3:11
CLERK
DEPUTY

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

[Exemption from Arbitration Based on Equitable and Declaratory Relief Requested

NAR 3(A), 5(A)]

Plaintiff DAILYPAY, INC. ("Daily Pay"), by and through its counsel, Holland & Hart LLP, hereby files this Complaint for Declaratory and Injunctive Relief against Defendant FRANCISCO V. AGUILAR, in his official capacity as Secretary of State for the State of Nevada. Plaintiff files this Complaint to challenge Initiative Petition S-01-2024 and Initiative Petition S-03-2024 (the "Petitions"). Plaintiff alleges as follows:

JURISDICTION

1. This Court has subject matter jurisdiction over this Complaint challenging the Petitions pursuant to NRS 295.061, and over Plaintiff's claims for declaratory and injunctive relief pursuant to NRS 30.030, NRS 30.040(1), and NRS 33.010.

INTRODUCTION

2. This Complaint challenges the Petitions, which seek to enact a new chapter to the Nevada Revised Statutes titled the “Preventing Predatory Payday and Other Loans Act” (the proposed “Act”). *See, Exhibits 1 and 2*, a true and correct copy of the Petitions, attached hereto.¹

3. The Petitions’ description of effect states, among other things, that the proposed Act “addresses high-interest lending practices by establishing maximum interest rates charged to consumers,” and “also prohibits evading the [proposed] interest rate cap by structuring transactions to mask their nature as loans covered by this measure[.]”

4. During the 2023 Legislative Session, the Legislature approved, and the Governor signed into law, Senate Bill 290 (“SB 290”). SB 290 authorizes the licensure in Nevada of providers of earned wage access services (also referred to in this Complaint as “EWA” services). SB 290 defines “earned wage access services” as “the delivery to a user of money that represents earned but unpaid income.” *See* SB 290, Sec. 7.

5. EWA services allow a worker-user to access wages the worker has already worked for and earned, for example, to pay for an unexpected emergency expense. Accordingly, SB 290 provides that EWA services are not loans or other forms of credit—the worker is accessing income that is already earned: “[E]arned wage access services...by a provider licensed pursuant to [SB 290] are not a loan or money transmission.” SB 290, Secs. 33(1)-(2); SB 290 Legislative Digest (emphasis added).

6. More than 36,000 Nevada workers have had access to the EWA services provided by DailyPay, and more than 200 Nevada businesses have offered DailyPay’s EWA services to their workers. Approximately 12,650 Nevada users are enrolled to use DailyPay’s EWA services.

¹ Initiative Petition S-01-2024 (Ex. 1) was filed on Jan. 5, 2024, and Initiative Petition S-03-2024 (Ex. 2) was filed on Jan. 24, 2024. Both petitions propose identical language relating to “predatory” lending and SB 290, but the second Petition removed language relating to wage garnishment and exempting personal funds from debt collection, initially included in the first Petition. As pertinent here, the Petitions are identical and propose the same Act. Their respective descriptions of effect of the proposed Act are identical. It is not clear why the first Petition was not withdrawn after the second Petition was filed. As of the filing of this Complaint, the Petitions propose the same language verbatim and suffer from the same legal defects, so this Complaint challenges both Petitions as invalid and unconstitutional.

1 7. The proposed Act would revise SB 290 by defining EWA services as a “loan” and
2 defining EWA service providers, and the employers they partner with, as lenders, subject to new
3 and expanded restrictions, liability, and civil penalties.

4 8. Despite SB 290, Secs. 33(1)-(2), declaring that EWA services are not to be deemed
5 a loan or other form of credit, the proposed Act defines a “loan” to include, among other things:
6 “Any...agreement for the payment of unpaid wages,...or other income...whether earned, to be
7 earned, or contingent upon future earnings...made in consideration for...the payment of money
8 to...the person earning or receiving or potentially earning or receiving, the wages...or other
9 income.” Ex 1., at 2; Ex. 2, at 2 (proposed Act, Sec. 5(1)(c) emphases added).

10 9. The proposed Act would revise SB 290’s plain language declaring that EWA
11 services are not a loan and are not to be “deemed a loan or other form of credit.” SB 290, Sec.
12 33(1)-(2). While the proposed Act refers to and revises SB 290, the Petitions do not include the
13 full text of SB 290 for a signatory to review.

14 10. The proposed Act would mandate a maximum Annual Percentage Rate (“APR”),
15 that would prospectively apply to EWA service providers licensed under SB 290, effective January
16 1, 2030. Ex 1, Ex. 2, Secs. 9, 15. If the proposed Act is approved, its remaining sections, including
17 its redefining EWA services as “loans,” and new restrictions and penalties for so-called
18 “predatory” lending or “masking” a transaction that the Act defines as a “loan”, would apply to
19 EWA service providers and their employer partners before January 1, 2030. The description of
20 effect is silent on the fiscal impacts to the State in enforcing these new and expanded mandates.

21 11. The Petitions also are silent to the fact that they would amend SB 290 and repeal
22 existing law which plainly directs that EWA services are not to be deemed a loan or other form of
23 credit, and that EWA service providers are not lenders.

24 12. The description of effect is argumentative, deceptive, and misleading, stating the
25 proposed Act will apply only to “predatory” and “high-interest” loans and lending practices. In
26 reality, the proposed Act’s express terms will apply to EWA services, which are not loans, and to
27
28

1 EWA service providers, which are not lenders, and which may not charge interest or any other
2 penalty against a user under SB 290. Nothing about EWA services under SB 290 is “predatory” or
3 “high-interest,” despite the Petitions’ deceptive description of effect stating otherwise.
4

5 13. The Petitions’ description of effect provides no meaningful notice to thousands of
6 potential Nevada signatories who are EWA users, or to hundreds of Nevada businesses that partner
7 with EWA providers to offer EWA services to their workers, that the proposed Act re-defines
8 EWA services to be a “loan” and a “predatory” loan, at that. The description of effect is silent on
9 the proposed Act imposing new restrictions, prohibitions, and penalties on providers of EWA
10 services, which SB 290 declares are not loans, and from which tens of thousands of Nevada
11 workers have benefited.
12

13 14. The misleading description of effect fails to notify hundreds of Nevada employers
14 who partner with EWA providers to offer EWA services to their workers as a benefit of
15 employment, that they, too, would be subject to new, so-called “predatory” lending rules, liability,
16 and penalties, as a “person that...markets, offers, brokers, arranges, facilitates, makes or services
17 a loan as defined in Section 5 of [the proposed Act].” Ex. 1, at 2; Ex. 2, at 2. (Sec. 7(1)).
18

19 15. The Petitions are invalid because they violate the single-subject rule, fail to
20 truthfully describe the proposed Act’s effects or give fair notice to potential signers, withhold the
21 full text of the proposed measure, and fail to account for the proposed Act’s fiscal impacts.
22

23 PARTIES

24 16. Plaintiff DailyPay, Inc. (“DailyPay”), is a Delaware-registered corporation
25 authorized to do business in Nevada. DailyPay is an employer-integrated earned wage access
26 service provider that currently partners with more than 200 Nevada employers to provide earned
27 wage access services to thousands of Nevada workers. DailyPay will be directly and irreparably
28 harmed by the challenged Petitions if their proposed Act is approved.

17. Defendant Francisco V. Aguilar is Nevada's duly elected Secretary of State and is sued in his official capacity. Defendant is Nevada's Chief Elections Officer responsible for administering Nevada's elections and initiative petition process under NRS Chapters 293 and 295.

JURISDICTION AND VENUE

18. NRS 295.061 confers jurisdiction on this Court to hear Plaintiff's claims challenging the Petitions' compliance with single-subject and description-of-effect requirements.

19. NRS 30.030, NRS 30.040 and NRS 33.010 confer jurisdiction on this Court to grant Plaintiff's requests for declaratory and injunctive relief.

20. The Court has personal jurisdiction over the Defendant, who resides in and carries out official duties in the State of Nevada, pursuant to NRS 14.065.

21. Venue is proper under NRS 295.061(1) and NRS 13.010, 13.020(3), and 13.040. Plaintiff challenges the Petitions' compliance with NRS Chapter 295, and the Defendant carries out official duties in Carson City, Nevada.

FACTUAL ALLEGATIONS

22. On or about January 5, 2024,² and January 24, 2024, Kate Feldman filed the challenged Petitions with the Nevada Secretary of State's Office. *See Exs. 1 and 2*, at 1.

23. The Petitions propose to enact the "Preventing Predatory Payday and Other Loans Act." Sections 1 to 16 of the proposed Act in both Petitions are identical, as are their descriptions of effect for the proposed Act. Despite their identical language pertaining to "predatory" lending, the Petition filed on January 5th has not been withdrawn as of the date of this filing.

The Proposed "Preventing Predatory Payday and Other Loans Act."

24. The proposed "Preventing Predatory Payday and Other Loans Act" seeks to add a new chapter (proposed NRS Chapter 604D) to the Nevada Revised Statutes." *Exs. 1 and 2*, Sec. 1.

25. The proposed Act, Sec. 2, describes the Act's purpose as "combatting predatory payday lending and other high-cost loans; ensuring that out-of-state lenders cannot flout Nevada

² The first Petition, *Ex. 1*, at 1, is dated Jan. 4, 2024, but the Secretary of State's online Petitions page states it was received Jan. 5, 2024. *See* <https://www.nvsos.gov/sos/elections/2024-petitions> (accessed Jan. 24, 2024).

1 law by making payday loans, other loans, or transactions subject to this chapter at unlawful rates
2 to Nevada residents; and protecting law-abiding lenders from unfair competition by predatory, out-
3 of-state entities.” **Exs. 1 and 2** (Sec. 2).

4 26. The proposed Act does not define the term “predatory” loan and refers to other
5 statutory definitions without providing their full text for a signer’s review. **Exs. 1 and 2**, (Sec.
6 8(1)-(10)).

7 27. The proposed Act, Section 4, defines “Annual percentage rate” or APR as “an
8 annual rate calculated including all amounts, charges, and payments made directly or indirectly,
9 incident to, ancillary to, or as a condition of a loan or other transactions subject to this chapter[.]”
10 **Exs. 1 and 2** (Sec. 4).

11 28. Section 5 defines the term “loan” to mean, among other things, “Any...agreement
12 for the payment of unpaid wages, salary, commissions, compensation, or other income...
13 whether earned, to be earned, or contingent upon future earnings, that is made in
14 consideration for...the payment of money to or for the account of the person earning or receiving,
15 or potentially earning or receiving, the wages, salary, commissions, compensation, or other
16 income.” **Exs. 1 and 2** (Sec. 5(1)(a)(c) (emphases added).

17 29. Section 5 further provides that “any transaction that satisfies any definition in this
18 section is a ‘loan’ for purposes of this chapter without regard to the means of collection, without
19 regard to whether the payday lender or other lender has legal recourse against the borrower in the
20 event of non-repayment and without regard to whether the transaction carries required charges or
21 payments.” **Exs. 1 and 2** (Sec. 5(2)).

22 30. Section 7 states the Act shall apply “to any payday lender or other person that:
23 1. Markets, offers, brokers, arranges, facilitates, makes or services a loan as defined in Section 5
24 of this chapter, or other transaction as defined in Section 8 of this Chapter, including a credit
25 service organization that obtains an extension of credit for a borrower.” **Exs. 1 and 2** (Sec. 7(1)).
26 Sec. 7 also states the Act shall apply to “any payday lender or other person” that “is deemed to be
27 subject to this chapter under Section 11...or is engaged in a transaction that is in substance a
28

1 disguised loan or...is a device, subterfuge or pretense to evade this chapter." **Exs. 1 and 2** (Sec.
2 7(5)).

3 31. Section 9 proposes a "maximum interest rate" for "any loan or other transaction
4 subject to this chapter" and provides "no payday lender or other person shall market, offer, charge,
5 contract for, collect or receive, directly or indirectly, charges or amounts exceeding a 36% annual
6 percentage rate on the unpaid balance of the amount financed." **Exs. 1 and 2** (Sec. 9). Sec. 9 "shall
7 apply notwithstanding any other provision of the laws of this state." *Id.*

8 32. Section 10 enumerates "prohibited acts to evade application" of the proposed Act.
9 **Exs. 1 and 2** (Sec. 10(1)-(6)). Such "prohibited acts" include "disguising a loan or other transaction
10 as the sale of goods, services, or things in action or disguising charges for a loan or other
11 transaction in the price of goods, services or things in action." **Exs. 1 and 2** (Sec. 10(3)). Section
12 10 includes as a "prohibited act" "structuring the transaction in a manner to obscure the fact that
13 it is a loan," or "charging, contracting for, or receiving interest, fees, charges or other payments in
14 excess of those permitted, regardless whether the payment purports to be voluntary." **Exs. 1 and**
15 **2** (Secs. 10(5)-(6)).

16 33. Sections 12-13 prohibit "facilitation of payday loans or other transactions in
17 violation" and establish "remedies for payday loans or other transactions made in violation of" the
18 proposed Act. Section 13 provides that "a loan or other transaction made in violation of this chapter
19 shall be void and uncollectable as to any principal, fee, interest, charge, or payment." **Exs. 1 and**
20 **2** (Sec. 13(1)). Section 13 allows "an action for violation of this chapter [to] be brought in any
21 court of competition jurisdiction." **Exs. 1 and 2** (Sec. 13(2)).

22 34. Section 13 makes "any person who violates" the proposed Act liable for:

- 23 (a) Actual and consequential damages;
24 (b) Restitution of any amounts paid;
25 (c) Treble the amount of any excess fee, interest, charge or payment;
26 (d) Statutory damages ranging from \$250 to \$1,000 per violation;
27 (e) Injunctive or declaratory relief;
28 (f) Reasonable attorney's fees and costs; and
(g) Any other legal or equitable relief that the court deems appropriate in addition to any other remedies provided at law.

(**Exs. 1 and 2**) (Secs. 13(3)(a)-(g)). The proposed Act does not define the term "person."

1 35. The proposed Act refers to SB 290 but does not include any of SB 290's text, much
2 less its "full text" as the Nevada Constitution and NRS 295.0575 require. The proposed Act, Sec.
3 15, relates to the "application of [the proposed] chapter to earned wage access services" under SB
4 290. **Exs. 1 and 2** (Sec. 15). Section 15 provides that:

5 Prior to January 1, 2030, section 9 of this chapter shall not apply
6 to entities licensed under the laws of this State to provide earned
7 wage access services, as defined in Senate Bill No. 290 of the 82nd
8 Regular Session of the Nevada Legislature (2023), 2023 Nev. Stat.,
9 ch. 400. Beginning on January 1, 2030, section 9 shall apply to
10 any provider of earned wage access services, regardless of
11 whether the provider is licensed under the laws of this State,
12 including any provider of transactions that satisfy the definition of
13 earned wage access services currently set forth in Senate Bill No.
14 290 of the 82nd Regular Session of the Nevada Legislature (2023),
15 2023 Nev. Stat., ch. 400.

16 **Exs. 1 and 2** (Sec. 15) (emphases added). The proposed Act's prospective application refers only
17 to Section 9's interest rate cap. If approved, the proposed Act's remaining sections would apply to
18 EWA service providers and their employer partners before January 1, 2030, including: Section 5's
19 definition of access to earned but unpaid income as a "loan,"; Section 10's prohibition on
20 "disguising" a transaction defined as a "loan," or "structuring" a transaction to "obscure" that it is
21 a loan, and prohibiting charging fees "in excess of those permitted"; and Section 13, subjecting
22 violations to treble damages, restitution, attorney fees, and injunctive and declaratory relief.

23 36. If approved, the proposed Act's Secs. 5, 8, 10, and 13, in particular, will apply to
24 DailyPay, which currently provides employer-integrated earned wage access services in Nevada
25 as authorized under SB 290, and to DailyPay's employer partners in Nevada, who offer employer-
26 integrated earned wage access services as a benefit to thousands of Nevada workers.

27 **SB 290**

28 37. SB 290 authorizes the licensure of earned wage access service providers in Nevada,
declares that EWA services are not loans, and declares that EWA service providers are not lenders.

38. SB 290 passed nearly unanimously in the State Senate by a vote of 19 to 1, with one excused. SB 290 passed the State Assembly by more than a two-thirds supermajority margin of 35 to 7. Governor Joe Lombardo signed the bill into law on June 13, 2023.

39. SB 290 authorizes an EWA service provider to deliver access to a worker's income, which the worker has already earned, before an employer has paid the income the worker has already earned. SB 290 declares that such a service is not a loan or other form of credit, because the EWA user is accessing income the EWA user has worked for, income which the worker has already earned. SB 290, Sec. 33(1)-(2).

40. SB 290 defines "earned but unpaid income" as "salary, wages, compensation or other income that: (a) A user or employer has represented, and a provider has reasonably determined to have been, earned or accrued to the benefit of the user in exchange for the user's provision of services to the employer or on behalf of an employer; and (b) Has not been paid to the user by the employer at the time a provider delivers the payment of the proceeds to a user." SB 290, Sec. 4(1)-(2) (emphases added).

41. SB 290 defines "earned wage access services" in general to be "the delivery to a user of money that represents earned but unpaid income. The term includes both employer-integrated earned wage access services and direct-to-consumer earned wage access services." SB 290, Sec. 7(1)-(2).

42. SB 290 authorizes two types of earned wage access services: Employer-Integrated, and Direct-to-Consumer. SB 290, Secs. 3.1-3.2; Secs. 9-9.1 DailyPay is an employer-integrated earned wage access service provider.

43. SB 290 requires an "employer-integrated earned wage access provider" to verify with an employer that a worker has already earned the income that the worker accesses through the EWA provider's service. Because the worker has already earned the income accessed through

1 the provider's service, the accessed funds are not a "loan" to the worker, who is merely accessing
2 income that has already been worked for and earned. The EWA provider must verify with the
3 employer that the income has been earned before the EWA user accesses it. SB 290, Sec. 9.1.

4 44. Thus, SB 290, Sec. 9.1, defines "employer-integrated earned wage access services"
5 not as the delivery of money to a user, but more particularly, the delivery of access to money that
6 the user has already earned. SB 290, Sec. 9.1, defines "employer-integrated earned wage access
7 services" as "the delivery to a user of access to earned but unpaid income determined based on
8 employment, income or attendance data obtained directly or indirectly from an employer,
9 including...an employer's payroll service provider." (Emphases added).

10 45. SB 290, Sec. 12, requires an EWA service provider to obtain a license from the
11 Financial Institutions Division ("FID"). SB 290 imposes a variety of regulatory requirements a
12 provider must satisfy to apply for and obtain a license to engage in business in Nevada.

13 46. As pertinent here, SB 290 requires any applicant for licensure to offer at least one
14 no-cost option to users, *i.e.*, an option allowing the user to access their earnings at no cost to them.
15 An applicant must include "a schedule of fees proposed to be charged to a user or employer for
16 the provision of earned wage access services, which must include, without limitation, a statement
17 identifying at least one option for a user to obtain earned wage access services from the
18 applicant at no cost to the user." SB 290, Sec. 12(2)(d) (emphases added).

19 47. SB 290 subjects EWA service provider applicants to a variety of background check
20 and reporting requirements, including fingerprinting, providing audited financial statements to
21 FID, annual reporting to FID, and other regulatory measures. SB 290, Secs. 12-13.

22 48. In addition to requiring at least one no-cost option for EWA users, SB 290, Sec. 31,
23 includes several specific measures to protect EWA users. SB 290 prohibits an EWA service
24 provider from sharing fees or any other proceeds from a user with the user's employer.

1 49. SB 290, Sec. 31(1)(b) prohibits an EWA service provider from using a worker's
2 credit report or credit score to determine the worker-user's eligibility for EWA services.

3 50. SB 290, Sec. 31(1)(c) forbids an EWA service provider from "charg[ing] a late fee,
4 deferral fee, interest or any other penalty or charge for a failure to pay outstanding proceeds, fees,
5 voluntary tips, gratuities, or other donations."

6 51. SB 290, Sec. 31(1)(d) prohibits an EWA service provider from reporting to a debt
7 collection agency information about the user regarding the inability of the provider to be repaid.

8 52. SB 290 requires EWA services to be non-recourse against the worker-user, *i.e.*, SB
9 290 Sec. 31(e)(1)-(3) prohibits a service provider from compelling or attempting to compel
10 payment by a user, either by filing a civil action, using a third-party debt collection agency, or
11 selling or assigning any outstanding amounts to a third-party debt collector or debt buyer. In this
12 regard, the proposed Act's provision declaring non-recourse transactions to nonetheless be defined
13 as "loans," is in direct response to, and constitutes a referendum on, SB 290, Sec. 31.

14 53. SB 290, Sec. 29(3), requires EWA service providers to allow a user to cancel, at
15 any time and without incurring any fee, a user's participation in an EWA services agreement.

16 54. SB 290 explicitly and plainly declares that EWA services are not a loan or other
17 form of credit, and that EWA service providers are not lenders subject to Nevada's lending laws.
18 SB 290, Sec. 33(1)(a)(1)-(3) declares that:
19
20
21

22 Nothing in this chapter [SB 290] shall be construed to cause: (a) Any
23 earned wage access services provided by a licensee in compliance with
24 this chapter to be deemed: (1) A loan or other form of credit; (2) As
25 violating or noncompliant with the laws of this State governing the sale or
26 assignment of, or an order of, earned but unpaid income; or (3) Money
27 transmission, or to be subject to any of the provisions of law governing
28 loans or money transmitters.

1 55. SB 290, Sec. 33(1)(b) further declares that “Nothing in this chapter [SB 290] shall
2 be construed to cause...any licensee in compliance with this chapter to be deemed a creditor,
3 lender, or money transmitter.”
4

5 56. SB 290, Sec. 33(2) further declares that “If there is a conflict between the provisions
6 of this chapter [SB 290] and any other statute, the provisions of this chapter control.”
7

8 57. SB 290, Sec. 33.5 provides “the proceeds provided to a consumer by a provider in
9 accordance with [SB 290] shall not be subject to the provisions of [NRS] chapters 604A or 675. A
10 provider of the proceeds shall not be required to be licensed pursuant to [NRS] chapters 604A and
11 675 unless the provider is conducting business pursuant to [NRS] chapter[s] 604A or 675.”
12

13 58. NRS Chapter 604A governs deferred deposit loans, high-interest loans, title loans,
14 and check-cashing services. SB 290 expressly provides that NRS Chapter 604A does not apply to
15 EWA services and that EWA services are not any of the types of loans governed under NRS 604A.
16

17 59. NRS Chapter 675 governs installment loans. SB 290 expressly provides that NRS
18 Chapter 675 does not apply to EWA services and that EWA services are not installment loans
19 under NRS Chapter 675. SB 290 expressly provides that other loan and lending-related statutes,
20 i.e., NRS Chapters 604A, 671, and 675, do not apply to EWA service providers, which SB 290
21 declares are not lenders. SB 290, Secs. 34.5, 35, 35.5.
22

23 60. SB 290 contains a sunset provision. The bill’s licensure-related provisions expire
24 by limitation on January 1, 2030. However, SB 290 authorizes EWA service providers currently
25 providing EWA services in Nevada to continue to do so, as of January 1, 2024. SB 290, Sec. 36.2.

26 ***The Petitions Violate the Single-Subject Rule.***

27 61. NRS 295.009(1) requires that an initiative petition must embrace only “one subject
28 and matters necessarily connected therewith and pertaining thereto.” NRS 295.009(2) provides

1 that an initiative petition embraces one subject “if the parts of the proposed initiative or referendum
2 are functionally related and germane to each other in a way that provides sufficient notice of the
3 general subject of, and of the interests likely to be affected by, the proposed initiative or
4 referendum.” (Emphases added).

5
6 62. “By limiting petitions to a single subject, NRS 295.009 facilitates the initiative
7 process by preventing petition drafters from circulating confusing petitions that address multiple
8 subjects...single subject requirements serve to prevent voter confusion and promote informed
9 decisions by narrowing the initiative to a single matter and providing information on that single
10 matter to the voter.” *Nevadans for the Protection of Property Rights, Inc. v. Heller*, 122 Nev. 894,
11 902, 141 P.3d 1235, 1240 (2006) (citing *Campbell v. Buckley* 203 F.3d 738 (10th Cir. 2000)).

12
13 63. The Petitions violate the single subject rule by telling voters that the proposed Act
14 addresses “predatory” and “high-interest” loans and lending practices, when the proposed Act also
15 applies, without explanation or fair notice, to EWA services, which existing law plainly declares
16 are not loans, are not lending, are not credit, are non-recourse, and must not charge interest.

17
18 64. The Petitions violate the single subject rule because the description of effect makes
19 no attempt to fairly inform voters that the proposed Act would apply to financial services that are,
20 by law, not “predatory,” that by law, must not charge interest, that by law, must not refer users to
21 debt collection agencies, or otherwise take recourse against users.

22 65. Although SB 290’s plain language is clear enough, Legislative testimony confirms
23 the Legislature’s policy decision to designate EWA services as categorically distinct from loans
24 and credit products. One of SB 290’s primary sponsors, Senate Majority Leader Nicole
25 Cannizzaro, testified SB 290 “defines ‘earned but unpaid income’ to mean salary, wages or other
26 compensation that an employee has already earned, but that has not been paid to the
27 employee...this definition is key to distinguishing EWA products from loans and other
28

1 lending-related financial products and services.” *Hearing on SB 290*, Nev. Sen. Commerce &
2 Labor Cmte. Mins. (April 5, 2023) at 42.

3
4 66. The Senate Majority Leader further testified that SB 290’s “non-recourse aspects
5 of EWA regulations are an important consumer protection feature that distinguishes EWA
6 products from other predatory and high-interest financial products and loans.” *Id.*, at 43. The
7 Senate Majority Leader made clear that SB 290 “distinguishes EWA services and products from
8 loans and other financial products.” *Id.*, at 44.

9
10 ***The Petitions’ Description of Effect is Misleading, Deceptive, and Argumentative.***

11 67. NRS 295.009(1)(b) requires an initiative petition to include a “description of effect”
12 that “[s]et[s] forth, in not more than 200 words, a description of the effect of the initiative...if the
13 initiative...is approved by the voters.” The description of effect “is significant as a tool to help
14 ‘prevent voter confusion and promote informed decisions.’” *Las Vegas Taxpayer Accountability*
15 *Cmte. v. City Council of City of Las Vegas*, 125 Nev. 165, 183, 208 P.3d 429, 441 (2009) (quoting
16 *Nevadans for Nev. v. Beers*, 122 Nev. 930, 939, 142 P.3d 339, 345 (2006)).

17
18 68. The description of effect must be “straightforward, succinct, and
19 nonargumentative.” *Id.* (citing *Herbst Gaming*, 122 Nev. 877, 889, 141 P.3d 1224, 1232). The
20 description of effect must not be deceptive or misleading. *Educ. Freedom PAC v. Reid*, 138 Nev.
21 Adv. Op. 47, 512 P.3d 296, 304 (2022) (citing *Educ. Initiative PAC v. Cmte. to Protect Nev. Jobs*,
22 129 Nev. 35, 37, 293 P.3d 874, 876 (2013)). The description of effect “is what the voters see when
23 deciding whether to sign a petition, and...must accurately inform petition signers of the nature and
24 effect of that which is proposed.” *No Solar Tax PAC v. Citizens for Solar and Energy Fairness*,
25 132 Nev. 1012, 2016 WL 4182739, at *1 (2016) (unpublished disposition) (citations omitted).
26
27
28

69. The Petitions' description of effect is argumentative, deceptive and misleading to potential signatories. It states the proposed Act "addresses high-interest lending practices by establishing maximum interest rates charged to consumers[.]" Ex. 1, at 19; Ex. 2, at 11. But the proposed Act also applies to EWA service providers, which by law, "shall not...[c]harge a late fee, deferral fee, interest or any other penalty or charge for failure to pay outstanding proceeds[.]" SB 290, Sec. 31(1)(c). The description of effect misleadingly equates EWA services, which may not charge interest and are not "loans," with "high-interest lending practices."

70. The Petitions' description of effect is deceptive and misleading in that it conspicuously omits any reference to SB 290 or EWA services, which are not "loans" under existing law, even though the proposed Act's definition of "loan" applies to EWA services.

71. Further, the description of effect contradicts the proposed Act's own language. The description states the proposed Act's interest rate cap will apply only to "loan" products, *i.e.*, to "consumer loans...deferred-deposit transactions ('payday loans'); title loans, and other loan types dependent on future earnings and income." Ex. 1, at 19; Ex. 2, at 11 (emphases added). This description contradicts Section 5's definition of "loan," which includes not only "future earnings and income," but also transactions involving past earnings, *i.e.*, "the payment of unpaid wages, salary...or other income...whether earned, to be earned, or contingent on upon future earnings." Exs. 1 and 2 (Sec. 5(1)(c) (emphases added). The description of effect not only fails to inform signers of the Act's applicability to non-loan products, it fails even to accurately describe the loans to which the Act states it will apply.

72. The Petitions' description of effect does not inform signers that the proposed Act applies to loan and non-loan products alike. *Las Vegas Taxpayer Accountability Cmte. v. City Council of City of Las Vegas*, 125 Nev. 165, 184, 208 P.3d 429, 441 (2009) (invalidating a

1 description of effect stating a “referendum’s passage would halt only new development projects,”
2 when the petition would “also affect existing redevelopment projects”).

3
4 73. The description of effect fails to inform potential signers regarding the scope of the
5 proposed Act, which uses key terms without defining them, further exacerbating the Petition’s
6 confusing content and argumentative tone. For example, nowhere in the proposed Act or
7 description of effect are the terms “person,” “consumer,” or “payday lender” defined, but the
8 proposed Act imposes restrictions, liability, and penalties on “any payday lender or other
9 person[.]” Exs. 1 and 2, (Sec. 7).

10
11 74. The proposed Act, Sec. 2, states it is meant to “combat[] predatory payday lending”
12 but nowhere does the Act define its pugilistic term “predatory payday lending.” *No Solar Tax PAC*
13 *v. Citizens for Solar and Energy Fairness*, 132 Nev. 1012, 2016 WL 4182739, at *2 (2016)
14 (unpublished) (description of effect was misleading and argumentative in using undefined terms
15 such as “unaffordable” and “cost-prohibitive” that were not used in statutory language).

16 75. SB 290’s plain language is clear enough, but Legislative testimony confirms the
17 Legislature’s policy determination that EWA products are not predatory or high-interest products,
18 and in fact, are an alternative to such products. SB 290’s bill sponsor testified it is intended to
19 authorize EWA services because they provide an alternative to predatory options: “As families are
20 struggling and banks are closing, we need to find a safe and secure means for Nevada families to
21 avoid predatory credit finance. Earned wage access allows a worker who needs a bit of money
22 to cover an unexpected expense to access money they have already earned.” *Hearing on SB 290*,
23 Nev. Sen. Commerce & Labor Cmte. Mins. (April 5, 2023) at 42 (emphases added).

24
25 76. On the Senate Floor, Sen. Jeff Stone (R) stated his “enthusiastic support” for SB
26 290, which he stated would help “many blue-collar workers in Nevada.” *Nev. Sen. Daily Journal*
27 (82nd Leg. Nev., May 25, 2023), at 314. Sen. Stone stated SB 290 “gives people an opportunity
28 to tap their own wages without paying significant fees or significant interest rates. They are getting

1 their own money. It is a wonderful device that will help many people. [SB 290] will probably have
2 the biggest impact on many of our citizens who need emergency help. This is their money.” *Id.*

3
4 77. The Petitions’ description of effect is misleading and argumentative in stating to
5 voters that EWA services are “predatory.” SB 290 authorizes EWA services as an alternative to
6 “predatory” products.

7 ***The Petitions Fail to Include the “Full Text of the Measure Proposed.”***

8 78. The Nevada Constitution requires that “[e]ach referendum petition and initiative
9 petition shall include the full text of the measure proposed.” NEV. CONST., Art. XIX, § 3, cl. 1. The
10 Nevada Constitution also directs that “no law shall be revised or amended by reference to its title
11 only; but, in such case, the act as revised or section as amended, shall be re-enacted and published
12 at length.” NEV. CONST., Art. IV, § 17.

13
14 79. NRS 295.0575(6) also requires initiative petition circulators to include an affidavit
15 stating that “each [petition] signer had an opportunity before signing to read the full text of the act
16 or resolution on which the initiative or referendum is demanded.”

17 80. The proposed Act would revise SB 290 by reclassifying EWA services as “loans”,
18 whereas SB 290 expressly and categorically declares that EWA services are not to be considered
19 “a loan or other form of credit,” and that an EWA service provider is not to be deemed “a creditor,
20 lender or money transmitter.” SB 290, Sec. 33(1)(a)(1)-(3).

21 81. The proposed Act, Sec. 15, refers to, but does not include SB 290’s definition of
22 “earned wage access services,” and purports to apply prospectively to “any provider of earned
23 wage access services...including any provider of transactions that satisfy the definition of earned
24 wage access services currently set forth in [SB] 290 of the 82nd Regular Session of the Nevada
25 Legislature (2023).” **Exs. 1 and 2** (Sec. 15).

26 82. The proposed Act withholds SB 290’s definition of “earned wage access services”
27 to which the proposed Act refers but purports to apply. It does not so much as provide the section
28 of the bill to which the proposed Act refers. SB 290 includes no less than 16 distinct defined terms
in authorizing EWA services and licensure. SB 290, Secs. 2-11.

1 83. A potential signer has no meaningful way of knowing the context of the proposed
2 Act's reference to SB 290, and no way of knowing that SB 290 actually declares EWA services
3 are not loans, are not credit, that EWA service providers are not lenders, may not charge interest,
4 and may not take recourse against users. The description of effect deceptively brands EWA
5 services as "predatory" when SB 290 requires an EWA provider to offer at least one option that is
6 no-cost to an EWA user.
7

8 84. The proposed Act directly revises SB 290's provisions but includes no description
9 of SB 290's rules governing EWA services, nor does the description of effect provide a signer "the
10 opportunity before signing to read the full text of the act [SB 290] on which the initiative...is
11 demanded." NRS 295.0575(6).
12

13 ***The "Initiative" is Substantively a Referendum on SB 290***

14 85. Further exacerbating the confusion, to the extent the Petitions seek to overturn SB
15 290, or portions thereof, (particularly SB 290's declarations that EWA services are not loans), the
16 Petitions are incorrectly classified as "Initiative Petitions," because they ask voters to effectively
17 repeal a law that the Legislature has already approved, without telling voters at all about that effect.
18 This is a deceptive end run around the legislative process and abuses the initiative petition process.
19

20 86. The Petitions' effective repeal of SB 290's framework for EWA services in Nevada
21 amounts to a "referendum" on SB 290, subject to distinct rules and procedures that control petitions
22 to approve or disapprove statutes the Legislature has adopted. NEV. CONST., Art. XIX, § 1.

23 87. The proposed Act's applicability, at Sec. 5(2), to "any transaction...without regard
24 to whether the payday lender or other lender has legal recourse against the borrower" is in direct
25 response to SB 290, Sec. 31, which requires EWA services to be "non-recourse" and prohibits
26 EWA service providers from "compelling or attempting to compel payment by a user through
27 certain actions." SB 290, Leg. Digest, at 2.
28

1 88. If circulators wish to submit a referendum on SB 290, the circulators must inform
2 Nevada voters of their intent do so, rather than disguise the referendum as an initiative petition.

3 89. In any event, the Nevada Constitution requires the Petitions (whether a referendum
4 or initiative) to include the “full text” of SB 290 and forbids a piecemeal revision to a bill without
5 a full re-print of the measure, to ensure that signatories can review the entire proposal in context.

6 90. The Petitions must include SB 290 in its entirety, so that potential signers are fully
7 and fairly informed as to SB 290’s EWA definitions, the bill’s protections for EWA users, and the
8 proposed Act’s revisions that seek to overturn and revise SB 290.

9 ***The Petitions Violate the Prohibition Against Unfunded Mandates.***

10 91. The initiative process “does not permit the proposal of any statute or statutory
11 amendment which makes an appropriation or otherwise requires the expenditure of money, unless
12 such...amendment also imposes a sufficient tax, not prohibited by the Constitution, or otherwise
13 constitutionally provides for raising the necessary revenue.” NEV. CONST., Art. XIX, § 6. “All
14 initiative petitions must comply with Article 19, Section 6’s requirement that initiatives requiring
15 expenditures or appropriations contain a funding provision.” *Educ. Freedom PAC v. Reid*, 138
16 Nev. Adv. Op. 47, 512 P.3d 296, 303 (2022).

17 92. SB 290 was subject to a two-thirds supermajority threshold because it directs EWA
18 service provider license applicants to pay new fees and other costs associated with the application
19 process, and to pay for costs the State (FID) must incur in carrying out its enforcement role. SB
20 290, Secs. 12, 21. SB 290 was referred to and approved by the Senate Finance committee because
21 of FID’s fiscal notes, and the bill’s fiscal impacts and revenue requirements.

22 93. FID’s fiscal note to SB 290 estimated that “25 new licensees” in Nevada would
23 require FID licensure and supervision, and that “FID will be responsible for regulatory
24 development, implementation, examinations, complaint investigations, and all other regulatory
25 matters pertaining thereto.” FID Fiscal Note No. 8397 (March 22, 2023) (attached as Exhibit 3).

26 94. The proposed Act would nullify SB 290’s declaration that EWA services are not
27 loans, that EWA service providers are not lenders, and would subject EWA services to expanded
28 regulation and enforcement as lending practices subject to the proposed Act. Yet the Petition

1 includes no explanation or reference to the clear fiscal impacts of its proposed expansion of
2 regulatory oversight and potential disciplinary actions over EWA service products and providers.

3 95. SB 290 exempted EWA services from Nevada's lending statutes and categorized
4 EWA services as non-loan, non-credit, non-money transmission products, and yet the bill had a
5 more-than \$162,000 fiscal impact to the State (according to FID's fiscal note, Ex. 3) that required
6 new revenue in the form of application and licensure fees.

7 96. The proposed Act would significantly expand regulatory oversight and
8 enforcement applicable to EWA services and apparently other financial products, but includes no
9 explanation as to how this oversight and enforcement will be administered or paid for.

10 97. Like SB 290, the proposed Act will necessarily require a funding source to pay for
11 its new and expanded enforcement mandates the proposed Act seeks to impose on EWA services
12 and service providers, as well as other unspecified categories of "persons" to which the proposed
13 Act seeks to apply. The Petitions' failure to include any funding provision constitutes an
14 impermissible unfunded mandate that renders the Petitions unconstitutional.
15

16
17 **FIRST CAUSE OF ACTION**
18 **(Declaratory Relief - Violation of NRS Chapter 295.009's Single-Subject Rule)**

19 98. Plaintiff re-alleges and incorporates all of the foregoing paragraphs as if fully set
20 forth herein.

21 99. The Petitions violate NRS 295.009(1)(a) because the proposed Act is not limited
22 to one subject and matters necessarily connected therewith and pertaining thereto.

23 100. The Petitions purport to address "high-interest" and "predatory" lending, but also
24 apply to earned wage access services, which existing law declares are not loans, are not credit,
25 may not charge interest, and are non-recourse against users.

26 101. The Petitions' scope exceeds the single-subject rule and the Petitions are therefore
27 invalid.
28

1 102. Plaintiff requests this Court declare that the Petitions violate NRS 295.009 and are
2 invalid.

3 103. This Court has the power to grant such relief.
4

5 **SECOND CAUSE OF ACTION**
6 **(Declaratory Relief - Violation of NRS 295.009's Description-of-Effect Rule)**

7 104. Plaintiff re-alleges and incorporates all of the foregoing paragraphs as if fully set
8 forth herein.

9 105. The Petitions' description of effect is argumentative, deceptive, and misleading in
10 violation of NRS 295.009(1)(b).

11 106. The Petitions' description of effect misleads potential signatories in claiming that
12 the proposed Act applies only to "loan" products, and to loan products "dependent on future
13 earnings," when the proposed Act's text, on its face, also applies to EWA transactions, which are
14 not loans, and which by definition deliver access to income that has already been earned.

15 107. The Petitions' description of effect does not inform voters or potential signatories
16 that the proposed Act would re-define earned wage access services, which existing law declares
17 are not a "loan or other form of credit" or to be considered "loans."
18

19 108. The Petitions purport to subject earned wage access service providers, and others
20 who "facilitate" earned wage access services, to new, burdensome restrictions, legal liability, and
21 civil penalties, but do not explain these material effects of the proposed Act.

22 109. The description of effect does not provide fair notice to a potential signer or voter
23 who is also an EWA user, or to an employer who partners with an EWA provider to offer EWA
24 services to workers, that signing the Petition and supporting the proposed Act will adversely affect
25 their interests in continuing to use or provide EWA services.
26

27 110. Plaintiff requests that this Court declare the Petitions are invalid and violate NRS
28 295.009(1)(b).

111. This Court has the power to grant such relief.

THIRD CAUSE OF ACTION
(Declaratory Relief - Violation of the Constitution's and NRS 295.0575(6)'s "Full Text"
Rule (NEV. CONST., Art. XIX, § 3 Cl. 1))

112. Plaintiff re-alleges and incorporates all of the foregoing paragraphs as if fully set forth herein.

113. The Petitions purport to directly revise and repeal SB 290, and incorporate definitions within SB 290 without providing SB 290's full text for signers to review and consider.

114. The Nevada Constitution forbids revisions to a bill without providing the full text of the measure that is being revised.

115. NRS 295.0575(6) requires the Petition circulators to affirm that signers had an opportunity to review the "full text" of the proposed act, but the Petitions do not include the full text of SB 290, which the Petitions refer to and seek to amend and repeal.

116. Plaintiff requests this Court declare the Petitions are invalid and violate the Nevada Constitution's and NRS 295.0575's requirements that an initiative petition or referendum "shall include the full text of the measure proposed." See NEV. CONST., Art. XIX, § 3, cl. 1.

117. This Court has the power to grant such relief.

FOURTH CAUSE OF ACTION
(Declaratory Relief - Violation of the Constitution's Unfunded Mandate Rule (NEV. CONST., Art. XIX, § 6)

118. Plaintiff re-alleges and incorporates all of the foregoing paragraphs as if fully set forth herein.

119. The Nevada Constitution forbids proposing a statute or statutory amendment which requires the expenditure of money without sufficient revenue to pay for the expenditure.

120. The proposed Act would dramatically expand the State's regulatory responsibilities over EWA services and other "persons" who facilitate EWA services, such as employers.

1 121. The proposed Act includes no funding mechanism to account for the expansive
2 regulatory oversight and enforcement duties the proposed Act requires the State to undertake.

3 122. Plaintiff requests this Court declare the Petitions are invalid and violate the Nevada
4 Constitution's prohibition against initiative petitions proposing unfunded mandates.

5 123. This Court has the power to grant such relief.

6
7 **PRAYER FOR RELIEF**

8 **WHEREFORE**, Plaintiff prays for the following relief:

- 9 A. A judgment in the Plaintiff's favor and against the Defendant;
10 B. A declaration that the Petitions violate NRS 295.009(1)(a);
11 C. A declaration that the Petitions violate NRS 295.009(1)(b);
12 D. A declaration that the Petitions violate the Nevada Constitution, Art. XIX, Sec. 3
13 and NRS 295.0575(6);
14 E. A declaration that the Petitions violate the Nevada Constitution, Art. XIX, Sec. 6;
15 F. An Order enjoining and prohibiting the Nevada Secretary of State from allowing
16 the circulation of the Petitions for signatures, or otherwise advancing the Petitions as filed on
17 January 5, 2024 and January 24, 2024;
18 G. For reasonable attorneys' fees and costs; and
19 H. For such other and further relief as the Court may deem just and proper.
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AFFIRMATION

The undersigned affirms that this document does not contain the social security number of any person and acknowledge that when any additional documents are filed, an affirmation will be provided only if the document does contain personal information.

DATE: January 29, 2024

HOLLAND & HART LLP

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PLAINTIFF'S EXHIBITS
Complaint for Declaratory and Injunctive Relief

Exhibit No.	Document Title	# of Pages
1	Petition S-01-2024	25
2	Petition S-03-2024	17
3	Fiscal Note to Senate Bill 290 (2023)	4
4	Declaration of Matthew Morris, Esq.	2

EXHIBIT 1



Pursuant to NRS 295.015, before a petition for initiative or referendum may be presented to registered voters for signatures, the person who intends to circulate the petition must provide the following information:

NAME OF PERSON FILING THE PETITION

Kate Feldman

NAME(S) OF PERSON(S) AUTHORIZED TO WITHDRAW OR AMEND THE PETITION (provide up to three)

1. Kate Feldman

2.

3.

NAME OF THE POLITICAL ACTION COMMITTEE (PAC) ADVOCATING FOR THE PASSAGE OF THE INITIATIVE OR REFERENDUM (if none, leave blank)

Please note, if you are creating a Political Action Committee for the purpose of advocating for the passage of the initiative or referendum, you must complete a separate PAC registration form.

Additionally, a copy of the initiative or referendum, including the description of effect, must be filed with the Secretary of State's office at the time you submit this form.

X

Kate Feldman

Signature of Petition Filer

1/4/2024

Date

Explanation - Matter in *italics* is new; matter between brackets [~~omitted material~~] is material to be omitted.

THE PEOPLE OF THE STATE OF NEVADA DO ENACT AS FOLLOWS

Section 1. The Nevada Revised Statutes are hereby amended by adding thereto a new Chapter, to be designated Chapter 604D: Preventing Predatory Payday and Other Loans Act, to read as follows:

Section 2. *Liberal construction. The provisions of this chapter shall be liberally construed to achieve its purposes, which are combatting predatory payday lending and other high-cost loans; ensuring that out-of-state lenders cannot flout Nevada law by making payday loans, other loans, or transactions subject to this chapter at unlawful rates to Nevada residents; and protecting law-abiding lenders from unfair competition by predatory, out-of-state entities.*

Section 3. *Definitions. As used in this chapter, the words and terms defined in sections 4 to 6, inclusive, of this chapter have the meanings ascribed to them in those sections.*

Section 4. *Annual percentage rate defined. The term “Annual percentage rate” or APR means an annual rate calculated including all amounts, charges, and payments made directly or indirectly, incident to, ancillary to, or as a condition of a loan or other transaction subject to this chapter, whether voluntary, optional or required, including any amount paid to a broker or credit services organization. The APR shall include, but is not limited to, all interest, fees, charges and other payments as set forth in the regulations issued by the United States Secretary of Defense on July 22, 2015 to implement the Military Lending Act, 10 USC sec. 987, except that credit card fees may be excluded only if the card is network-branded and the fees collectively each year do not exceed 15% of the credit line. The annual percentage rate shall be calculated as specified in such regulations.*

Section 5. *Loan defined.*

1. For purposes of this chapter, “loan” means and includes:

(a) Money or credit provided to a consumer in exchange for the consumer’s agreement to a certain set of terms, including, but not limited to, provisions for direct or indirect repayment, interest, fees, charges or other payments, or other conditions;

(b) Any deferred deposit transaction or payday loan, installment loan, line of credit, retail installment sales contract, and motor vehicle retail installment sales contract, and other closed-end or open-end credit; and

(c) Any sale, assignment, order, or agreement for the payment of unpaid wages, salary, commissions, compensation, or other income, or any portion or amount thereof, whether earned, to be earned, or contingent upon future earnings, that is made in consideration for goods or services, credit, or the payment of money to or for the account of the person earning or receiving, or potentially earning or receiving, the wages, salary, commissions, compensation, or other income.

2. Any transaction that satisfies any definition in this section is a “loan” for purposes of this chapter without regard to the means of collection, without regard to whether the payday lender or other lender has legal recourse against the borrower in the event of non-repayment, and without regard to whether the transaction carries required charges or payments.

Section 6. *Network-branded defined.* *“Network-branded” means branded with and available for use on the Visa, MasterCard, American Express or Discover networks or a similar widely-accepted card network that is accepted upon presentation for purchases of goods and services at multiple, unaffiliated merchants.*

Section 7. *Application of chapter.* *This chapter applies to any payday lender or other person that:*

1. Markets, offers, brokers, arranges, facilitates, makes or services a loan as defined in Section 5 of this chapter or other transaction as defined in Section 8 of this chapter, including a credit service organization that obtains an extension of credit for a borrower;

2. Is a bank, savings bank, savings and loan association, or credit union organized, chartered or holding a certificate of authority to do business under the laws of this state, another state, or the United States. However, banks, savings banks, savings and loan associations, and credit unions organized, chartered or holding a certificate of authority to do business under the laws of another state or under the laws of the United States are exempt from this chapter only to the extent this chapter is preempted by federal law;

3. Is an agent of a person subject this chapter or of any affiliate, subsidiary or other entity that is related to, that controls, or that is controlled by a person subject to this chapter;

4. Acquires a whole or partial interest in a loan or transaction subject to this chapter;

5. Is deemed to be subject to this chapter under section 11 of this chapter or is engaged in a transaction that is in substance a disguised loan or other transaction subject to this chapter or is a device, subterfuge or pretense to evade this chapter.

6. Markets, offers, brokers, arranges, facilitates, makes or services any transaction that is otherwise subject to this chapter and that is offered or made to a person residing in this state, whether the transaction is conducted in person, by telephone, via the Internet, or by any other means.

Section 8. *Specific transactions subject to this chapter.* *Notwithstanding any other provision of law, transactions subject to this chapter shall include, but shall not be limited to, the following:*

1. Deferred deposit loans (also known as payday loans), as defined in NRS 604A.050. A deferred deposit loan is subject to this chapter notwithstanding NRS 604A.220 or any other provision of law.

2. High-interest loans, as defined in NRS 604A.0703. A high-interest loan is subject to this chapter notwithstanding NRS 604A.220 or any other provision of law.

3. Title loans, as defined in NRS 604A.105. A title loan is subject to this chapter notwithstanding NRS 604A.220 or any other provision of law.

4. Refund anticipation loans, as defined in NRS 604B.060.

5. Consumer litigation funding transactions, as defined in NRS 604C.100. A consumer litigation funding transaction is subject to this chapter notwithstanding NRS 604C.220 or any other provision of law.

7. Installment loans, as regulated by Chapter 675 of the Nevada Revised Statutes;

8. Retail installment transactions, as defined in NRS 97.115. A retail installment transaction is subject to this chapter notwithstanding NRS 97.285 or any other provision of law;

9. Loans secured by a life insurance or annuity contract, as regulated by NRS 688A.110; and

10. Loans made by a bank, savings bank, savings and loan association, or credit union organized, chartered or holding a certificate of authority to do business

under the laws of this state. This chapter shall apply to loans made by those entities notwithstanding NRS 662.015, NRS 672.370, NRS 672.460, NRS 672.710, NRS 673.225, NRS 673.3272, NRS 677.730 or any other provision of law.

Section 9. Maximum interest rate permitted. *For any loan or other transaction subject to this chapter made or renewed on or after the effective date of this chapter, no payday lender or other person shall market, offer, charge, contract for, collect or receive, directly or indirectly, charges or amounts exceeding a 36% annual percentage rate on the unpaid balance of the amount financed. This section shall apply notwithstanding any other provision of the laws of this state, including but not limited to any provision of NRS 604A.0703, NRS 604A.5029, NRS 604A.5052, or NRS 604A.5057 or any other law that refers to or allows an annual percentage rate that exceeds 36%.*

Section 10. Prohibited acts to evade application of chapter. *For any loan or other transaction subject to this chapter, no payday lender or other person shall engage in any device, subterfuge, or pretense to evade the requirements of this chapter, including, but not limited to:*

- 1. Making a loan or other transaction disguised as a personal property sale and leaseback transaction;*
- 2. Disguising proceeds of a loan or other transaction as a cash rebate for the pretextual sale of goods or services;*
- 3. Disguising a loan or other transaction as the sale of goods, services or things in action or disguising charges for a loan or other transaction in the price of goods, services or things in action;*
- 4. Making, contracting for, offering, assisting, or arranging for a borrower to obtain a loan or other transaction with a higher rate or amount of interest, consideration, charge or other payment received incident to the loan than is permitted by Section 9 of this chapter through any method including mail, telephone, internet or any electronic means, regardless of whether the person has a physical location in the state;*
- 5. Structuring the transaction in a manner to obscure the fact that it is a loan; or*
- 6. Charging, contracting for or receiving interest, fees, charges or other payments in excess of those permitted, regardless whether the payment purports to be voluntary.*

Section 11. Application of chapter to agents and service providers of exempt entities. *If the annual percentage rate of the loan or other transaction exceeds the rate permitted by Section 9*

of this chapter, a person shall be subject to the requirements of this chapter notwithstanding the fact that the person purports to act as an agent or service provider or in another capacity for a person that is exempt from this chapter, if, among other things:

- 1. The person holds, acquires, or maintains, directly or indirectly, the predominant economic interest, risk or reward, in the loan or transaction;*
- 2. The person (a) markets, solicits, brokers, arranges, facilitates or services loans or transactions and (b) holds, or has the right, requirement or first right of refusal to acquire, the loans, transactions, a share of receivables or another direct or indirect interest in the loans or loan program; or*
- 3. The totality of the circumstances indicate that the person is engaging in transactions subject to this chapter and that the transaction is structured to evade the requirements of this chapter. Circumstances that weigh in favor of a person being subject to this chapter include, without limitation, when the person:*

(a) indemnifies, insures or protects an exempt entity from costs or risks related to the loan or transaction;

(b) predominantly designs, controls or operates the loan program or transaction;

(c) holds the trademark or intellectual property rights in the brand, underwriting system, or other core aspects of the loan program or transaction; or

(d) purports to act as an agent or service provider or in another capacity for an exempt entity while acting directly as a lender in other states.

Section 12. *Prohibition against facilitation of payday loans or other transactions in violation of chapter.* *No person shall solicit, broker, or engage in any other activity intended to facilitate or result in, or that in fact facilitates or results in, a loan or transaction that violates this chapter.*

Section 13. *Remedies for payday loans or other transactions made in violation of this chapter.*

- 1. A loan or other transaction made in violation of this chapter shall be void and uncollectible as to any principal, fee, interest, charge or payment.*
- 2. An action for violation of this chapter may be brought in any court of competent jurisdiction.*
- 3. Any person who violates this chapter is liable to the borrower for:*

- (a) Actual and consequential damages;*
- (b) Restitution of any amounts paid;*
- (c) Treble the amount of any excess fee, interest, charge, or payment;*
- (d) Statutory damages, at an amount that the court considers just, of at least \$250 and no more than \$1,000 per violation;*
- (e) Injunctive or declaratory relief;*
- (f) Reasonable attorney's fees and costs; and*
- (g) Any other legal or equitable relief that the court deems appropriate in addition to any other remedies provided at law.*

4. The remedies provided for in this section are cumulative to any other remedies that apply to a loan or other transaction made in violation of other laws of this State.

Section 14. *Declaration of intent to opt out of DIDMCA.* *In accordance with section 525 of the federal "Depository Institutions Deregulation and Monetary Control Act of 1980", Pub.L. 96-221, the voters of the State of Nevada declare that the State of Nevada does not want the amendments to the "Federal Deposit Insurance Act", 12 U.S.C. sec. 1811 et seq.; the federal "National Housing Act", 12 U.S.C. sec. 1701 et seq.; and the "Federal Credit Union Act", 12 U.S.C. sec. 1757, made by sections 521 to 523 of the federal "Depository Institutions Deregulation and Monetary Control Act of 1980", Pub.L. 96-221, prescribing interest rates and preempting state interest rates to apply to loans as defined in Section 5 of this chapter or specific transactions as defined in Section 8 of this chapter. The rates established in this chapter shall apply to payday loans and other loans as defined in Section 5 of this chapter and specific transactions as defined in Section 8 of this chapter.*

Section 15. *Application of chapter to earned wage access services.* *Prior to January 1, 2030, section 9 of this chapter shall not apply to entities licensed under the laws of this State to provide earned wage access services, as defined in Senate Bill No. 290 of the 82nd Regular Session of the Nevada Legislature (2023), 2023 Nev. Stat., ch. 400. Beginning on January 1, 2030, section 9 shall apply to any provider of earned wage access services, regardless of whether the provider is licensed under the laws of this State, including any provider of transactions that satisfy the definition of earned wage access services currently set forth in Senate Bill No. 290 of the 82nd Regular Session of the Nevada Legislature (2023), 2023 Nev. Stat., ch. 400.*

Section 16. NRS 99.050 is hereby amended to read as follows:

1. Except as otherwise provided in subsection 2, parties may agree for the payment of any rate of interest on money due or to become due on any contract, for the compounding of interest if they choose, and for any other charges or fees, *provided, however, that parties cannot agree to any arrangement that violates the requirements of Chapter 604D of the Nevada Revised Statutes*. The parties shall specify in writing the rate upon which they agree, that interest is to be compounded if so agreed, and any other charges or fees to which they have agreed.

2. A creditor shall not charge an annual percentage rate that is greater than the lesser of 36 percent or the maximum annual percentage rate authorized under any federal law or regulation with respect to the consumer credit extended to a covered service member or a dependent of a covered service member. Any contract or agreement in violation of this subsection is void and unenforceable.

3. As used in this section:

(a) “Annual percentage rate” has the meaning ascribed to it in the federal Truth in Lending Act, as amended, 15 U.S.C. §§ 1601 et seq., and the federal regulations adopted pursuant thereto.

(b) “Consumer credit”:

(1) Except as otherwise provided in subparagraph (2), means credit offered or extended to a covered service member or dependent of a covered service member primarily for personal, family or household purposes, and that is:

(I) Subject to a finance charge; or

(II) Payable by a written agreement in more than four installments.

(2) Does not include:

(I) A residential mortgage, which is any credit transaction secured by an interest in a dwelling, including a transaction to finance the purchase or initial construction of the dwelling, any refinance transaction, home equity loan or line of credit or reverse mortgage;

(II) Any credit transaction that is expressly intended to finance the purchase of a motor vehicle when the credit is secured by the vehicle being purchased;

(III) Any credit transaction that is expressly intended to finance the purchase of personal property when the credit is secured by the property being purchased;

(IV) Any credit transaction that is an exempt transaction for the purposes of 12 C.F.R. Part 1026, commonly known as Regulation Z, other than a transaction exempt under 12 C.F.R. § 1026.29, or otherwise is not subject to disclosure requirements under 12 C.F.R. Part 1026, commonly known as Regulation Z; and

(V) Any credit transaction or account for credit for which a creditor determines that a natural person is not a covered borrower by using a method and by complying with the recordkeeping requirement set forth in 32 C.F.R. § 232.5(b).

(c) “Covered service member”:

(1) Except as otherwise provided in subparagraph (2), means a member of the armed forces who is serving on:

(I) Active duty pursuant to title 10, title 14 or title 32 of the United States Code, under a call or order that does not specify a period of 30 days or fewer; or

(II) Active Guard and Reserve duty, as that term is defined in 10 U.S.C. § 101(d)(6).

(2) Does not include a consumer who was a covered service member pursuant to subparagraph (1) at the time he or she became obligated on a consumer credit transaction or established an account for consumer credit but is no longer a covered service member pursuant to subparagraph (1) or a dependent of a person who is a covered service member pursuant to subparagraph (1).

(d) “Credit” means the right granted to a natural person by a person engaged in the business of extending consumer credit, or an assignee of such a person with respect to any consumer credit extended, to defer payment or to incur debt and defer its payment.

(e) “Dependent” with respect to a covered service member means:

(1) The spouse;

(2) A child who:

(I) Has not attained the age of 21;

(II) Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, as defined in 10 U.S.C. § 1072(3), and is, or was at the time of the covered service

member's or former covered service member's death, in fact dependent on the covered service member or former covered service member for over one-half of the child's support; or

(III) Is incapable of self-support because of a mental or physical incapacity that occurs while a dependent of a covered service member or former covered service member under sub-subparagraph (I) or (II) and is, or was at the time of the covered service member's or former covered service member's death, in fact dependent on the member or former member for over one-half of the child's support;

(3) A parent or parent-in-law who is, or was at the time of the covered service member's or former covered service member's death, in fact dependent on him or her for over one-half of his or her support and residing in his or her household;

(4) An unmarried person who:

(I) Is placed in the legal custody of the covered service member or former covered service member as a result of an order of a court of competent jurisdiction in the United States, or possession of the United States, for a period of at least 12 consecutive months;

(II) Has not attained the age of 21, has not attained the age of 23 and is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, as defined in 10 U.S.C. § 1072(3), or is incapable of self-support because of a mental or physical incapacity that occurred while the person was considered a dependent of the covered service member or former covered service member pursuant to this paragraph;

(III) Is dependent on the covered service member or former covered service member for over one-half of the person's support;

(IV) Resides with the covered service member or former covered service member unless separated by the necessity of military service or to receive institutional care as a result of disability or incapacitation or under such other circumstances as the administering Secretary, as defined in 10 U.S.C. § 1072(3), may by regulation prescribe; and

(V) Is not a dependent of a covered service member or a former covered service member pursuant to subparagraph (1), (2) or (3).

(f) “Dwelling” means a residential structure that contains one to four units, whether or not the structure is attached to real property. The term includes, without limitation, an individual condominium unit, cooperative unit, mobile home and manufactured home.

Section 17. NRS 21.105 is hereby amended to read as follows:

~~[1. If a writ of execution or garnishment is levied on the personal bank account of the judgment debtor and money has been deposited into the account electronically within the immediately preceding 45 days from the date on which the writ was served which is reasonably identifiable as exempt from execution, notwithstanding any other deposits of money into the account, \$2,000 or the entire amount in the account, whichever is less, is not subject to execution and must remain accessible to the judgment debtor. For the purposes of this section, money is reasonably identifiable as exempt from execution if the money is deposited in the bank account by the United States Department of the Treasury, including, without limitation, money deposited as:~~

~~(a) Benefits provided pursuant to the Social Security Act which are exempt from execution pursuant to 42 U.S.C. §§ 407 and 1383, including, without limitation, retirement and survivors' benefits, supplemental security income benefits, disability insurance benefits and child support payments that are processed pursuant to Part D of Title IV of the Social Security Act;~~

~~(b) Veterans' benefits which are exempt from execution pursuant to 38 U.S.C. § 5301;~~

~~(c) Annuities payable to retired railroad employees which are exempt from execution pursuant to 45 U.S.C. § 231m;~~

~~(d) Benefits provided for retirement or disability of federal employees which are exempt from execution pursuant to 5 U.S.C. §§ 8346 and 8470;~~

~~(e) Annuities payable to retired members of the Armed Forces of the United States and to any surviving spouse or children of such members which are exempt from execution pursuant to 10 U.S.C. §§ 1440 and 1450;~~

~~(f) Payments and allowances to members of the Armed Forces of the United States which are exempt from execution pursuant to 37 U.S.C. § 701;~~

~~(g) Federal student loan payments which are exempt from execution pursuant to 20 U.S.C. § 1095a;~~

- ~~(h) Wages due or accruing to merchant seamen which are exempt from execution pursuant to 46 U.S.C. § 11109;~~
- ~~(i) Compensation or benefits due or payable to longshore and harbor workers which are exempt from execution pursuant to 33 U.S.C. § 916;~~
- ~~(j) Annuities and benefits for retirement and disability of members of the foreign service which are exempt from execution pursuant to 22 U.S.C. § 4060;~~
- ~~(k) Compensation for injury, death or detention of employees of contractors with the United States outside the United States which is exempt from execution pursuant to 42 U.S.C. § 1717;~~
- ~~(l) Assistance for a disaster from the Federal Emergency Management Agency which is exempt from execution pursuant to 44 C.F.R. § 206.110;~~
- ~~(m) Black lung benefits paid to a miner or a miner's surviving spouse or children pursuant to 30 U.S.C. § 922 or 931 which are exempt from execution; and~~
- ~~(n) Benefits provided pursuant to any other federal law.]~~

~~1~~^[2]. If a writ of execution or garnishment is levied on the personal bank account of the judgment debtor ~~[and the provisions of subsection 1 do not apply,]~~ ~~\$5,000~~ ^[400] or the entire amount in the account, whichever is less, is not subject to execution and must remain accessible to the judgment debtor, unless the writ of execution or garnishment is for the recovery of money owed for the support of any person.

~~2~~^[3]. If a judgment debtor has more than one personal bank account with the bank to which a writ is issued, the amount that is not subject to execution must not in the aggregate exceed the amount specified in subsection 1 ~~[or 2, as applicable]~~.

~~3~~^[4]. A judgment debtor may apply to a court to claim an exemption for any amount subject to a writ levied on a personal bank account which exceeds the amount that is not subject to execution pursuant to subsection 1 ~~[or 2]~~.

~~4~~^[5]. If money in the personal account of the judgment debtor which exceeds the amount that is not subject to execution pursuant to subsection ~~[1 or 2]~~ includes exempt and nonexempt money, the judgment debtor may claim an exemption for the exempt money in the manner set forth in NRS 21.112. To determine whether such money in the account is exempt, the judgment creditor must use the method of accounting which applies the standard that the first money deposited in the account is the first money withdrawn from the account. The court may require a judgment debtor to provide statements from the bank which include all deposits into and withdrawals from the account for the immediately preceding 90 days.

5[6]. A financial institution which makes a reasonable effort to determine whether money in the account of a judgment debtor is subject to execution for the purposes of this section is immune from civil liability for any act or omission with respect to that determination. ~~[, including, without limitation, when the financial institution makes an incorrect determination after applying commercially reasonable methods for determining whether money in an account is exempt because the source of the money was not clearly identifiable or because the financial institution inadvertently misidentified the source of the money.]~~ If a court determines that a financial institution failed to identify that money in an account was not subject to execution pursuant to this section, the financial institution must adjust its actions with respect to a writ of execution as soon as possible but may not be held liable for damages.

6[7]. Nothing in this section requires a financial institution to revise its determination about whether money is exempt, except by an order of a court.

Section 18. NRS 21.090 is hereby amended to read as follows:

1. The following property is exempt from execution, except as otherwise specifically provided in this section or required by federal law:

- (a) Private libraries, works of art, musical instruments and jewelry not to exceed \$5,000 in value, belonging to the judgment debtor or a dependent of the judgment debtor, to be selected by the judgment debtor, and all family pictures and keepsakes.
- (b) Necessary household goods, furnishings, electronics, wearing apparel, other personal effects and yard equipment, not to exceed \$12,000 in value, belonging to the judgment debtor or a dependent of the judgment debtor, to be selected by the judgment debtor.
- (c) Farm trucks, farm stock, farm tools, farm equipment, supplies and seed not to exceed \$4,500 in value, belonging to the judgment debtor to be selected by the judgment debtor.
- (d) Professional libraries, equipment, supplies, and the tools, inventory, instruments and materials used to carry on the trade or business of the judgment debtor for the support of the judgment debtor and his or her family not to exceed \$10,000 in value.
- (e) The cabin or dwelling of a miner or prospector, the miner's or prospector's cars, implements and appliances necessary for carrying on any mining operations and the mining claim actually worked by the miner or prospector, not exceeding \$4,500 in total value.

(f) Except as otherwise provided in paragraph (p), one vehicle if the judgment debtor's equity does not exceed \$15,000 or the creditor is paid an amount equal to any excess above that equity.

(g) For any workweek, *\$850 of disposable earnings. If the debtor's weekly disposable earnings exceed \$850, 90% of disposable earnings in excess of \$850 shall be exempt from garnishment unless the weekly disposable earnings of the debtor exceed \$1,200, in which case 85% of the disposable earnings in excess of \$850 shall be exempt from garnishment. The amount not subject to garnishment is exempt.*~~82 percent of the disposable earnings of a judgment debtor during that week if the gross weekly salary or wage of the judgment debtor on the date the most recent writ of garnishment was issued was \$770 or less, 75 percent of the disposable earnings of a judgment debtor during that week if the gross weekly salary or wage of the judgment debtor on the date the most recent writ of garnishment was issued exceeded \$770, or 50 times the minimum hourly wage prescribed by section 206(a)(1) of the federal Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201 et seq., and in effect at the time the earnings are payable, whichever is greater.]~~ Except as otherwise provided in paragraphs (o), (s) and (t), the exemption provided in this paragraph does not apply in the case of any order of a court of competent jurisdiction for the support of any person, any order of a court of bankruptcy or of any debt due for any state or federal tax. As used in this paragraph:

(1) "Disposable earnings" means that part of the earnings of a judgment debtor remaining after the deduction from those earnings of any amounts required by law to be withheld.

(2) "Earnings" means compensation paid or payable for personal services performed by a judgment debtor in the regular course of business, including, without limitation, compensation designated as income, wages, tips, a salary, a commission or a bonus. The term includes compensation received by a judgment debtor that is in the possession of the judgment debtor, compensation held in accounts maintained in a bank or any other financial institution or, in the case of a receivable, compensation that is due the judgment debtor. *Compensation paid or payable for personal services is earnings regardless of whether the judgment debtor is classified as an independent contractor or an employee.*

(h) All fire engines, hooks and ladders, with the carts, trucks and carriages, hose, buckets, implements and apparatus thereunto appertaining, and all

furniture and uniforms of any fire company or department organized under the laws of this State.

(i) All arms, uniforms and accouterments required by law to be kept by any person, and also one gun, to be selected by the debtor.

(j) All courthouses, jails, public offices and buildings, lots, grounds and personal property, the fixtures, furniture, books, papers and appurtenances belonging and pertaining to the courthouse, jail and public offices belonging to any county of this State, all cemeteries, public squares, parks and places, public buildings, town halls, markets, buildings for the use of fire departments and military organizations, and the lots and grounds thereto belonging and appertaining, owned or held by any town or incorporated city, or dedicated by the town or city to health, ornament or public use, or for the use of any fire or military company organized under the laws of this State and all lots, buildings and other school property owned by a school district and devoted to public school purposes.

(k) All money, benefits, privileges or immunities accruing or in any manner growing out of any life insurance.

(l) The homestead as provided for by law, including:

(1) Subject to the provisions of NRS 115.055, the sum of \$605,000 that is paid to the defendant in execution pursuant to subsection 2 of NRS 115.050 or to a spouse pursuant to subsection 3 of NRS 115.050; and

(2) A homestead for which allodial title has been established and not relinquished and for which a waiver executed pursuant to NRS 115.010 is not applicable.

(m) The dwelling of the judgment debtor occupied as a home for himself or herself and family, where the amount of equity held by the judgment debtor in the home does not exceed \$605,000 in value and the dwelling is situated upon lands not owned by the judgment debtor.

(n) All money reasonably deposited with a landlord by the judgment debtor to secure an agreement to rent or lease a dwelling that is used by the judgment debtor as his or her primary residence, except that such money is not exempt with respect to a landlord or the landlord's successor in interest who seeks to enforce the terms of the agreement to rent or lease the dwelling.

(o) All property in this State of the judgment debtor where the judgment is in favor of any state for failure to pay that state's income tax on benefits received from a pension or other retirement plan.

(p) Any vehicle owned by the judgment debtor for use by the judgment debtor or the judgment debtor's dependent that is equipped or modified to provide mobility for a person with a permanent disability.

(q) Any prosthesis or equipment prescribed by a physician or dentist for the judgment debtor or a dependent of the debtor.

(r) Money, not to exceed \$1,000,000 in present value, held in:

(1) An individual retirement arrangement which conforms with or is maintained pursuant to the applicable limitations and requirements of section 408 or 408A of the Internal Revenue Code, 26 U.S.C. §§ 408 and 408A, including, without limitation, an inherited individual retirement arrangement;

(2) A written simplified employee pension plan which conforms with or is maintained pursuant to the applicable limitations and requirements of section 408 of the Internal Revenue Code, 26 U.S.C. § 408, including, without limitation, an inherited simplified employee pension plan;

(3) A cash or deferred arrangement plan which is qualified and maintained pursuant to the Internal Revenue Code, including, without limitation, an inherited cash or deferred arrangement plan;

(4) A trust forming part of a stock bonus, pension or profit-sharing plan which is qualified and maintained pursuant to sections 401 et seq. of the Internal Revenue Code, 26 U.S.C. §§ 401 et seq.; and

(5) A trust forming part of a qualified tuition program pursuant to chapter 353B of NRS, any applicable regulations adopted pursuant to chapter 353B of NRS and section 529 of the Internal Revenue Code, 26 U.S.C. § 529, unless the money is deposited after the entry of a judgment against the purchaser or account owner or the money will not be used by any beneficiary to attend a college or university.

(s) All money and other benefits paid pursuant to the order of a court of competent jurisdiction for the support, education and maintenance of a child, whether collected by the judgment debtor or the State.

(t) All money and other benefits paid pursuant to the order of a court of competent jurisdiction for the support and maintenance of a former

spouse, including the amount of any arrearages in the payment of such support and maintenance to which the former spouse may be entitled.

(u) Payments, in an amount not to exceed \$16,150, received as compensation for personal injury, not including compensation for pain and suffering or actual pecuniary loss, by the judgment debtor or by a person upon whom the judgment debtor is dependent at the time the payment is received.

(v) Payments received as compensation for the wrongful death of a person upon whom the judgment debtor was dependent at the time of the wrongful death, to the extent reasonably necessary for the support of the judgment debtor and any dependent of the judgment debtor.

(w) Payments received as compensation for the loss of future earnings of the judgment debtor or of a person upon whom the judgment debtor is dependent at the time the payment is received, to the extent reasonably necessary for the support of the judgment debtor and any dependent of the judgment debtor.

(x) Payments received as restitution for a criminal act.

(y) Payments received pursuant to the federal Social Security Act, including, without limitation, retirement and survivors' benefits, supplemental security income benefits and disability insurance benefits.

(z) Any personal property not otherwise exempt from execution pursuant to this subsection belonging to the judgment debtor, including, without limitation, the judgment debtor's equity in any property, money, stocks, bonds or other funds on deposit with a financial institution, not to exceed \$10,000 in total value, to be selected by the judgment debtor.

(aa) Any tax refund received by the judgment debtor that is derived from the earned income credit described in section 32 of the Internal Revenue Code, 26 U.S.C. § 32, or a similar credit provided pursuant to a state law.

(bb) Stock of a corporation described in subsection 2 of NRS 78.746 except as set forth in that section.

(cc) Regardless of whether a trust contains a spendthrift provision:

(1) A distribution interest in the trust as defined in NRS 163.4155 that is a contingent interest, if the contingency has not been satisfied or removed;

- (2) A distribution interest in the trust as defined in NRS 163.4155 that is a discretionary interest as described in NRS 163.4185, if the interest has not been distributed;
- (3) A power of appointment in the trust as defined in NRS 163.4157 regardless of whether the power has been exercised;
- (4) A power listed in NRS 163.5553 that is held by a trust protector as defined in NRS 163.5547 or any other person regardless of whether the power has been exercised; and
- (5) A reserved power in the trust as defined in NRS 163.4165 regardless of whether the power has been exercised.

(dd) If a trust contains a spendthrift provision:

- (1) A distribution interest in the trust as defined in NRS 163.4155 that is a mandatory interest as described in NRS 163.4185, if the interest has not been distributed; and
- (2) Notwithstanding a beneficiary's right to enforce a support interest, a distribution interest in the trust as defined in NRS 163.4155 that is a support interest as described in NRS 163.4185, if the interest has not been distributed.

(ee) Proceeds received from a private disability insurance plan.

(ff) Money in a trust fund for funeral or burial services pursuant to NRS 689.700.

(gg) Compensation that was payable or paid pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS as provided in NRS 616C.205.

(hh) Unemployment compensation benefits received pursuant to NRS 612.710.

(ii) Benefits or refunds payable or paid from the Public Employees' Retirement System pursuant to NRS 286.670.

(jj) Money paid or rights existing for vocational rehabilitation pursuant to NRS 615.270.

(kk) Public assistance provided through the Department of Health and Human Services pursuant to NRS 422.291 and 422A.325.

(ll) Child welfare assistance provided pursuant to NRS 432.036.

2. Except as otherwise provided in NRS 115.010, no article or species of property mentioned in this section is exempt from execution issued upon a judgment to recover for its price, or upon a judgment of foreclosure of a mortgage or other lien thereon.

3. Any exemptions specified in subsection (d) of section 522 of the Bankruptcy Reform Act of 1978, 11 U.S.C. §§ 101 et seq., do not apply to property owned by a resident of this State unless conferred also by subsection 1, as limited by subsection 2.

4. The exemptions set forth in this section and NRS 21.105 shall be automatically adjusted to reflect changes by the percentage change, if any, from January 1st to December 31st of the preceding year in the Consumer Price Index for All Urban Consumers, Annual City Average, for the Western Region, or its successor index, as published by the United States Department of Labor, Bureau of Labor Statistics or its successor agency, beginning the April 1 following enactment and every 3 years thereafter. The Nevada Department of Business & Industry shall publish the 1-year adjustment for an effective date of April 1st for the following year. Adjustments made pursuant to this paragraph must be rounded up to the next \$10.

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DESCRIPTION OF EFFECT

This measure addresses high-interest lending practices by establishing maximum interest rates charged to consumers, and shields more of people's savings and earnings from garnishment than under current law.

Currently, most consumer loans have no interest rate cap. The proposed cap would set a maximum interest rate of 36% annually on the unpaid balance of the amount financed, and would apply to consumer loans; deferred-deposit transactions ("payday loans"); title loans; and other loan types dependent on future earnings and income.

The initiative also prohibits evading the interest rate cap by structuring transactions to mask their nature as loans covered by this measure, or partnering with out-of-state lenders to violate the rate cap. The initiative voids transactions that violate the cap, and establishes civil penalties.

Additionally, the initiative automatically protects \$5,000 of savings in a personal bank account (up from \$400 now), and \$850 of wages in any workweek (up from \$369), as well as a portion of disposable earnings above that amount, from seizure for a debt. Those amounts would be indexed to increase periodically with inflation.

County of _____ (**Only** registered voters of this county may sign below)
 Petition District: _____ (**Only** registered voters of this petition district may sign below)

			Office Use
1	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE - DATE / /	CITY COUNTY	
2	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE - DATE / /	CITY COUNTY	
3	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
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	YOUR SIGNATURE - DATE / /	CITY COUNTY	
7	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
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			Office Use
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10	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE - DATE / /	CITY COUNTY	
11	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE - DATE / /	CITY COUNTY	
12	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE - DATE / /	CITY COUNTY	

DESCRIPTION OF EFFECT

This measure addresses high-interest lending practices by establishing maximum interest rates charged to consumers, and shields more of people's savings and earnings from garnishment than under current law.

Currently, most consumer loans have no interest rate cap. The proposed cap would set a maximum interest rate of 36% annually on the unpaid balance of the amount financed, and would apply to consumer loans; deferred-deposit transactions ("payday loans"); title loans; and other loan types dependent on future earnings and income.

The initiative also prohibits evading the interest rate cap by structuring transactions to mask their nature as loans covered by this measure, or partnering with out-of-state lenders to violate the rate cap. The initiative voids transactions that violate the cap, and establishes civil penalties.

Additionally, the initiative automatically protects \$5,000 of savings in a personal bank account (up from \$400 now), and \$850 of wages in any workweek (up from \$369), as well as a portion of disposable earnings above that amount, from seizure for a debt. Those amounts would be indexed to increase periodically with inflation.

County of _____ (Only registered voters of this county may sign below)
 Petition District: _____ (Only registered voters of this petition district may sign below)

			Office Use
13	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE - DATE / /	CITY COUNTY	
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AFFIDAVIT OF CIRCULATOR

(TO BE SIGNED BY CIRCULATOR)

STATE OF NEVADA)
)
COUNTY OF _____)

I, _____, (print name), being first duly sworn under penalty of perjury, depose and say: (1) that I reside at _____ (print street, city and state); (2) that I am 18 years of age or older; (3) that I personally circulated this document; (4) that all signatures were affixed in my presence; (5) that the number of signatures affixed thereon is _____; and (6) that each person who signed had an opportunity before signing to read the full text of the act or resolution on which the initiative or referendum is demanded.

Signature of Circulator

Subscribed and sworn to or affirmed before me this

_____ day of _____, _____, by _____.

Notary Public or person authorized to administer oath

EXHIBIT 2



Pursuant to NRS 295.015, before a petition for initiative or referendum may be presented to registered voters for signatures, the person who intends to circulate the petition must provide the following information:

NAME OF PERSON FILING THE PETITION

Kate Feldman

NAME(S) OF PERSON(S) AUTHORIZED TO WITHDRAW OR AMEND THE PETITION (provide up to three)

1. Kate Feldman
- 2.
- 3.

NAME OF THE POLITICAL ACTION COMMITTEE (PAC) ADVOCATING FOR THE PASSAGE OF THE INITIATIVE OR REFERENDUM (if none, leave blank)

Please note, if you are creating a Political Action Committee for the purpose of advocating for the passage of the initiative or referendum, you must complete a separate PAC registration form.

Additionally, a copy of the initiative or referendum, including the description of effect, must be filed with the Secretary of State's office at the time you submit this form.

X

Kate Feldman

Signature of Petition Filer

1-24-2024

Date

Explanation - Matter in *italics* is new; matter between brackets [~~omitted material~~] is material to be omitted.

THE PEOPLE OF THE STATE OF NEVADA DO ENACT AS FOLLOWS

Section 1. The Nevada Revised Statutes are hereby amended by adding thereto a new Chapter, to be designated Chapter 604D: Preventing Predatory Payday and Other Loans Act, to read as follows:

Section 2. *Liberal construction. The provisions of this chapter shall be liberally construed to achieve its purposes, which are combatting predatory payday lending and other high-cost loans; ensuring that out-of-state lenders cannot flout Nevada law by making payday loans, other loans, or transactions subject to this chapter at unlawful rates to Nevada residents; and protecting law-abiding lenders from unfair competition by predatory, out-of-state entities.*

Section 3. *Definitions. As used in this chapter, the words and terms defined in sections 4 to 6, inclusive, of this chapter have the meanings ascribed to them in those sections.*

Section 4. *Annual percentage rate defined. The term “Annual percentage rate” or APR means an annual rate calculated including all amounts, charges, and payments made directly or indirectly, incident to, ancillary to, or as a condition of a loan or other transaction subject to this chapter, whether voluntary, optional or required, including any amount paid to a broker or credit services organization. The APR shall include, but is not limited to, all interest, fees, charges and other payments as set forth in the regulations issued by the United States Secretary of Defense on July 22, 2015 to implement the Military Lending Act, 10 USC sec. 987, except that credit card fees may be excluded only if the card is network-branded and the fees collectively each year do not exceed 15% of the credit line. The annual percentage rate shall be calculated as specified in such regulations.*

Section 5. *Loan defined.*

1. For purposes of this chapter, “loan” means and includes:

- (a) Money or credit provided to a consumer in exchange for the consumer’s agreement to a certain set of terms, including, but not limited to, provisions for direct or indirect repayment, interest, fees, charges or other payments, or other conditions;*
- (b) Any deferred deposit transaction or payday loan, installment loan, line of credit, retail installment sales contract, and motor vehicle retail installment sales contract, and other closed-end or open-end credit; and*

(c) Any sale, assignment, order, or agreement for the payment of unpaid wages, salary, commissions, compensation, or other income, or any portion or amount thereof, whether earned, to be earned, or contingent upon future earnings, that is made in consideration for goods or services, credit, or the payment of money to or for the account of the person earning or receiving, or potentially earning or receiving, the wages, salary, commissions, compensation, or other income.

2. Any transaction that satisfies any definition in this section is a “loan” for purposes of this chapter without regard to the means of collection, without regard to whether the payday lender or other lender has legal recourse against the borrower in the event of non-repayment, and without regard to whether the transaction carries required charges or payments.

Section 6. Network-branded defined. *“Network-branded” means branded with and available for use on the Visa, MasterCard, American Express or Discover networks or a similar widely-accepted card network that is accepted upon presentation for purchases of goods and services at multiple, unaffiliated merchants.*

Section 7. Application of chapter. *This chapter applies to any payday lender or other person that:*

1. Markets, offers, brokers, arranges, facilitates, makes or services a loan as defined in Section 5 of this chapter or other transaction as defined in Section 8 of this chapter, including a credit service organization that obtains an extension of credit for a borrower;

2. Is a bank, savings bank, savings and loan association, or credit union organized, chartered or holding a certificate of authority to do business under the laws of this state, another state, or the United States. However, banks, savings banks, savings and loan associations, and credit unions organized, chartered or holding a certificate of authority to do business under the laws of another state or under the laws of the United States are exempt from this chapter only to the extent this chapter is preempted by federal law;

3. Is an agent of a person subject this chapter or of any affiliate, subsidiary or other entity that is related to, that controls, or that is controlled by a person subject to this chapter;

4. Acquires a whole or partial interest in a loan or transaction subject to this chapter;

5. Is deemed to be subject to this chapter under section 11 of this chapter or is engaged in a transaction that is in substance a disguised loan or other transaction subject to this chapter or is a device, subterfuge or pretense to evade this chapter.

6. Markets, offers, brokers, arranges, facilitates, makes or services any transaction that is otherwise subject to this chapter and that is offered or made to a person residing in this state, whether the transaction is conducted in person, by telephone, via the Internet, or by any other means.

Section 8. *Specific transactions subject to this chapter.* *Notwithstanding any other provision of law, transactions subject to this chapter shall include, but shall not be limited to, the following:*

1. Deferred deposit loans (also known as payday loans), as defined in NRS 604A.050. A deferred deposit loan is subject to this chapter notwithstanding NRS 604A.220 or any other provision of law.

2. High-interest loans, as defined in NRS 604A.0703. A high-interest loan is subject to this chapter notwithstanding NRS 604A.220 or any other provision of law.

3. Title loans, as defined in NRS 604A.105. A title loan is subject to this chapter notwithstanding NRS 604A.220 or any other provision of law.

4. Refund anticipation loans, as defined in NRS 604B.060.

5. Consumer litigation funding transactions, as defined in NRS 604C.100. A consumer litigation funding transaction is subject to this chapter notwithstanding NRS 604C.220 or any other provision of law.

7. Installment loans, as regulated by Chapter 675 of the Nevada Revised Statutes;

8. Retail installment transactions, as defined in NRS 97.115. A retail installment transaction is subject to this chapter notwithstanding NRS 97.285 or any other provision of law;

9. Loans secured by a life insurance or annuity contract, as regulated by NRS 688A.110; and

10. Loans made by a bank, savings bank, savings and loan association, or credit union organized, chartered or holding a certificate of authority to do business under the laws of this state. This chapter shall apply to loans made by those entities notwithstanding NRS 662.015, NRS 672.370, NRS 672.460, NRS

672.710, NRS 673.225, NRS 673.3272, NRS 677.730 or any other provision of law.

Section 9. Maximum interest rate permitted. *For any loan or other transaction subject to this chapter made or renewed on or after the effective date of this chapter, no payday lender or other person shall market, offer, charge, contract for, collect or receive, directly or indirectly, charges or amounts exceeding a 36% annual percentage rate on the unpaid balance of the amount financed. This section shall apply notwithstanding any other provision of the laws of this state, including but not limited to any provision of NRS 604A.0703, NRS 604A.5029, NRS 604A.5052, or NRS 604A.5057 or any other law that refers to or allows an annual percentage rate that exceeds 36%.*

Section 10. Prohibited acts to evade application of chapter. *For any loan or other transaction subject to this chapter, no payday lender or other person shall engage in any device, subterfuge, or pretense to evade the requirements of this chapter, including, but not limited to:*

- 1. Making a loan or other transaction disguised as a personal property sale and leaseback transaction;*
- 2. Disguising proceeds of a loan or other transaction as a cash rebate for the pretextual sale of goods or services;*
- 3. Disguising a loan or other transaction as the sale of goods, services or things in action or disguising charges for a loan or other transaction in the price of goods, services or things in action;*
- 4. Making, contracting for, offering, assisting, or arranging for a borrower to obtain a loan or other transaction with a higher rate or amount of interest, consideration, charge or other payment received incident to the loan than is permitted by Section 9 of this chapter through any method including mail, telephone, internet or any electronic means, regardless of whether the person has a physical location in the state;*
- 5. Structuring the transaction in a manner to obscure the fact that it is a loan; or*
- 6. Charging, contracting for or receiving interest, fees, charges or other payments in excess of those permitted, regardless whether the payment purports to be voluntary.*

Section 11. Application of chapter to agents and service providers of exempt entities. *If the annual percentage rate of the loan or other transaction exceeds the rate permitted by Section 9 of this chapter, a person shall be subject to the requirements of this chapter notwithstanding*

the fact that the person purports to act as an agent or service provider or in another capacity for a person that is exempt from this chapter, if, among other things:

- 1. The person holds, acquires, or maintains, directly or indirectly, the predominant economic interest, risk or reward, in the loan or transaction;*
- 2. The person (a) markets, solicits, brokers, arranges, facilitates or services loans or transactions and (b) holds, or has the right, requirement or first right of refusal to acquire, the loans, transactions, a share of receivables or another direct or indirect interest in the loans or loan program; or*
- 3. The totality of the circumstances indicate that the person is engaging in transactions subject to this chapter and that the transaction is structured to evade the requirements of this chapter. Circumstances that weigh in favor of a person being subject to this chapter include, without limitation, when the person:*
 - (a) indemnifies, insures or protects an exempt entity from costs or risks related to the loan or transaction;*
 - (b) predominantly designs, controls or operates the loan program or transaction;*
 - (c) holds the trademark or intellectual property rights in the brand, underwriting system, or other core aspects of the loan program or transaction; or*
 - (d) purports to act as an agent or service provider or in another capacity for an exempt entity while acting directly as a lender in other states.*

Section 12. *Prohibition against facilitation of payday loans or other transactions in violation of chapter.* *No person shall solicit, broker, or engage in any other activity intended to facilitate or result in, or that in fact facilitates or results in, a loan or transaction that violates this chapter.*

Section 13. *Remedies for payday loans or other transactions made in violation of this chapter.*

- 1. A loan or other transaction made in violation of this chapter shall be void and uncollectible as to any principal, fee, interest, charge or payment.*
- 2. An action for violation of this chapter may be brought in any court of competent jurisdiction.*
- 3. Any person who violates this chapter is liable to the borrower for:*
 - (a) Actual and consequential damages;*

- (b) Restitution of any amounts paid;*
- (c) Treble the amount of any excess fee, interest, charge, or payment;*
- (d) Statutory damages, at an amount that the court considers just, of at least \$250 and no more than \$1,000 per violation;*
- (e) Injunctive or declaratory relief;*
- (f) Reasonable attorney's fees and costs; and*
- (g) Any other legal or equitable relief that the court deems appropriate in addition to any other remedies provided at law.*

4. The remedies provided for in this section are cumulative to any other remedies that apply to a loan or other transaction made in violation of other laws of this State.

Section 14. *Declaration of intent to opt out of DIDMCA.* *In accordance with section 525 of the federal "Depository Institutions Deregulation and Monetary Control Act of 1980", Pub.L. 96-221, the voters of the State of Nevada declare that the State of Nevada does not want the amendments to the "Federal Deposit Insurance Act", 12 U.S.C. sec. 1811 et seq.; the federal "National Housing Act", 12 U.S.C. sec. 1701 et seq.; and the "Federal Credit Union Act", 12 U.S.C. sec. 1757, made by sections 521 to 523 of the federal "Depository Institutions Deregulation and Monetary Control Act of 1980", Pub.L. 96-221, prescribing interest rates and preempting state interest rates to apply to loans as defined in Section 5 of this chapter or specific transactions as defined in Section 8 of this chapter. The rates established in this chapter shall apply to payday loans and other loans as defined in Section 5 of this chapter and specific transactions as defined in Section 8 of this chapter.*

Section 15. *Application of chapter to earned wage access services.* *Prior to January 1, 2030, section 9 of this chapter shall not apply to entities licensed under the laws of this State to provide earned wage access services, as defined in Senate Bill No. 290 of the 82nd Regular Session of the Nevada Legislature (2023), 2023 Nev. Stat., ch. 400. Beginning on January 1, 2030, section 9 shall apply to any provider of earned wage access services, regardless of whether the provider is licensed under the laws of this State, including any provider of transactions that satisfy the definition of earned wage access services currently set forth in Senate Bill No. 290 of the 82nd Regular Session of the Nevada Legislature (2023), 2023 Nev. Stat., ch. 400.*

Section 16. NRS 99.050 is hereby amended to read as follows:

1. Except as otherwise provided in subsection 2, parties may agree for the payment of any rate of interest on money due or to become due on any contract, for the compounding

of interest if they choose, and for any other charges or fees, *provided, however, that parties cannot agree to any arrangement that violates the requirements of Chapter 604D of the Nevada Revised Statutes*. The parties shall specify in writing the rate upon which they agree, that interest is to be compounded if so agreed, and any other charges or fees to which they have agreed.

2. A creditor shall not charge an annual percentage rate that is greater than the lesser of 36 percent or the maximum annual percentage rate authorized under any federal law or regulation with respect to the consumer credit extended to a covered service member or a dependent of a covered service member. Any contract or agreement in violation of this subsection is void and unenforceable.

3. As used in this section:

(a) “Annual percentage rate” has the meaning ascribed to it in the federal Truth in Lending Act, as amended, 15 U.S.C. §§ 1601 et seq., and the federal regulations adopted pursuant thereto.

(b) “Consumer credit”:

(1) Except as otherwise provided in subparagraph (2), means credit offered or extended to a covered service member or dependent of a covered service member primarily for personal, family or household purposes, and that is:

(I) Subject to a finance charge; or

(II) Payable by a written agreement in more than four installments.

(2) Does not include:

(I) A residential mortgage, which is any credit transaction secured by an interest in a dwelling, including a transaction to finance the purchase or initial construction of the dwelling, any refinance transaction, home equity loan or line of credit or reverse mortgage;

(II) Any credit transaction that is expressly intended to finance the purchase of a motor vehicle when the credit is secured by the vehicle being purchased;

(III) Any credit transaction that is expressly intended to finance the purchase of personal property when the credit is secured by the property being purchased;

(IV) Any credit transaction that is an exempt transaction for the purposes of 12 C.F.R. Part 1026, commonly known as Regulation Z, other than a transaction exempt under 12 C.F.R. § 1026.29, or otherwise is not subject to disclosure requirements under 12 C.F.R. Part 1026, commonly known as Regulation Z; and

(V) Any credit transaction or account for credit for which a creditor determines that a natural person is not a covered borrower by using a method and by complying with the recordkeeping requirement set forth in 32 C.F.R. § 232.5(b).

(c) “Covered service member”:

(1) Except as otherwise provided in subparagraph (2), means a member of the armed forces who is serving on:

(I) Active duty pursuant to title 10, title 14 or title 32 of the United States Code, under a call or order that does not specify a period of 30 days or fewer; or

(II) Active Guard and Reserve duty, as that term is defined in 10 U.S.C. § 101(d)(6).

(2) Does not include a consumer who was a covered service member pursuant to subparagraph (1) at the time he or she became obligated on a consumer credit transaction or established an account for consumer credit but is no longer a covered service member pursuant to subparagraph (1) or a dependent of a person who is a covered service member pursuant to subparagraph (1).

(d) “Credit” means the right granted to a natural person by a person engaged in the business of extending consumer credit, or an assignee of such a person with respect to any consumer credit extended, to defer payment or to incur debt and defer its payment.

(e) “Dependent” with respect to a covered service member means:

(1) The spouse;

(2) A child who:

(I) Has not attained the age of 21;

(II) Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, as defined in 10 U.S.C. §

1072(3), and is, or was at the time of the covered service member's or former covered service member's death, in fact dependent on the covered service member or former covered service member for over one-half of the child's support; or

(III) Is incapable of self-support because of a mental or physical incapacity that occurs while a dependent of a covered service member or former covered service member under sub-subparagraph (I) or (II) and is, or was at the time of the covered service member's or former covered service member's death, in fact dependent on the member or former member for over one-half of the child's support;

(3) A parent or parent-in-law who is, or was at the time of the covered service member's or former covered service member's death, in fact dependent on him or her for over one-half of his or her support and residing in his or her household;

(4) An unmarried person who:

(I) Is placed in the legal custody of the covered service member or former covered service member as a result of an order of a court of competent jurisdiction in the United States, or possession of the United States, for a period of at least 12 consecutive months;

(II) Has not attained the age of 21, has not attained the age of 23 and is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, as defined in 10 U.S.C. § 1072(3), or is incapable of self-support because of a mental or physical incapacity that occurred while the person was considered a dependent of the covered service member or former covered service member pursuant to this paragraph;

(III) Is dependent on the covered service member or former covered service member for over one-half of the person's support;

(IV) Resides with the covered service member or former covered service member unless separated by the necessity of military service or to receive institutional care as a result of disability or incapacitation or under such other

circumstances as the administering Secretary, as defined in 10 U.S.C. § 1072(3), may by regulation prescribe; and

(V) Is not a dependent of a covered service member or a former covered service member pursuant to subparagraph (1), (2) or (3).

(f) “Dwelling” means a residential structure that contains one to four units, whether or not the structure is attached to real property. The term includes, without limitation, an individual condominium unit, cooperative unit, mobile home and manufactured home.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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AFFIDAVIT OF CIRCULATOR

(TO BE SIGNED BY CIRCULATOR)

STATE OF NEVADA)
)
COUNTY OF _____)

I, _____, (print name), being first duly sworn under penalty of perjury, depose and say: (1) that I reside at _____

_____ (print street, city and state); (2) that I am 18 years of age or older; (3) that I personally circulated this document; (4) that all signatures were affixed in my presence; (5) that the number of signatures affixed thereon is _____; and (6) that each person who signed had an opportunity before signing to read the full text of the act or resolution on which the initiative or referendum is demanded.

Signature of Circulator

Subscribed and sworn to or affirmed before me this

_____ day of _____, _____, by _____.

Notary Public or person authorized to administer oath

EXHIBIT 3

EXECUTIVE AGENCY
FISCAL NOTE

AGENCY'S ESTIMATES

Date Prepared: March 23, 2023

Agency Submitting: Department of Business and Industry, Division of Financial Institutions

Items of Revenue or Expense, or Both	Fiscal Year 2022-23	Fiscal Year 2023-24	Fiscal Year 2024-25	Effect on Future Biennia
3718 - Earned Wage Access Providers (Revenue)			\$50,000	\$50,000
3730 - Examination Fees (Revenue)			\$56,250	\$112,500
Total	0	0	\$106,250	\$162,500

Explanation

(Use Additional Sheets of Attachments, if required)

As currently drafted, BDR 52-9 (SB290) creates a new licensing and regulatory program for on-demand pay providers. BDR 52-9 (SB290), if passed, would add approximately 25 new licensees under the Financial Institutions Division's (FID) supervision. FID will be responsible for regulatory development, implementation, examinations, complaint investigations, and all other regulatory matters pertaining thereto.

Name Dale Hansen

Title ASO IV

GOVERNOR'S OFFICE OF FINANCE COMMENTS

Date Wednesday, March 22, 2023

The agency's response appears reasonable.

Name Amy Stephenson

Title Director

NEBS210

State of Nevada - Budget Division
Line Item Detail & Summary
2023-2025 Biennium (FY24-25)

3/22/23 10:30 AM

Section B1: Summary by GL

Budget Account: 3805 B&I - FINANCIAL INSTITUTIONS INVESTIGATIONS

Item No	Description	Actual 2021-2022	Work Program 2022-2023	W01 Year 1 2023-2024	W01 Year 2 2024-2025
REVENUE					
3717	APPLICATION FEES	0	0	0	25,000
TOTAL REVENUES FOR BUDGET ACCOUNT 3805		0	0	0	25,000

Section B1: Summary by GL
Budget Account: 3835 B&I - DIVISION OF FINANCIAL INSTITUTIONS

Item No	Description	Actual 2021-2022	Work Program 2022-2023	W04 Year 1 2023-2024	W04 Year 2 2024-2025
REVENUE					
3718	Earned Wage Access Providers	0	0	0	25,000
3730	EXAMINATION FEES	0	0	0	56,250
TOTAL REVENUES FOR BUDGET ACCOUNT 3835		0	0	0	81,250

Financial Institutions BDR 52-9

	Year 1	Year 2	Biennia
Application (BA 3805)	-	25,000.00	-
Initial License (BA 3835)	-	25,000.00	-
Renewal License (BA 3835)	-	-	50,000.00
Examination (BA 3835)	-	56,250.00	112,500.00
	\$ -	\$ 106,250.00	\$ 162,500.00

TOTALS	Fee	# of Licensees	Total
RGL 3717 Application	\$ 1,000.00	25	\$ 25,000.00
RGL 3718 Initial License	\$ 1,000.00	25	\$ 25,000.00
RGL 3718 Renewal License	\$ 1,000.00	25	\$ 25,000.00
RGL 3730 Examination per hour	\$ 75.00	25	\$ 56,250.00
approx time for examination 30 hours			
		Total	\$ 131,250.00

EXHIBIT 4

Jay DeVoy (NSBN 11950)
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Attorneys for Plaintiff DailyPay, Inc.

FIRST JUDICIAL DISTRICT COURT OF NEVADA
IN AND FOR CARSON CITY

DAILYPAY, INC., a Delaware Corporation

Plaintiff,

v.

The Honorable FRANCISCO V. AGUILAR,
in his official capacity as Secretary of State for
the State of Nevada;

Defendant.

Case No.

Dept. No.

**DECLARATION OF MATTHEW
MORRIS, ESQ., IN SUPPORT OF
COMPLAINT**

I, **Matthew Morris**, Esq., under penalty of perjury, and as required under FJDCR 3.14,
hereby declare as follows:

1. I am an attorney at the law firm of Holland & Hart, LLP. I am an attorney in the
State of Nevada, duly licensed and in good standing with the Nevada State Bar.

2. I represent the Plaintiff, DailyPay, Inc., in this action.

3. I submit this Declaration in support of the Plaintiff's Complaint for Declaratory and
Injunctive Relief that is filed contemporaneously herewith.

4. The Complaint challenges the legality, lawfulness, and constitutionality of
Initiative Petitions S-01-2024 and S-03-2024, filed on or about January 5, 2024 and January 24,
2024 with the Nevada Secretary of State's Office.

5. The Complaint is timely filed with this Court pursuant to NRS 295.061.

1 6. The factual allegations in the Complaint are true and correct based on knowledge
2 and belief.

3 I declare under penalty of perjury under the laws of the State of Nevada that the
4 foregoing is true and correct.
5

6 **DATE: January 26, 2024**

HOLLAND & HART LLP



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10 **IN THE FIRST JUDICIAL DISTRICT COURT**
11 **OF THE STATE OF NEVADA IN AND FOR CARSON CITY**

12 PREFERRED CAPITAL FUNDING -
13 NEVADA, LLC, a Nevada limited liability
company, and ALLIANCE FOR
14 RESPONSIBLE CONSUMER LEGAL
FUNDING, an Illinois nonprofit corporation,

15 Plaintiffs,

16 vs.

17 FRANCISCO V. AGUILAR, in his official
18 capacity as NEVADA SECRETARY OF
STATE, and KATE FELDMAN, an individual,

19 Defendants.

CASE NO. 240c00073-1B
DEPT. NO. I

**COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF CHALLENGING
INITIATIVE PETITIONS S-01-2024 and S-
03-2024**

Priority Matter Pursuant to NRS 295.061(1)

**Exempt from Arbitration: Action Seeking
Declaratory and Injunctive Relief**

22 Plaintiffs Preferred Capital Funding - Nevada, LLC, a Nevada limited liability company,
23 and Alliance For Responsible Consumer Legal Funding, an Illinois nonprofit corporation, by and
24 through their attorneys, Joshua H. Reisman, Esq., Elizabeth M. Sorokac, Esq., and Michael R.
25 Kalish, Esq., of the law firm Reisman Sorokac, hereby complain against Defendants Francisco V.
26
27
28

1 Aguilar, in his official capacity as Nevada Secretary of State, and Kate Feldman, an individual,
2 pursuant to NRS 295.061 and 30.010 et seq., as follows:

3 **PARTIES**

4 1. Plaintiff Preferred Capital Funding - Nevada, LLC is, and at all relevant times was,
5 a Nevada limited liability company organized, existing and doing business in the State of Nevada
6 to provide consumer litigation funding. Plaintiff Preferred Capital Funding – Nevada LLC has
7 been licensed as a consumer litigation funding company since 2019 and its principal place of
8 business is in Las Vegas, Nevada.

9 2. Plaintiff Alliance For Responsible Consumer Legal Funding is, and at all relevant
10 times was, an Illinois nonprofit corporation organized and existing in the State of Illinois, and
11 representing consumer litigation funding companies doing business in the State of Nevada.

12 3. Defendant Francisco V. Aguilar is the Nevada Secretary of State ("Secretary") and
13 is sued in his official capacity.

14 4. Defendant Kate Feldman, an individual, is the individual that filed that certain (i)
15 Notice of Intent Statewide Initiative or Referendum Petition designated as S-01-2024 entitled
16 "Initiative Petition – Statewide Statutory Measure" ("Petition S-01") and (ii) Notice of Intent
17 Statewide Initiative or Referendum Petition designated as S-03-2024 entitled "Initiative Petition –
18 Statewide Statutory Measure" ("Petition S-03", together with Petition S-01, the "Petition") with
19 the Secretary that is the subject of this Complaint.¹

20 **JURISDICTION**

21 5. This Court has jurisdiction over this matter because Plaintiffs assert claims
22 pursuant to NRS 295.061 and seek declaratory and injunctive relief pursuant to NRS 30.010 et
23 seq.

24
25
26 ¹ Petition S-03 was filed separately and designated separately by the Secretary. Petition S-
27 03 restates Petition S-01 in its entirety, but it removes Sections 17 and 18 of Petition S-01 and a
28 description of such sections in the Description of Effect. As of the date of this Complaint, Petition
S-01 has not been withdrawn. As such, Plaintiffs are challenging Petition S-01 and Petition S-03.

6. Venue is proper under NRS 13.020 and 13.040 because this action is against a public officer for acting in his official capacity, and is pursuant to NRS 295.061, which requires a complaint challenging a petition for initiative to be filed in the First Judicial District Court.

GENERAL ALLEGATIONS

7. On January 5, 2024, the Secretary received Petition S-01 from Defendant Kate Feldman. *See* Exhibit 1, a true and correct copy of Petition S-01.

8. On January 24, 2024, the Secretary received Petition S-03 from Defendant Kate Feldman. *See* Exhibit 2, a true and correct copy of Petition S-03.

9. Under Section 9 of the Petition, amongst other provisions, the Petition seeks to amend Nevada Revised Statutes by adding a new Chapter 604D to restrict any payday lender or other person from charging an annual percentage rate in excess of 36% on the unpaid balances of loans as such lenders and loans are defined in Sections 5 and 7 of the Petition (collectively, the "Catch-All Interest Rate Restrictions"). *See* Ex. 1 at 1-6, and Ex. 2 at 1-6.

10. Under Section 7 of the Petition, a payday lender or other person are broadly defined as such persons that:

"1. Markets, offers, brokers, arranges, facilitates, makes or services a loan as defined in Section 5 of this chapter or other transaction as defined in Section 8 of this chapter, including a credit service organization that obtains an extension of credit for a borrower;

2. Is a bank, savings bank, savings and loan association, or credit union organized, chartered or holding a certificate of authority to do business under the laws of this state, another state, or the United States. However, banks, savings banks, savings and loan associations, and credit unions organized, chartered or holding a certificate of authority to do business under the laws of another state or under the laws of the United States are exempt from this chapter only to the extent this chapter is preempted by federal law;

3. Is an agent of a person subject this chapter or of any affiliate, subsidiary or other entity that is related to, that controls, or that is controlled by a person subject to this chapter;

4. Acquires a whole or partial interest in a loan or transaction subject to this chapter;

1 5. Is deemed to be subject to this chapter under section 11 of this chapter
2 or is engaged in a transaction that is in substance a disguised loan or other
3 transaction subject to this chapter or is a device, subterfuge or pretense to
evade this chapter.

4 6. Markets, offers, brokers, arranges, facilitates, makes or services any
5 transaction that is otherwise subject to this chapter and that is offered or
6 made to a person residing in this state, whether the transaction is
conducted in person, by telephone, via the Internet, or by any other
means."

7 See Ex. 1 at 2-3, and Ex. 2 at 2-3.

8
9 11. Under Section 5 of the Petition, loans are broadly defined as:

10 "(a) Money or credit provided to a consumer in exchange for the
11 consumer's agreement to a certain set of terms, including, but not limited
to, provisions for direct or indirect repayment, interest, fees, charges or
other payments, or other conditions;

12 (b) Any deferred deposit transaction or payday loan, installment loan, line
13 of credit, retail installment sales contract, and motor vehicle retail
14 installment sales contract, and other closed-end or open-end credit; and

15 (c) Any sale, assignment, order, or agreement for the payment of unpaid
16 wages, salary, commissions, compensation, or other income, or any
17 portion or amount thereof, whether earned, to be earned, or contingent
upon future earnings, that is made in consideration for goods or services,
18 credit, or the payment of money to or for the account of the person earning
or receiving, or potentially earning or receiving, the wages, salary,
commissions, compensation, or other income."

19 See Ex. 1 at 1-2, Ex. 2 at 1-2.

20 12. In addition to the Catch-All Interest Rate Restrictions, the Petition also seeks to
21 restrict lenders from charging an annual percentage rate in excess of 36% on the unpaid balances
22 on specific loans and transactions listed in Sections 8, 15 and 16 (the, "Specific Interest Rate
23 Restrictions"): (i) deferred deposit loans as defined in NRS 604A.050; (ii) high-interest loans as
24 defined in NRS 604A.0703; (iii) title loans as defined in NRS 604A.105; (iv) refund anticipation
25 loans as defined in NRS 604B.060; (v) consumer litigation funding transactions as defined in NRS
26 604C.100; (vi) installment loans as regulated by NRS Chapter 675; (vii) retail installment
27 transactions as defined in NRS 97.115; (viii) loans secured by a life insurance or annuity contract
28

1 as regulated by NRS 688A.110; (ix) all loans made by a bank, savings bank, savings and loan
2 association, or credit union organized, chartered or holding a certificate of authority to do business
3 under the laws of the State of Nevada; (x) consumer credit extended to certain members of the
4 military and dependents as regulated by NRS 99.050; and (xi) earned wage access services as
5 regulated by Senate Bill No. 290 of the 82nd Regular Session of the Nevada Legislature (2023),
6 2023 Nev. Stat., ch. 400. *See* Ex. 1 at 3-4, and 6-10, and Ex. 2 at 3-4, and 6-10.

7 13. In addition to the Specific Interest Rate Restrictions and the Catch-All Interest Rate
8 Restrictions, the Petition seeks to cause the State of Nevada to opt out of Sections 521 to 523 of
9 the Depository Institutions Deregulation and Monetary Control Act of 1980., 96 P.L. 221, 94 Stat.
10 132 ("Act"), to prevent lenders from applying any interest rates permitted by such Act to all loans
11 made subject to the new NRS Chapter 604D as a result of the Petition (the, "Act Opt-Out
12 Provision"). *See* Ex. 1 at 6, and Ex. 2 at 6.

13 14. Additionally, Petition S-01 seeks to (i) increase the minimum amount of money
14 that is not subject to a writ of execution or garnishment levied against a personal bank account of a
15 judgment debtor pursuant to NRS 21.105, and require such amount to be adjusted based on
16 changes to the Consumer Price Index for All Urban Consumers, Annual City Average, for the
17 Western Region (the, "Garnishment Restrictions"), and (ii) remove civil immunity for a financial
18 institution that makes an incorrect determination of whether money in the account of a judgment
19 debtor is subject to execution pursuant to NRS 21.105 after applying commercially reasonable
20 methods because the source of the money was not clearly identifiable or because the financial
21 institution inadvertently misidentified the source of the money (the, "Immunity Waiver"). *See* Ex.
22 1 at 10-12, and 18.

23 15. Lastly, Petition S-01 seeks to (i) increase the percentage of disposable earnings of a
24 judgment debtor that are exempt from execution pursuant to NRS 21.090, and require such
25 amount to be adjusted based on changes to the Consumer Price Index for All Urban Consumers,
26 Annual City Average, for the Western Region, and (ii) revise the definition of earnings as defined
27 in NRS 21.090(1)(g)(2) to also include compensation payable for personal services performed by a
28

1 judgment debtor whether such judgment debtor is an independent contractor or employee
2 (collectively, the "Disposable Earnings Restrictions"). See Ex. 1 at 12-13, and 18.

3 16. Petition S-01 includes the following description of effect ("Petition S-01
4 Description"):

5 "This measure addresses high-interest lending practices by establishing
6 maximum interest rates charged to consumers, and shields more of
7 people's savings and earnings from garnishment than under current law.

8 Currently, most consumer loans have no interest rate cap. The proposed
9 cap would set a maximum interest rate of 36% annually on the unpaid
10 balance of the amount financed, and would apply to consumer loans;
deferred-deposit transactions ("payday loans"); title loans; and other loan
types dependent on future earnings and income.

11 The initiative also prohibits evading the interest rate cap by structuring
12 transactions to mask their nature as loans covered by this measure, or
13 partnering with out-of-state lenders to violate the rate cap. The initiative
voids transactions that violate the cap, and establishes civil penalties.

14 Additionally, the initiative automatically protects \$5,000 of savings in a
15 personal bank account (up from \$400 now), and \$850 of wages in any
16 workweek (up from \$369), as well as a portion of disposable earnings
above that amount, from seizure for a debt. Those amounts would be
indexed to increase periodically with inflation."

17 See Ex. 1 at 19.

18 17. Petition S-03 includes the following description of effect ("Petition S-03
19 Description", together with Petition S-01 Description, the "Description"):

21 "This measure addresses high-interest lending practices by establishing
22 maximum interest rates charged to consumers.

23 Currently, most consumer loans have no interest rate cap. The proposed
24 cap would set a maximum interest rate of 36% annually on the unpaid
25 balance of the amount financed, and would apply to consumer loans;
deferred-deposit transactions ("payday loans"); title loans; and other loan
types dependent on future earnings and income.

26 The initiative also prohibits evading the interest rate cap by structuring
27 transactions to mask their nature as loans covered by this measure, or
28 partnering with out-of-state lenders to violate the rate cap. The initiative
voids transactions that violate the cap, and establishes civil penalties."

See Ex. 2 at 11.

FIRST CAUSE OF ACTION
(Violation of NRS 295.009(1)(a))

18. Plaintiffs repeat and reallege each and every allegation contained above as though fully set forth herein.

19. A petition for initiative or referendum is required to "[e]mbrace but one subject and matters necessarily connected therewith and pertaining thereto." NRS 295.009(1)(a).

20. "[A] petition for initiative or referendum embraces but one subject and matters necessarily connected therewith and pertaining thereto, if the parts of the proposed initiative or referendum are functionally related and germane to each other in a way that provides sufficient notice of the general subject of, and of the interests likely to be affected by, the proposed initiative or referendum." NRS 295.009(2).

21. "[T]he single-subject requirement helps both in promoting informed decisions and in preventing the enactment of unpopular provisions by attaching them to more attractive proposals or concealing them in lengthy, complex initiatives (i.e., logrolling)." *Las Vegas Taxpayer Accountability v. City Council of Las Vegas*, 125 Nev. 165, 176-77, 208 P.3d 429, 436-37 (2009) (quoting *Nevadans for the Prot. of Prop. Rights, Inc. v. Heller*, 122 Nev. 894, 905, 141 P.3d 1235, 1242 (2006)).

22. "[L]ogrolling 'occurs when two or more completely separate provisions are combined in a petition, one or both of which would not obtain enough votes to pass without the other.'" *Helton v. Nev. Voters First Pac*, 512 P.3d 309, 315 (Nev. 2022) (quoting *Nevadans for the Prot. of Prop. Rights, Inc. v. Heller*, 122 Nev. 894, 922, 141 P.3d 1235, 1254 (2006) (Hardesty, J., concurring and dissenting)).

23. The Catch-All Interest Rate Restrictions of the Petition broadly seek to limit the interest rate that is chargeable under essentially every conceivable loan transaction that is entered into between either in-state or out-of-state lenders with any of their consumers.

1 24. In addition to the Catch-All Interest Rate Restrictions, the Specific Interest Rate
2 Restrictions seek to limit the interest rate that is chargeable under eleven separate types of
3 transactions, including loans and consumer litigation funding.

4 25. As such, the Catch-All Interest Rate Restrictions and the Specific Interest Rate
5 Restrictions provisions of the Petition seek to embrace at least eleven different subjects.

6 26. Furthermore, the loans and consumer litigation funding transactions listed in the
7 Specific Interest Rate Restrictions are utilized when consumers are in need of credit in specific
8 types of transactions, and, the customary terms for such transactions are inherently different,
9 including, the amount, term, repayment terms, collateral, and interest rate.

10 27. The legislature of the State of Nevada has deemed the transactions listed in the
11 Specific Interest Rate Restrictions to be sufficiently distinct and unique to require that each of
12 these such transactions be subject to separate statutory and licensing requirements, including,
13 without limitation, consumer litigation funding transactions that are subject to NRS Chapter 604C.

14 28. Indeed, "[n]othing in [NRS Chapter 604C] shall be construed to cause any
15 consumer litigation funding transaction conforming to this chapter to be deemed a loan or to be
16 subject to any of the provisions of law governing loans. A consumer litigation funding transaction
17 that complies with this chapter is not subject to any other statutory or regulatory provisions
18 governing loans or investment contracts." NRS 604C.220(2).

19 29. As a result, the Catch-All Interest Rate Restrictions and the Specific Interest Rate
20 Restrictions portions of the Petition are not functionally related or germane to each other.

21 30. Moreover, in addition to the at least eleven different subjects already embraced in
22 the Catch-All Interest Rate Restrictions and the Specific Interest Rate Restrictions, the Petition
23 also seeks to embrace four additional subjects through the inclusion of the (i) Act Opt-Out
24 Provision, (ii) Garnishment Restrictions, (iii) Immunity Waiver, and (iv) Disposable Earnings
25 Restrictions.

26 31. The subjects set forth in the Catch-All Interest Rate Restrictions and the Specific
27 Interest Rate Restrictions are unquestionably separate from the Act Opt-Out Provision,
28 Garnishment Restrictions, Immunity Waiver, and Disposable Earnings Restrictions.

1 32. Furthermore, the interest rate restrictions contained in the Catch-All Interest Rate
2 Restrictions and the Specific Interest Rate Restrictions, which contain separate subjects therein,
3 have no bearing on whether the State of Nevada should opt out of the Act, or on the amounts that
4 are exempt from garnishment by a lender, or on the potential civil immunity for a lender's failure
5 to determine what amounts are exempt from garnishment.

6 33. As such, the Act Opt-Out Provision, Garnishment Restrictions, Immunity Waiver,
7 and Disposable Earnings Restrictions are not functionally related or germane to each other, the
8 Catch-All Interest Rate Restrictions or the Specific Interest Rate Restrictions.

9 34. The inclusion of the separate subjects contained within the Catch-All Interest Rate
10 Restrictions, Specific Interest Rate Restrictions, Act Opt-Out Provision, Garnishment Restrictions,
11 Immunity Waiver, and Disposable Earnings Restrictions are an attempt to conceal unattractive
12 proposals with proposals that the petitioner believes are more attractive to the voters of the State of
13 Nevada.

14 35. Accordingly, for the reasons cited above, among other things, the Petition violates
15 NRS 295.009(1)(a) and, therefore, is invalid.
16

17 **SECOND CAUSE OF ACTION**

18 **(Violation of NRS 295.009(1)(b))**

19 36. Plaintiffs repeat and re-allege each and every allegation contained above as though
20 fully set forth herein.

21 37. A petition for initiative or referendum is required to "[s]et forth, in not more than
22 200 words, a description of the effect of the initiative or referendum if the initiative or referendum
23 is approved by the voters." NRS 295.009(1)(b).

24 38. The purpose of the description of effect is to "prevent voter confusion and promote
25 informed decisions." *Nevadans for Nev. v. Beers*, 122 Nev. 930, 939, 142 P.3d 339, 345 (2006)
26 (quoting *Campbell v. Buckley*, 203 F.3d 738, 746 (10th Cir. 2000)).
27
28

1 39. "[A] description of effect must identify what the law proposes and how it intends to
2 achieve that proposal." *Educ. Initiative PAC v. Comm. to Protect Nev. Jobs*, 129 Nev. 35, 42, 293
3 P.3d 874, 879 (2013).

4 40. A description of effect, including, the title of the petition, must be a
5 "straightforward, succinct, and nonargumentative summary of an initiative's purpose and how that
6 purpose is achieved." *Educ. Initiative PAC v. Comm. to Protect Nev. Jobs*, 129 Nev. 35, 48, 293
7 P.3d 874, 883 (2013) (quoting *Las Vegas Taxpayer Accountability v. City Council of Las Vegas*,
8 125 Nev. 165, 183, 208 P.3d 429, 441 (2009)). And, a description of effect must not
9 "misrepresent what the initiative will accomplish and how it intends to achieve those goals." *Id*
10 (quoting *Stumpf v. Lau*, 108 Nev. 826, 833, 839 P.2d 120, 124 (1992)).

11 41. A description of effect is invalid under NRS 295.009(1)(b) when it fails to include
12 the effects of a petition. *See Las Vegas Taxpayer Accountability v. City Council of Las Vegas*, 125
13 Nev. 165, 183-184, 208 P.3d 429, 441 (2009) (holding that a description of effect was insufficient
14 because it failed to accurately inform voters of the consequences that would result if the measure
15 passed).

16 42. From the outset, the title of the Petition, which is entitled "Initiative Petition –
17 Statewide Statutory Measure," fails to provide voters with any idea regarding the subject matter or
18 potential effect of the Petition.

19 43. The Description states that the Petition is addressing "high-interest lending
20 practices." *See* Ex. 1 at 19, and Ex. 2 at 11. High-interest loans are specifically defined in NRS
21 604A.0703 and do not include other loan products or types of transactions, such as consumer
22 litigation funding transactions governed by NRS Chapter 604C. The Petition seeks not only to
23 restrict high-interest loans but various types of transactions pursuant to the Catch-All Interest Rate
24 Restrictions and Specific Interest Rate Restrictions. As such, the Description misleads voters into
25 believing that the Petition will only address high-interest loans.

26 44. The Description states that "most consumer loans have no interest rate cap." *See*
27 Ex. 1 at 19, and Ex. 2 at 11. However, a number of different transactions covered by the Petition,
28 including consumer litigation funding transactions governed by NRS Chapter 604C, have interest

1 rate restrictions. As such, the Description's general characterization of the nonexistence of interest
2 rate caps misleads voters into believing that the majority of consumer loans and other types of
3 transactions subject to the Petition and their corresponding interest rates are unregulated under
4 Nevada law.

5 45. The Description states that the Petition's proposed interest rate cap applies to
6 "consumer loans; deferred-deposit transactions ("payday loans"); title loans; and other loan types
7 dependent on future earnings and income." *See* Ex. 1 at 19, Ex. 2 at 11. A consumer litigation
8 funding transaction is a nonrecourse transaction where a consumer is provided funding from a
9 funding company to help pay for living expenses, and in exchange, the consumer assigns to such
10 funding company the right to receive an amount of the potential proceeds of a settlement,
11 judgment, award or verdict obtained in the litigation being pursued by such consumer. *See* NRS
12 604C.100. Consumer litigation funding transactions by definition and nature are not loans. The
13 State of Nevada legislature made clear that "[n]othing in [NRS Chapter 604C] shall be construed
14 to cause any consumer litigation funding transaction conforming to this chapter to be deemed a
15 loan or to be subject to any of the provisions of law governing loans." *See* NRS 604C.220(2). The
16 Description mischaracterizes consumer litigation funding transactions as loans and includes them
17 in the same category as loans.

18 46. Moreover, the Description fails to separately identify all of the other specific types
19 of transactions set forth in the Specific Interest Rate Restrictions. The Description also fails to
20 explain that the Petition seeks to place interest rate caps on various types of transactions, including
21 consumer litigation funding transactions, pursuant to the Catch-All Interest Rate Restrictions. As
22 such, the Description's mischaracterization of consumer litigation funding transactions as loans
23 and its failure to clearly identify all transactions that are subject to the proposed interest rate cap
24 prevents voters from determining what transactions are actually affected by such cap and will
25 prevent voters from making informed decisions.

26 47. The Description fails to include any explanation of the potential impact of
27 imposing the proposed interest rate cap under the Petition. Under the Catch-All Interest Rate
28 Restrictions and Specific Interest Rate Restrictions, the Petition broadly imposes an interest rate

1 cap on all loan transactions, which will likely require lenders to modify other terms of their
2 transactions or require lenders to cease providing certain products to consumers. The Description
3 misleads voters into believing that that the voters (the consumer borrowers) will not be impacted
4 by the imposition of the interest rate cap proposed under the Petition.

5 48. The Petition S-01 Description states that the amounts exempt from garnishment
6 under the Petition "would be indexed to increase periodically with inflation." See Ex. 1 at 19.
7 However, the Disposable Earnings Restrictions and Garnishment Restrictions only permit
8 adjustments one year after enactment, and then every three years thereafter, based on changes in
9 the Consumer Price Index for All Urban Consumers, Annual City Average, for the Western
10 Region. If any deflation occurred in the Consumer Price Index for All Urban Consumers, Annual
11 City Average, for the Western Region, the Disposable Earnings Restrictions and Garnishment
12 Restrictions require such amounts to be adjusted accordingly and do not prohibit any reductions in
13 such amounts. The Description misleads voters into believing that amounts exempt from
14 garnishment will continue to increase on a far more frequent basis than what is permitted under the
15 Petition and that such amounts will never be decreased.

16 49. The Description fails to include any description of the Act or the effects of the Act
17 Opt-Out Provision. The typical voter is not likely to be aware or have an understanding of the
18 complex provisions of the Act, which was enacted over four decades ago, or the effect of the Act
19 Opt-Out Provision. Voters cannot make an informed decision without a description of the same
20 and, therefore, the Description is misleading.

21 50. Based on the foregoing, the Description fails to provide a straightforward, succinct
22 and nonargumentative summary of the Petition, and it misrepresents the goals of the Petition and
23 how it intends to accomplish the same.

24 51. Accordingly, for the reasons cited above, among other things, the Description
25 violates NRS 295.009(1)(b) and, therefore, the Petition is invalid.

26 **PRAYER FOR RELIEF**

27 WHEREFORE, the Plaintiffs asks the Court to enter an order:
28

REISMAN SOROKAC
8965 SOUTH EASTERN AVENUE, SUITE 382
LAS VEGAS, NEVADA 89123
PHONE: (702) 727-6258 FAX: (702) 446-6756

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1. Declaring that the Petition embraces more than one subject and matters that are not necessarily connected therewith or pertaining thereto in violation of NRS 295.009(1)(a), and is therefore invalid;


2. Declaring that the Description (i) fails to provide a straightforward, succinct and nonargumentative summary of the Pctition, and (ii) misrepresents the goals of the Petition and how it intends to accomplish the same, in violation of NRS 295.009(1)(b), and the Petition is therefore invalid;

3. Enjoining and prohibiting the Secretary from placing the Petition on any future general election ballot or from taking further action upon it;

4. Awarding Plaintiffs their reasonable attorneys' fees and costs; and

5. Granting such other relief as permitted under NRS Chapter 295 or as the Court deems appropriate.

DATED this 26th day of January, 2024.

REISMAN SOROKAC

Joshua H. Reisman, Esq.
Nevada Bar No. 7152
Elizabeth M. Sorokac, Esq.
Nevada Bar No. 8270
Michael R. Kalish, Esq.
Nevada Bar No. 12793
8965 South Eastern Avenue, Suite 382
Las Vegas, Nevada 89123

Attorneys for *Plaintiffs*

AFFIRMATION

The undersigned hereby affirms that the foregoing document does not contain any personal information or the social security number of any person.

DATED this 26th day of January, 2024.

REISMAN·SOROKAC



Joshua H. Reisman, Esq.
Nevada Bar No. 7152
Elizabeth M. Sorokac, Esq.
Nevada Bar No. 8270
Michael R. Kalish, Esq.
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EXHIBIT 1



Pursuant to NRS 295.015, before a petition for initiative or referendum may be presented to registered voters for signatures, the person who intends to circulate the petition must provide the following information:

NAME OF PERSON FILING THE PETITION

Kate Feldman

NAME(S) OF PERSON(S) AUTHORIZED TO WITHDRAW OR AMEND THE PETITION (provide up to three)

1. Kate Feldman

2.

3.

NAME OF THE POLITICAL ACTION COMMITTEE (PAC) ADVOCATING FOR THE PASSAGE OF THE INITIATIVE OR REFERENDUM (if none, leave blank)

Please note, if you are creating a Political Action Committee for the purpose of advocating for the passage of the initiative or referendum, you must complete a separate PAC registration form.

Additionally, a copy of the initiative or referendum, including the description of effect, must be filed with the Secretary of State's office at the time you submit this form.

X Kate Feldman
Signature of Petition Filer

1/4/2024
Date

Explanation - Matter in *italics* is new; matter between brackets [~~omitted material~~] is material to be omitted.

THE PEOPLE OF THE STATE OF NEVADA DO ENACT AS FOLLOWS

Section 1. The Nevada Revised Statutes are hereby amended by adding thereto a new Chapter, to be designated Chapter 604D: Preventing Predatory Payday and Other Loans Act, to read as follows:

Section 2. Liberal construction. *The provisions of this chapter shall be liberally construed to achieve its purposes, which are combatting predatory payday lending and other high-cost loans; ensuring that out-of-state lenders cannot flout Nevada law by making payday loans, other loans, or transactions subject to this chapter at unlawful rates to Nevada residents; and protecting law-abiding lenders from unfair competition by predatory, out-of-state entities.*

Section 3. Definitions. *As used in this chapter, the words and terms defined in sections 4 to 6, inclusive, of this chapter have the meanings ascribed to them in those sections.*

Section 4. Annual percentage rate defined. *The term “Annual percentage rate” or APR means an annual rate calculated including all amounts, charges, and payments made directly or indirectly, incident to, ancillary to, or as a condition of a loan or other transaction subject to this chapter, whether voluntary, optional or required, including any amount paid to a broker or credit services organization. The APR shall include, but is not limited to, all interest, fees, charges and other payments as set forth in the regulations issued by the United States Secretary of Defense on July 22, 2015 to implement the Military Lending Act, 10 USC sec. 987, except that credit card fees may be excluded only if the card is network-branded and the fees collectively each year do not exceed 15% of the credit line. The annual percentage rate shall be calculated as specified in such regulations.*

Section 5. Loan defined.

1. For purposes of this chapter, “loan” means and includes:

(a) Money or credit provided to a consumer in exchange for the consumer’s agreement to a certain set of terms, including, but not limited to, provisions for direct or indirect repayment, interest, fees, charges or other payments, or other conditions;

(b) Any deferred deposit transaction or payday loan, installment loan, line of credit, retail installment sales contract, and motor vehicle retail installment sales contract, and other closed-end or open-end credit; and

(c) Any sale, assignment, order, or agreement for the payment of unpaid wages, salary, commissions, compensation, or other income, or any portion or amount thereof, whether earned, to be earned, or contingent upon future earnings, that is made in consideration for goods or services, credit, or the payment of money to or for the account of the person earning or receiving, or potentially earning or receiving, the wages, salary, commissions, compensation, or other income.

2. Any transaction that satisfies any definition in this section is a “loan” for purposes of this chapter without regard to the means of collection, without regard to whether the payday lender or other lender has legal recourse against the borrower in the event of non-repayment, and without regard to whether the transaction carries required charges or payments.

Section 6. Network-branded defined. *“Network-branded” means branded with and available for use on the Visa, MasterCard, American Express or Discover networks or a similar widely-accepted card network that is accepted upon presentation for purchases of goods and services at multiple, unaffiliated merchants.*

Section 7. Application of chapter. *This chapter applies to any payday lender or other person that:*

1. Markets, offers, brokers, arranges, facilitates, makes or services a loan as defined in Section 5 of this chapter or other transaction as defined in Section 8 of this chapter, including a credit service organization that obtains an extension of credit for a borrower;

2. Is a bank, savings bank, savings and loan association, or credit union organized, chartered or holding a certificate of authority to do business under the laws of this state, another state, or the United States. However, banks, savings banks, savings and loan associations, and credit unions organized, chartered or holding a certificate of authority to do business under the laws of another state or under the laws of the United States are exempt from this chapter only to the extent this chapter is preempted by federal law;

3. Is an agent of a person subject this chapter or of any affiliate, subsidiary or other entity that is related to, that controls, or that is controlled by a person subject to this chapter;

- 4. Acquires a whole or partial interest in a loan or transaction subject to this chapter;*
- 5. Is deemed to be subject to this chapter under section 11 of this chapter or is engaged in a transaction that is in substance a disguised loan or other transaction subject to this chapter or is a device, subterfuge or pretense to evade this chapter.*
- 6. Markets, offers, brokers, arranges, facilitates, makes or services any transaction that is otherwise subject to this chapter and that is offered or made to a person residing in this state, whether the transaction is conducted in person, by telephone, via the Internet, or by any other means.*

Section 8. *Specific transactions subject to this chapter.* Notwithstanding any other provision of law, transactions subject to this chapter shall include, but shall not be limited to, the following:

- 1. Deferred deposit loans (also known as payday loans), as defined in NRS 604A.050. A deferred deposit loan is subject to this chapter notwithstanding NRS 604A.220 or any other provision of law.*
- 2. High-interest loans, as defined in NRS 604A.0703. A high-interest loan is subject to this chapter notwithstanding NRS 604A.220 or any other provision of law.*
- 3. Title loans, as defined in NRS 604A.105. A title loan is subject to this chapter notwithstanding NRS 604A.220 or any other provision of law.*
- 4. Refund anticipation loans, as defined in NRS 604B.060.*
- 5. Consumer litigation funding transactions, as defined in NRS 604C.100. A consumer litigation funding transaction is subject to this chapter notwithstanding NRS 604C.220 or any other provision of law.*
- 7. Installment loans, as regulated by Chapter 675 of the Nevada Revised Statutes;*
- 8. Retail installment transactions, as defined in NRS 97.115. A retail installment transaction is subject to this chapter notwithstanding NRS 97.285 or any other provision of law;*
- 9. Loans secured by a life insurance or annuity contract, as regulated by NRS 688A.110; and*
- 10. Loans made by a bank, savings bank, savings and loan association, or credit union organized, chartered or holding a certificate of authority to do business*

under the laws of this state. This chapter shall apply to loans made by those entities notwithstanding NRS 662.015, NRS 672.370, NRS 672.460, NRS 672.710, NRS 673.225, NRS 673.3272, NRS 677.730 or any other provision of law.

Section 9. Maximum interest rate permitted. *For any loan or other transaction subject to this chapter made or renewed on or after the effective date of this chapter, no payday lender or other person shall market, offer, charge, contract for, collect or receive, directly or indirectly, charges or amounts exceeding a 36% annual percentage rate on the unpaid balance of the amount financed. This section shall apply notwithstanding any other provision of the laws of this state, including but not limited to any provision of NRS 604A.0703, NRS 604A.5029, NRS 604A.5052, or NRS 604A.5057 or any other law that refers to or allows an annual percentage rate that exceeds 36%.*

Section 10. Prohibited acts to evade application of chapter. *For any loan or other transaction subject to this chapter, no payday lender or other person shall engage in any device, subterfuge, or pretense to evade the requirements of this chapter, including, but not limited to:*

- 1. Making a loan or other transaction disguised as a personal property sale and leaseback transaction;*
- 2. Disguising proceeds of a loan or other transaction as a cash rebate for the pretextual sale of goods or services;*
- 3. Disguising a loan or other transaction as the sale of goods, services or things in action or disguising charges for a loan or other transaction in the price of goods, services or things in action;*
- 4. Making, contracting for, offering, assisting, or arranging for a borrower to obtain a loan or other transaction with a higher rate or amount of interest, consideration, charge or other payment received incident to the loan than is permitted by Section 9 of this chapter through any method including mail, telephone, internet or any electronic means, regardless of whether the person has a physical location in the state;*
- 5. Structuring the transaction in a manner to obscure the fact that it is a loan; or*
- 6. Charging, contracting for or receiving interest, fees, charges or other payments in excess of those permitted, regardless whether the payment purports to be voluntary.*

Section 11. Application of chapter to agents and service providers of exempt entities. *If the annual percentage rate of the loan or other transaction exceeds the rate permitted by Section 9*

of this chapter, a person shall be subject to the requirements of this chapter notwithstanding the fact that the person purports to act as an agent or service provider or in another capacity for a person that is exempt from this chapter, if, among other things:

- 1. The person holds, acquires, or maintains, directly or indirectly, the predominant economic interest, risk or reward, in the loan or transaction;*
- 2. The person (a) markets, solicits, brokers, arranges, facilitates or services loans or transactions and (b) holds, or has the right, requirement or first right of refusal to acquire, the loans, transactions, a share of receivables or another direct or indirect interest in the loans or loan program; or*
- 3. The totality of the circumstances indicate that the person is engaging in transactions subject to this chapter and that the transaction is structured to evade the requirements of this chapter. Circumstances that weigh in favor of a person being subject to this chapter include, without limitation, when the person:*
 - (a) indemnifies, insures or protects an exempt entity from costs or risks related to the loan or transaction;*
 - (b) predominantly designs, controls or operates the loan program or transaction;*
 - (c) holds the trademark or intellectual property rights in the brand, underwriting system, or other core aspects of the loan program or transaction; or*
 - (d) purports to act as an agent or service provider or in another capacity for an exempt entity while acting directly as a lender in other states.*

Section 12. Prohibition against facilitation of payday loans or other transactions in violation of chapter. *No person shall solicit, broker, or engage in any other activity intended to facilitate or result in, or that in fact facilitates or results in, a loan or transaction that violates this chapter.*

Section 13. Remedies for payday loans or other transactions made in violation of this chapter.

- 1. A loan or other transaction made in violation of this chapter shall be void and uncollectible as to any principal, fee, interest, charge or payment.*
- 2. An action for violation of this chapter may be brought in any court of competent jurisdiction.*
- 3. Any person who violates this chapter is liable to the borrower for:*

- (a) Actual and consequential damages;*
- (b) Restitution of any amounts paid;*
- (c) Treble the amount of any excess fee, interest, charge, or payment;*
- (d) Statutory damages, at an amount that the court considers just, of at least \$250 and no more than \$1,000 per violation;*
- (e) Injunctive or declaratory relief;*
- (f) Reasonable attorney's fees and costs; and*
- (g) Any other legal or equitable relief that the court deems appropriate in addition to any other remedies provided at law.*

4. The remedies provided for in this section are cumulative to any other remedies that apply to a loan or other transaction made in violation of other laws of this State.

Section 14. *Declaration of intent to opt out of DIDMCA.* *In accordance with section 525 of the federal "Depository Institutions Deregulation and Monetary Control Act of 1980", Pub.L. 96-221, the voters of the State of Nevada declare that the State of Nevada does not want the amendments to the "Federal Deposit Insurance Act", 12 U.S.C. sec. 1811 et seq.; the federal "National Housing Act", 12 U.S.C. sec. 1701 et seq.; and the "Federal Credit Union Act", 12 U.S.C. sec. 1757, made by sections 521 to 523 of the federal "Depository Institutions Deregulation and Monetary Control Act of 1980", Pub.L. 96-221, prescribing interest rates and preempting state interest rates to apply to loans as defined in Section 5 of this chapter or specific transactions as defined in Section 8 of this chapter. The rates established in this chapter shall apply to payday loans and other loans as defined in Section 5 of this chapter and specific transactions as defined in Section 8 of this chapter.*

Section 15. *Application of chapter to earned wage access services.* *Prior to January 1, 2030, section 9 of this chapter shall not apply to entities licensed under the laws of this State to provide earned wage access services, as defined in Senate Bill No. 290 of the 82nd Regular Session of the Nevada Legislature (2023), 2023 Nev. Stat., ch. 400. Beginning on January 1, 2030, section 9 shall apply to any provider of earned wage access services, regardless of whether the provider is licensed under the laws of this State, including any provider of transactions that satisfy the definition of earned wage access services currently set forth in Senate Bill No. 290 of the 82nd Regular Session of the Nevada Legislature (2023), 2023 Nev. Stat., ch. 400.*

Section 16. *NRS 99.050 is hereby amended to read as follows:*

1. Except as otherwise provided in subsection 2, parties may agree for the payment of any rate of interest on money due or to become due on any contract, for the compounding of interest if they choose, and for any other charges or fees, *provided, however, that parties cannot agree to any arrangement that violates the requirements of Chapter 604D of the Nevada Revised Statutes*. The parties shall specify in writing the rate upon which they agree, that interest is to be compounded if so agreed, and any other charges or fees to which they have agreed.

2. A creditor shall not charge an annual percentage rate that is greater than the lesser of 36 percent or the maximum annual percentage rate authorized under any federal law or regulation with respect to the consumer credit extended to a covered service member or a dependent of a covered service member. Any contract or agreement in violation of this subsection is void and unenforceable.

3. As used in this section:

(a) “Annual percentage rate” has the meaning ascribed to it in the federal Truth in Lending Act, as amended, 15 U.S.C. §§ 1601 et seq., and the federal regulations adopted pursuant thereto.

(b) “Consumer credit”:

(1) Except as otherwise provided in subparagraph (2), means credit offered or extended to a covered service member or dependent of a covered service member primarily for personal, family or household purposes, and that is:

(I) Subject to a finance charge; or

(II) Payable by a written agreement in more than four installments.

(2) Does not include:

(I) A residential mortgage, which is any credit transaction secured by an interest in a dwelling, including a transaction to finance the purchase or initial construction of the dwelling, any refinance transaction, home equity loan or line of credit or reverse mortgage;

(II) Any credit transaction that is expressly intended to finance the purchase of a motor vehicle when the credit is secured by the vehicle being purchased;

(III) Any credit transaction that is expressly intended to finance the purchase of personal property when the credit is secured by the property being purchased;

(IV) Any credit transaction that is an exempt transaction for the purposes of 12 C.F.R. Part 1026, commonly known as Regulation Z, other than a transaction exempt under 12 C.F.R. § 1026.29, or otherwise is not subject to disclosure requirements under 12 C.F.R. Part 1026, commonly known as Regulation Z; and

(V) Any credit transaction or account for credit for which a creditor determines that a natural person is not a covered borrower by using a method and by complying with the recordkeeping requirement set forth in 32 C.F.R. § 232.5(b).

(c) “Covered service member”:

(1) Except as otherwise provided in subparagraph (2), means a member of the armed forces who is serving on:

(I) Active duty pursuant to title 10, title 14 or title 32 of the United States Code, under a call or order that does not specify a period of 30 days or fewer; or

(II) Active Guard and Reserve duty, as that term is defined in 10 U.S.C. § 101(d)(6).

(2) Does not include a consumer who was a covered service member pursuant to subparagraph (1) at the time he or she became obligated on a consumer credit transaction or established an account for consumer credit but is no longer a covered service member pursuant to subparagraph (1) or a dependent of a person who is a covered service member pursuant to subparagraph (1).

(d) “Credit” means the right granted to a natural person by a person engaged in the business of extending consumer credit, or an assignee of such a person with respect to any consumer credit extended, to defer payment or to incur debt and defer its payment.

(e) “Dependent” with respect to a covered service member means:

(1) The spouse;

(2) A child who:

(I) Has not attained the age of 21;

(II) Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, as defined in 10 U.S.C. § 1072(3), and is, or was at the time of the covered service

member's or former covered service member's death, in fact dependent on the covered service member or former covered service member for over one-half of the child's support; or

(III) Is incapable of self-support because of a mental or physical incapacity that occurs while a dependent of a covered service member or former covered service member under sub-subparagraph (I) or (II) and is, or was at the time of the covered service member's or former covered service member's death, in fact dependent on the member or former member for over one-half of the child's support;

(3) A parent or parent-in-law who is, or was at the time of the covered service member's or former covered service member's death, in fact dependent on him or her for over one-half of his or her support and residing in his or her household;

(4) An unmarried person who:

(I) Is placed in the legal custody of the covered service member or former covered service member as a result of an order of a court of competent jurisdiction in the United States, or possession of the United States, for a period of at least 12 consecutive months;

(II) Has not attained the age of 21, has not attained the age of 23 and is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, as defined in 10 U.S.C. § 1072(3), or is incapable of self-support because of a mental or physical incapacity that occurred while the person was considered a dependent of the covered service member or former covered service member pursuant to this paragraph;

(III) Is dependent on the covered service member or former covered service member for over one-half of the person's support;

(IV) Resides with the covered service member or former covered service member unless separated by the necessity of military service or to receive institutional care as a result of disability or incapacitation or under such other circumstances as the administering Secretary, as defined in 10 U.S.C. § 1072(3), may by regulation prescribe; and

(V) Is not a dependent of a covered service member or a former covered service member pursuant to subparagraph (1), (2) or (3).

(f) “Dwelling” means a residential structure that contains one to four units, whether or not the structure is attached to real property. The term includes, without limitation, an individual condominium unit, cooperative unit, mobile home and manufactured home.

Section 17. NRS 21.105 is hereby amended to read as follows:

~~[1. If a writ of execution or garnishment is levied on the personal bank account of the judgment debtor and money has been deposited into the account electronically within the immediately preceding 45 days from the date on which the writ was served which is reasonably identifiable as exempt from execution, notwithstanding any other deposits of money into the account, \$2,000 or the entire amount in the account, whichever is less, is not subject to execution and must remain accessible to the judgment debtor. For the purposes of this section, money is reasonably identifiable as exempt from execution if the money is deposited in the bank account by the United States Department of the Treasury, including, without limitation, money deposited as:~~

~~(a) Benefits provided pursuant to the Social Security Act which are exempt from execution pursuant to 42 U.S.C. §§ 407 and 1383, including, without limitation, retirement and survivors’ benefits, supplemental security income benefits, disability insurance benefits and child support payments that are processed pursuant to Part D of Title IV of the Social Security Act;~~

~~(b) Veterans’ benefits which are exempt from execution pursuant to 38 U.S.C. § 5301;~~

~~(c) Annuities payable to retired railroad employees which are exempt from execution pursuant to 45 U.S.C. § 231m;~~

~~(d) Benefits provided for retirement or disability of federal employees which are exempt from execution pursuant to 5 U.S.C. §§ 8346 and 8470;~~

~~(e) Annuities payable to retired members of the Armed Forces of the United States and to any surviving spouse or children of such members which are exempt from execution pursuant to 10 U.S.C. §§ 1440 and 1450;~~

~~(f) Payments and allowances to members of the Armed Forces of the United States which are exempt from execution pursuant to 37 U.S.C. § 701;~~

~~(g) Federal student loan payments which are exempt from execution pursuant to 20 U.S.C. § 1095a;~~

~~(h) Wages due or accruing to merchant seamen which are exempt from execution pursuant to 46 U.S.C. § 11109;~~

~~(i) Compensation or benefits due or payable to longshore and harbor workers which are exempt from execution pursuant to 33 U.S.C. § 916;~~

~~(j) Annuities and benefits for retirement and disability of members of the foreign service which are exempt from execution pursuant to 22 U.S.C. § 4060;~~

~~(k) Compensation for injury, death or detention of employees of contractors with the United States outside the United States which is exempt from execution pursuant to 42 U.S.C. § 1717;~~

~~(l) Assistance for a disaster from the Federal Emergency Management Agency which is exempt from execution pursuant to 44 C.F.R. § 206.110;~~

~~(m) Black lung benefits paid to a miner or a miner's surviving spouse or children pursuant to 30 U.S.C. § 922 or 931 which are exempt from execution; and~~

~~(n) Benefits provided pursuant to any other federal law.]~~

1[2]. If a writ of execution or garnishment is levied on the personal bank account of the judgment debtor [and the provisions of subsection 1 do not apply,] \$5,000 [400] or the entire amount in the account, whichever is less, is not subject to execution and must remain accessible to the judgment debtor, unless the writ of execution or garnishment is for the recovery of money owed for the support of any person.

2[3]. If a judgment debtor has more than one personal bank account with the bank to which a writ is issued, the amount that is not subject to execution must not in the aggregate exceed the amount specified in subsection 1 [or 2, as applicable].

3[4]. A judgment debtor may apply to a court to claim an exemption for any amount subject to a writ levied on a personal bank account which exceeds the amount that is not subject to execution pursuant to subsection 1 [or 2].

4[5]. If money in the personal account of the judgment debtor which exceeds the amount that is not subject to execution pursuant to subsection [1 or 2] includes exempt and nonexempt money, the judgment debtor may claim an exemption for the exempt money in the manner set forth in NRS 21.112. To determine whether such money in the account is exempt, the judgment creditor must use the method of accounting which applies the standard that the first money deposited in the account is the first money withdrawn from the account. The court may require a judgment debtor to provide statements from the bank which include all deposits into and withdrawals from the account for the immediately preceding 90 days.

5[6]. A financial institution which makes a reasonable effort to determine whether money in the account of a judgment debtor is subject to execution for the purposes of this section is immune from civil liability for any act or omission with respect to that determination. [~~including, without limitation, when the financial institution makes an incorrect determination after applying commercially reasonable methods for determining whether money in an account is exempt because the source of the money was not clearly identifiable or because the financial institution inadvertently misidentified the source of the money.~~] If a court determines that a financial institution failed to identify that money in an account was not subject to execution pursuant to this section, the financial institution must adjust its actions with respect to a writ of execution as soon as possible but may not be held liable for damages.

6[7]. Nothing in this section requires a financial institution to revise its determination about whether money is exempt, except by an order of a court.

Section 18. NRS 21.090 is hereby amended to read as follows:

1. The following property is exempt from execution, except as otherwise specifically provided in this section or required by federal law:

- (a) Private libraries, works of art, musical instruments and jewelry not to exceed \$5,000 in value, belonging to the judgment debtor or a dependent of the judgment debtor, to be selected by the judgment debtor, and all family pictures and keepsakes.
- (b) Necessary household goods, furnishings, electronics, wearing apparel, other personal effects and yard equipment, not to exceed \$12,000 in value, belonging to the judgment debtor or a dependent of the judgment debtor, to be selected by the judgment debtor.
- (c) Farm trucks, farm stock, farm tools, farm equipment, supplies and seed not to exceed \$4,500 in value, belonging to the judgment debtor to be selected by the judgment debtor.
- (d) Professional libraries, equipment, supplies, and the tools, inventory, instruments and materials used to carry on the trade or business of the judgment debtor for the support of the judgment debtor and his or her family not to exceed \$10,000 in value.
- (e) The cabin or dwelling of a miner or prospector, the miner's or prospector's cars, implements and appliances necessary for carrying on any mining operations and the mining claim actually worked by the miner or prospector, not exceeding \$4,500 in total value.

(f) Except as otherwise provided in paragraph (p), one vehicle if the judgment debtor's equity does not exceed \$15,000 or the creditor is paid an amount equal to any excess above that equity.

(g) For any workweek, *\$850 of disposable earnings. If the debtor's weekly disposable earnings exceed \$850, 90% of disposable earnings in excess of \$850 shall be exempt from garnishment unless the weekly disposable earnings of the debtor exceed \$1,200, in which case 85% of the disposable earnings in excess of \$850 shall be exempt from garnishment. The amount not subject to garnishment is exempt.*~~82 percent of the disposable earnings of a judgment debtor during that week if the gross weekly salary or wage of the judgment debtor on the date the most recent writ of garnishment was issued was \$770 or less, 75 percent of the disposable earnings of a judgment debtor during that week if the gross weekly salary or wage of the judgment debtor on the date the most recent writ of garnishment was issued exceeded \$770, or 50 times the minimum hourly wage prescribed by section 206(a)(1) of the federal Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201 et seq., and in effect at the time the earnings are payable, whichever is greater.]~~ Except as otherwise provided in paragraphs (o), (s) and (t), the exemption provided in this paragraph does not apply in the case of any order of a court of competent jurisdiction for the support of any person, any order of a court of bankruptcy or of any debt due for any state or federal tax. As used in this paragraph:

(1) "Disposable earnings" means that part of the earnings of a judgment debtor remaining after the deduction from those earnings of any amounts required by law to be withheld.

(2) "Earnings" means compensation paid or payable for personal services performed by a judgment debtor in the regular course of business, including, without limitation, compensation designated as income, wages, tips, a salary, a commission or a bonus. The term includes compensation received by a judgment debtor that is in the possession of the judgment debtor, compensation held in accounts maintained in a bank or any other financial institution or, in the case of a receivable, compensation that is due the judgment debtor. *Compensation paid or payable for personal services is earnings regardless of whether the judgment debtor is classified as an independent contractor or an employee.*

(h) All fire engines, hooks and ladders, with the carts, trucks and carriages, hose, buckets, implements and apparatus thereunto appertaining, and all

furniture and uniforms of any fire company or department organized under the laws of this State.

(i) All arms, uniforms and accouterments required by law to be kept by any person, and also one gun, to be selected by the debtor.

(j) All courthouses, jails, public offices and buildings, lots, grounds and personal property, the fixtures, furniture, books, papers and appurtenances belonging and pertaining to the courthouse, jail and public offices belonging to any county of this State, all cemeteries, public squares, parks and places, public buildings, town halls, markets, buildings for the use of fire departments and military organizations, and the lots and grounds thereto belonging and appertaining, owned or held by any town or incorporated city, or dedicated by the town or city to health, ornament or public use, or for the use of any fire or military company organized under the laws of this State and all lots, buildings and other school property owned by a school district and devoted to public school purposes.

(k) All money, benefits, privileges or immunities accruing or in any manner growing out of any life insurance.

(l) The homestead as provided for by law, including:

(1) Subject to the provisions of NRS 115.055, the sum of \$605,000 that is paid to the defendant in execution pursuant to subsection 2 of NRS 115.050 or to a spouse pursuant to subsection 3 of NRS 115.050; and

(2) A homestead for which allodial title has been established and not relinquished and for which a waiver executed pursuant to NRS 115.010 is not applicable.

(m) The dwelling of the judgment debtor occupied as a home for himself or herself and family, where the amount of equity held by the judgment debtor in the home does not exceed \$605,000 in value and the dwelling is situated upon lands not owned by the judgment debtor.

(n) All money reasonably deposited with a landlord by the judgment debtor to secure an agreement to rent or lease a dwelling that is used by the judgment debtor as his or her primary residence, except that such money is not exempt with respect to a landlord or the landlord's successor in interest who seeks to enforce the terms of the agreement to rent or lease the dwelling.

(o) All property in this State of the judgment debtor where the judgment is in favor of any state for failure to pay that state's income tax on benefits received from a pension or other retirement plan.

(p) Any vehicle owned by the judgment debtor for use by the judgment debtor or the judgment debtor's dependent that is equipped or modified to provide mobility for a person with a permanent disability.

(q) Any prosthesis or equipment prescribed by a physician or dentist for the judgment debtor or a dependent of the debtor.

(r) Money, not to exceed \$1,000,000 in present value, held in:

(1) An individual retirement arrangement which conforms with or is maintained pursuant to the applicable limitations and requirements of section 408 or 408A of the Internal Revenue Code, 26 U.S.C. §§ 408 and 408A, including, without limitation, an inherited individual retirement arrangement;

(2) A written simplified employee pension plan which conforms with or is maintained pursuant to the applicable limitations and requirements of section 408 of the Internal Revenue Code, 26 U.S.C. § 408, including, without limitation, an inherited simplified employee pension plan;

(3) A cash or deferred arrangement plan which is qualified and maintained pursuant to the Internal Revenue Code, including, without limitation, an inherited cash or deferred arrangement plan;

(4) A trust forming part of a stock bonus, pension or profit-sharing plan which is qualified and maintained pursuant to sections 401 et seq. of the Internal Revenue Code, 26 U.S.C. §§ 401 et seq.; and

(5) A trust forming part of a qualified tuition program pursuant to chapter 353B of NRS, any applicable regulations adopted pursuant to chapter 353B of NRS and section 529 of the Internal Revenue Code, 26 U.S.C. § 529, unless the money is deposited after the entry of a judgment against the purchaser or account owner or the money will not be used by any beneficiary to attend a college or university.

(s) All money and other benefits paid pursuant to the order of a court of competent jurisdiction for the support, education and maintenance of a child, whether collected by the judgment debtor or the State.

(t) All money and other benefits paid pursuant to the order of a court of competent jurisdiction for the support and maintenance of a former

spouse, including the amount of any arrearages in the payment of such support and maintenance to which the former spouse may be entitled.

(u) Payments, in an amount not to exceed \$16,150, received as compensation for personal injury, not including compensation for pain and suffering or actual pecuniary loss, by the judgment debtor or by a person upon whom the judgment debtor is dependent at the time the payment is received.

(v) Payments received as compensation for the wrongful death of a person upon whom the judgment debtor was dependent at the time of the wrongful death, to the extent reasonably necessary for the support of the judgment debtor and any dependent of the judgment debtor.

(w) Payments received as compensation for the loss of future earnings of the judgment debtor or of a person upon whom the judgment debtor is dependent at the time the payment is received, to the extent reasonably necessary for the support of the judgment debtor and any dependent of the judgment debtor.

(x) Payments received as restitution for a criminal act.

(y) Payments received pursuant to the federal Social Security Act, including, without limitation, retirement and survivors' benefits, supplemental security income benefits and disability insurance benefits.

(z) Any personal property not otherwise exempt from execution pursuant to this subsection belonging to the judgment debtor, including, without limitation, the judgment debtor's equity in any property, money, stocks, bonds or other funds on deposit with a financial institution, not to exceed \$10,000 in total value, to be selected by the judgment debtor.

(aa) Any tax refund received by the judgment debtor that is derived from the earned income credit described in section 32 of the Internal Revenue Code, 26 U.S.C. § 32, or a similar credit provided pursuant to a state law.

(bb) Stock of a corporation described in subsection 2 of NRS 78.746 except as set forth in that section.

(cc) Regardless of whether a trust contains a spendthrift provision:

(1) A distribution interest in the trust as defined in NRS 163.4155 that is a contingent interest, if the contingency has not been satisfied or removed;

- (2) A distribution interest in the trust as defined in NRS 163.4155 that is a discretionary interest as described in NRS 163.4185, if the interest has not been distributed;
- (3) A power of appointment in the trust as defined in NRS 163.4157 regardless of whether the power has been exercised;
- (4) A power listed in NRS 163.5553 that is held by a trust protector as defined in NRS 163.5547 or any other person regardless of whether the power has been exercised; and
- (5) A reserved power in the trust as defined in NRS 163.4165 regardless of whether the power has been exercised.

(dd) If a trust contains a spendthrift provision:

- (1) A distribution interest in the trust as defined in NRS 163.4155 that is a mandatory interest as described in NRS 163.4185, if the interest has not been distributed; and
- (2) Notwithstanding a beneficiary's right to enforce a support interest, a distribution interest in the trust as defined in NRS 163.4155 that is a support interest as described in NRS 163.4185, if the interest has not been distributed.

(ee) Proceeds received from a private disability insurance plan.

(ff) Money in a trust fund for funeral or burial services pursuant to NRS 689.700.

(gg) Compensation that was payable or paid pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS as provided in NRS 616C.205.

(hh) Unemployment compensation benefits received pursuant to NRS 612.710.

(ii) Benefits or refunds payable or paid from the Public Employees' Retirement System pursuant to NRS 286.670.

(jj) Money paid or rights existing for vocational rehabilitation pursuant to NRS 615.270.

(kk) Public assistance provided through the Department of Health and Human Services pursuant to NRS 422.291 and 422A.325.

(ll) Child welfare assistance provided pursuant to NRS 432.036.

2. Except as otherwise provided in NRS 115.010, no article or species of property mentioned in this section is exempt from execution issued upon a judgment to recover for its price, or upon a judgment of foreclosure of a mortgage or other lien thereon.

3. Any exemptions specified in subsection (d) of section 522 of the Bankruptcy Reform Act of 1978, 11 U.S.C. §§ 101 et seq., do not apply to property owned by a resident of this State unless conferred also by subsection 1, as limited by subsection 2.

4. The exemptions set forth in this section and NRS 21.105 shall be automatically adjusted to reflect changes by the percentage change, if any, from January 1st to December 31st of the preceding year in the Consumer Price Index for All Urban Consumers, Annual City Average, for the Western Region, or its successor index, as published by the United States Department of Labor, Bureau of Labor Statistics or its successor agency, beginning the April 1 following enactment and every 3 years thereafter. The Nevada Department of Business & Industry shall publish the 1-year adjustment for an effective date of April 1st for the following year. Adjustments made pursuant to this paragraph must be rounded up to the next \$10.

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DESCRIPTION OF EFFECT

This measure addresses high-interest lending practices by establishing maximum interest rates charged to consumers, and shields more of people's savings and earnings from garnishment than under current law.

Currently, most consumer loans have no interest rate cap. The proposed cap would set a maximum interest rate of 36% annually on the unpaid balance of the amount financed, and would apply to consumer loans; deferred-deposit transactions ("payday loans"); title loans; and other loan types dependent on future earnings and income.

The initiative also prohibits evading the interest rate cap by structuring transactions to mask their nature as loans covered by this measure, or partnering with out-of-state lenders to violate the rate cap. The initiative voids transactions that violate the cap, and establishes civil penalties.

Additionally, the initiative automatically protects \$5,000 of savings in a personal bank account (up from \$400 now), and \$850 of wages in any workweek (up from \$369), as well as a portion of disposable earnings above that amount, from seizure for a debt. Those amounts would be indexed to increase periodically with inflation.

County of _____ (**Only registered voters of this county may sign below**)
 Petition District: _____ (**Only registered voters of this petition district may sign below**)

			Office Use
1	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE - DATE / /	CITY COUNTY	
2	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE - DATE / /	CITY COUNTY	
3	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE - DATE / /	CITY COUNTY	
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	YOUR SIGNATURE - DATE / /	CITY COUNTY	
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	YOUR SIGNATURE - DATE / /	CITY COUNTY	
20	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE - DATE / /	CITY COUNTY	

AFFIDAVIT OF CIRCULATOR

(TO BE SIGNED BY CIRCULATOR)

STATE OF NEVADA)
)
COUNTY OF _____)

I, _____, (print name), being first duly sworn under penalty of perjury, depose and say: (1) that I reside at _____ (print street, city and state); (2) that I am 18 years of age or older; (3) that I personally circulated this document; (4) that all signatures were affixed in my presence; (5) that the number of signatures affixed thereon is _____; and (6) that each person who signed had an opportunity before signing to read the full text of the act or resolution on which the initiative or referendum is demanded.

Signature of Circulator

Subscribed and sworn to or affirmed before me this

_____ day of _____, _____, by _____.

Notary Public or person authorized to administer oath

EXHIBIT 2

State of Nevada
Secretary of State
Francisco V. Aguilar



Notice of Intent
Statewide Initiative or
Referendum Petition
NRS 295.009 and 295.015

Pursuant to NRS 295.015, before a petition for initiative or referendum may be presented to registered voters for signatures, the person who intends to circulate the petition must provide the following information:

NAME OF PERSON FILING THE PETITION

Kate Feldman

**NAME(S) OF PERSON(S) AUTHORIZED TO WITHDRAW OR AMEND THE
PETITION (provide up to three)**

1. Kate Feldman

2.

3.

**NAME OF THE POLITICAL ACTION COMMITTEE (PAC) ADVOCATING FOR
THE PASSAGE OF THE INITIATIVE OR
REFERENDUM (if none, leave blank)**

Please note, if you are creating a Political Action Committee for the purpose of advocating for the passage of the initiative or referendum, you must complete a separate PAC registration form.

Additionally, a copy of the initiative or referendum, including the description of effect, must be filed with the Secretary of State's office at the time you submit this form.

X

Kate Feldman

Signature of Petition Filer

1-24-2024

Date

Explanation - Matter in *italics* is new; matter between brackets [~~omitted material~~] is material to be omitted.

THE PEOPLE OF THE STATE OF NEVADA DO ENACT AS FOLLOWS

Section 1. The Nevada Revised Statutes are hereby amended by adding thereto a new Chapter, to be designated Chapter 604D: Preventing Predatory Payday and Other Loans Act, to read as follows:

Section 2. *Liberal construction.* *The provisions of this chapter shall be liberally construed to achieve its purposes, which are combatting predatory payday lending and other high-cost loans; ensuring that out-of-state lenders cannot flout Nevada law by making payday loans, other loans, or transactions subject to this chapter at unlawful rates to Nevada residents; and protecting law-abiding lenders from unfair competition by predatory, out-of-state entities.*

Section 3. *Definitions.* *As used in this chapter, the words and terms defined in sections 4 to 6, inclusive, of this chapter have the meanings ascribed to them in those sections.*

Section 4. *Annual percentage rate defined.* *The term “Annual percentage rate” or APR means an annual rate calculated including all amounts, charges, and payments made directly or indirectly, incident to, ancillary to, or as a condition of a loan or other transaction subject to this chapter, whether voluntary, optional or required, including any amount paid to a broker or credit services organization. The APR shall include, but is not limited to, all interest, fees, charges and other payments as set forth in the regulations issued by the United States Secretary of Defense on July 22, 2015 to implement the Military Lending Act, 10 USC sec. 987, except that credit card fees may be excluded only if the card is network-branded and the fees collectively each year do not exceed 15% of the credit line. The annual percentage rate shall be calculated as specified in such regulations.*

Section 5. *Loan defined.*

1. For purposes of this chapter, “loan” means and includes:

- (a) Money or credit provided to a consumer in exchange for the consumer’s agreement to a certain set of terms, including, but not limited to, provisions for direct or indirect repayment, interest, fees, charges or other payments, or other conditions;*
- (b) Any deferred deposit transaction or payday loan, installment loan, line of credit, retail installment sales contract, and motor vehicle retail installment sales contract, and other closed-end or open-end credit; and*

(c) Any sale, assignment, order, or agreement for the payment of unpaid wages, salary, commissions, compensation, or other income, or any portion or amount thereof, whether earned, to be earned, or contingent upon future earnings, that is made in consideration for goods or services, credit, or the payment of money to or for the account of the person earning or receiving, or potentially earning or receiving, the wages, salary, commissions, compensation, or other income.

2. Any transaction that satisfies any definition in this section is a “loan” for purposes of this chapter without regard to the means of collection, without regard to whether the payday lender or other lender has legal recourse against the borrower in the event of non-repayment, and without regard to whether the transaction carries required charges or payments.

Section 6. Network-branded defined. *“Network-branded” means branded with and available for use on the Visa, MasterCard, American Express or Discover networks or a similar widely-accepted card network that is accepted upon presentation for purchases of goods and services at multiple, unaffiliated merchants.*

Section 7. Application of chapter. *This chapter applies to any payday lender or other person that:*

- 1. Markets, offers, brokers, arranges, facilitates, makes or services a loan as defined in Section 5 of this chapter or other transaction as defined in Section 8 of this chapter, including a credit service organization that obtains an extension of credit for a borrower;*
- 2. Is a bank, savings bank, savings and loan association, or credit union organized, chartered or holding a certificate of authority to do business under the laws of this state, another state, or the United States. However, banks, savings banks, savings and loan associations, and credit unions organized, chartered or holding a certificate of authority to do business under the laws of another state or under the laws of the United States are exempt from this chapter only to the extent this chapter is preempted by federal law;*
- 3. Is an agent of a person subject this chapter or of any affiliate, subsidiary or other entity that is related to, that controls, or that is controlled by a person subject to this chapter;*
- 4. Acquires a whole or partial interest in a loan or transaction subject to this chapter;*

5. Is deemed to be subject to this chapter under section 11 of this chapter or is engaged in a transaction that is in substance a disguised loan or other transaction subject to this chapter or is a device, subterfuge or pretense to evade this chapter.

6. Markets, offers, brokers, arranges, facilitates, makes or services any transaction that is otherwise subject to this chapter and that is offered or made to a person residing in this state, whether the transaction is conducted in person, by telephone, via the Internet, or by any other means.

Section 8. *Specific transactions subject to this chapter. Notwithstanding any other provision of law, transactions subject to this chapter shall include, but shall not be limited to, the following:*

1. Deferred deposit loans (also known as payday loans), as defined in NRS 604A.050. A deferred deposit loan is subject to this chapter notwithstanding NRS 604A.220 or any other provision of law.

2. High-interest loans, as defined in NRS 604A.0703. A high-interest loan is subject to this chapter notwithstanding NRS 604A.220 or any other provision of law.

3. Title loans, as defined in NRS 604A.105. A title loan is subject to this chapter notwithstanding NRS 604A.220 or any other provision of law.

4. Refund anticipation loans, as defined in NRS 604B.060.

5. Consumer litigation funding transactions, as defined in NRS 604C.100. A consumer litigation funding transaction is subject to this chapter notwithstanding NRS 604C.220 or any other provision of law.

7. Installment loans, as regulated by Chapter 675 of the Nevada Revised Statutes;

8. Retail installment transactions, as defined in NRS 97.115. A retail installment transaction is subject to this chapter notwithstanding NRS 97.285 or any other provision of law;

9. Loans secured by a life insurance or annuity contract, as regulated by NRS 688A.110; and

10. Loans made by a bank, savings bank, savings and loan association, or credit union organized, chartered or holding a certificate of authority to do business under the laws of this state. This chapter shall apply to loans made by those entities notwithstanding NRS 662.015, NRS 672.370, NRS 672.460, NRS

672.710, NRS 673.225, NRS 673.3272, NRS 677.730 or any other provision of law.

Section 9. Maximum interest rate permitted. For any loan or other transaction subject to this chapter made or renewed on or after the effective date of this chapter, no payday lender or other person shall market, offer, charge, contract for, collect or receive, directly or indirectly, charges or amounts exceeding a 36% annual percentage rate on the unpaid balance of the amount financed. This section shall apply notwithstanding any other provision of the laws of this state, including but not limited to any provision of NRS 604A.0703, NRS 604A.5029, NRS 604A.5052, or NRS 604A.5057 or any other law that refers to or allows an annual percentage rate that exceeds 36%.

Section 10. Prohibited acts to evade application of chapter. For any loan or other transaction subject to this chapter, no payday lender or other person shall engage in any device, subterfuge, or pretense to evade the requirements of this chapter, including, but not limited to:

1. Making a loan or other transaction disguised as a personal property sale and leaseback transaction;
2. Disguising proceeds of a loan or other transaction as a cash rebate for the pretextual sale of goods or services;
3. Disguising a loan or other transaction as the sale of goods, services or things in action or disguising charges for a loan or other transaction in the price of goods, services or things in action;
4. Making, contracting for, offering, assisting, or arranging for a borrower to obtain a loan or other transaction with a higher rate or amount of interest, consideration, charge or other payment received incident to the loan than is permitted by Section 9 of this chapter through any method including mail, telephone, internet or any electronic means, regardless of whether the person has a physical location in the state;
5. Structuring the transaction in a manner to obscure the fact that it is a loan; or
6. Charging, contracting for or receiving interest, fees, charges or other payments in excess of those permitted, regardless whether the payment purports to be voluntary.

Section 11. Application of chapter to agents and service providers of exempt entities. If the annual percentage rate of the loan or other transaction exceeds the rate permitted by Section 9 of this chapter, a person shall be subject to the requirements of this chapter notwithstanding

the fact that the person purports to act as an agent or service provider or in another capacity for a person that is exempt from this chapter, if, among other things:

- 1. The person holds, acquires, or maintains, directly or indirectly, the predominant economic interest, risk or reward, in the loan or transaction;*
- 2. The person (a) markets, solicits, brokers, arranges, facilitates or services loans or transactions and (b) holds, or has the right, requirement or first right of refusal to acquire, the loans, transactions, a share of receivables or another direct or indirect interest in the loans or loan program; or*
- 3. The totality of the circumstances indicate that the person is engaging in transactions subject to this chapter and that the transaction is structured to evade the requirements of this chapter. Circumstances that weigh in favor of a person being subject to this chapter include, without limitation, when the person:*
 - (a) indemnifies, insures or protects an exempt entity from costs or risks related to the loan or transaction;*
 - (b) predominantly designs, controls or operates the loan program or transaction;*
 - (c) holds the trademark or intellectual property rights in the brand, underwriting system, or other core aspects of the loan program or transaction; or*
 - (d) purports to act as an agent or service provider or in another capacity for an exempt entity while acting directly as a lender in other states.*

Section 12. Prohibition against facilitation of payday loans or other transactions in violation of chapter. *No person shall solicit, broker, or engage in any other activity intended to facilitate or result in, or that in fact facilitates or results in, a loan or transaction that violates this chapter.*

Section 13. Remedies for payday loans or other transactions made in violation of this chapter.

- 1. A loan or other transaction made in violation of this chapter shall be void and uncollectible as to any principal, fee, interest, charge or payment.*
- 2. An action for violation of this chapter may be brought in any court of competent jurisdiction.*
- 3. Any person who violates this chapter is liable to the borrower for:*
 - (a) Actual and consequential damages;*

- (b) Restitution of any amounts paid;*
- (c) Treble the amount of any excess fee, interest, charge, or payment;*
- (d) Statutory damages, at an amount that the court considers just, of at least \$250 and no more than \$1,000 per violation;*
- (e) Injunctive or declaratory relief;*
- (f) Reasonable attorney's fees and costs; and*
- (g) Any other legal or equitable relief that the court deems appropriate in addition to any other remedies provided at law.*

4. The remedies provided for in this section are cumulative to any other remedies that apply to a loan or other transaction made in violation of other laws of this State.

Section 14. *Declaration of intent to opt out of DIDMCA.* *In accordance with section 525 of the federal "Depository Institutions Deregulation and Monetary Control Act of 1980", Pub.L. 96-221, the voters of the State of Nevada declare that the State of Nevada does not want the amendments to the "Federal Deposit Insurance Act", 12 U.S.C. sec. 1811 et seq.; the federal "National Housing Act", 12 U.S.C. sec. 1701 et seq.; and the "Federal Credit Union Act", 12 U.S.C. sec. 1757, made by sections 521 to 523 of the federal "Depository Institutions Deregulation and Monetary Control Act of 1980", Pub.L. 96-221, prescribing interest rates and preempting state interest rates to apply to loans as defined in Section 5 of this chapter or specific transactions as defined in Section 8 of this chapter. The rates established in this chapter shall apply to payday loans and other loans as defined in Section 5 of this chapter and specific transactions as defined in Section 8 of this chapter.*

Section 15. *Application of chapter to earned wage access services.* *Prior to January 1, 2030, section 9 of this chapter shall not apply to entities licensed under the laws of this State to provide earned wage access services, as defined in Senate Bill No. 290 of the 82nd Regular Session of the Nevada Legislature (2023), 2023 Nev. Stat., ch. 400. Beginning on January 1, 2030, section 9 shall apply to any provider of earned wage access services, regardless of whether the provider is licensed under the laws of this State, including any provider of transactions that satisfy the definition of earned wage access services currently set forth in Senate Bill No. 290 of the 82nd Regular Session of the Nevada Legislature (2023), 2023 Nev. Stat., ch. 400.*

Section 16. NRS 99.050 is hereby amended to read as follows:

1. Except as otherwise provided in subsection 2, parties may agree for the payment of any rate of interest on money due or to become due on any contract, for the compounding

of interest if they choose, and for any other charges or fees, *provided, however, that parties cannot agree to any arrangement that violates the requirements of Chapter 604D of the Nevada Revised Statutes*. The parties shall specify in writing the rate upon which they agree, that interest is to be compounded if so agreed, and any other charges or fees to which they have agreed.

2. A creditor shall not charge an annual percentage rate that is greater than the lesser of 36 percent or the maximum annual percentage rate authorized under any federal law or regulation with respect to the consumer credit extended to a covered service member or a dependent of a covered service member. Any contract or agreement in violation of this subsection is void and unenforceable.

3. As used in this section:

(a) “Annual percentage rate” has the meaning ascribed to it in the federal Truth in Lending Act, as amended, 15 U.S.C. §§ 1601 et seq., and the federal regulations adopted pursuant thereto.

(b) “Consumer credit”:

(1) Except as otherwise provided in subparagraph (2), means credit offered or extended to a covered service member or dependent of a covered service member primarily for personal, family or household purposes, and that is:

(I) Subject to a finance charge; or

(II) Payable by a written agreement in more than four installments.

(2) Does not include:

(I) A residential mortgage, which is any credit transaction secured by an interest in a dwelling, including a transaction to finance the purchase or initial construction of the dwelling, any refinance transaction, home equity loan or line of credit or reverse mortgage;

(II) Any credit transaction that is expressly intended to finance the purchase of a motor vehicle when the credit is secured by the vehicle being purchased;

(III) Any credit transaction that is expressly intended to finance the purchase of personal property when the credit is secured by the property being purchased;

(IV) Any credit transaction that is an exempt transaction for the purposes of 12 C.F.R. Part 1026, commonly known as Regulation Z, other than a transaction exempt under 12 C.F.R. § 1026.29, or otherwise is not subject to disclosure requirements under 12 C.F.R. Part 1026, commonly known as Regulation Z; and

(V) Any credit transaction or account for credit for which a creditor determines that a natural person is not a covered borrower by using a method and by complying with the recordkeeping requirement set forth in 32 C.F.R. § 232.5(b).

(c) “Covered service member”:

(1) Except as otherwise provided in subparagraph (2), means a member of the armed forces who is serving on:

(I) Active duty pursuant to title 10, title 14 or title 32 of the United States Code, under a call or order that does not specify a period of 30 days or fewer; or

(II) Active Guard and Reserve duty, as that term is defined in 10 U.S.C. § 101(d)(6).

(2) Does not include a consumer who was a covered service member pursuant to subparagraph (1) at the time he or she became obligated on a consumer credit transaction or established an account for consumer credit but is no longer a covered service member pursuant to subparagraph (1) or a dependent of a person who is a covered service member pursuant to subparagraph (1).

(d) “Credit” means the right granted to a natural person by a person engaged in the business of extending consumer credit, or an assignee of such a person with respect to any consumer credit extended, to defer payment or to incur debt and defer its payment.

(e) “Dependent” with respect to a covered service member means:

(1) The spouse;

(2) A child who:

(I) Has not attained the age of 21;

(II) Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, as defined in 10 U.S.C. §

1072(3), and is, or was at the time of the covered service member's or former covered service member's death, in fact dependent on the covered service member or former covered service member for over one-half of the child's support; or

(III) Is incapable of self-support because of a mental or physical incapacity that occurs while a dependent of a covered service member or former covered service member under sub-subparagraph (I) or (II) and is, or was at the time of the covered service member's or former covered service member's death, in fact dependent on the member or former member for over one-half of the child's support;

(3) A parent or parent-in-law who is, or was at the time of the covered service member's or former covered service member's death, in fact dependent on him or her for over one-half of his or her support and residing in his or her household;

(4) An unmarried person who:

(I) Is placed in the legal custody of the covered service member or former covered service member as a result of an order of a court of competent jurisdiction in the United States, or possession of the United States, for a period of at least 12 consecutive months;

(II) Has not attained the age of 21, has not attained the age of 23 and is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, as defined in 10 U.S.C. § 1072(3), or is incapable of self-support because of a mental or physical incapacity that occurred while the person was considered a dependent of the covered service member or former covered service member pursuant to this paragraph;

(III) Is dependent on the covered service member or former covered service member for over one-half of the person's support;

(IV) Resides with the covered service member or former covered service member unless separated by the necessity of military service or to receive institutional care as a result of disability or incapacitation or under such other

circumstances as the administering Secretary, as defined in 10 U.S.C. § 1072(3), may by regulation prescribe; and

(V) Is not a dependent of a covered service member or a former covered service member pursuant to subparagraph (1), (2) or (3).

(f) “Dwelling” means a residential structure that contains one to four units, whether or not the structure is attached to real property. The term includes, without limitation, an individual condominium unit, cooperative unit, mobile home and manufactured home.

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DESCRIPTION OF EFFECT

This measure addresses high-interest lending practices by establishing maximum interest rates charged to consumers.

Currently, most consumer loans have no interest rate cap. The proposed cap would set a maximum interest rate of 36% annually on the unpaid balance of the amount financed, and would apply to consumer loans; deferred-deposit transactions (“payday loans”); title loans; and other loan types dependent on future earnings and income.

The initiative also prohibits evading the interest rate cap by structuring transactions to mask their nature as loans covered by this measure, or partnering with out-of-state lenders to violate the rate cap. The initiative voids transactions that violate the cap, and establishes civil penalties.

County of _____ (Only registered voters of this county may sign below)
 Petition District: _____ (Only registered voters of this petition district may sign below)

			Office Use
1	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE - DATE / /	CITY COUNTY	
2	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE - DATE / /	CITY COUNTY	
3	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
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	YOUR SIGNATURE - DATE / /	CITY COUNTY	
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	YOUR SIGNATURE - DATE / /	CITY COUNTY	
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	YOUR SIGNATURE - DATE / /	CITY COUNTY	
19	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE - DATE / /	CITY COUNTY	
20	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE - DATE / /	CITY COUNTY	

AFFIDAVIT OF CIRCULATOR

(TO BE SIGNED BY CIRCULATOR)

STATE OF NEVADA)
)
COUNTY OF _____)

I, _____, (print name), being first duly sworn under penalty of perjury, depose and say: (1) that I reside at _____ (print street, city and state); (2) that I am 18 years of age or older; (3) that I personally circulated this document; (4) that all signatures were affixed in my presence; (5) that the number of signatures affixed thereon is _____; and (6) that each person who signed had an opportunity before signing to read the full text of the act or resolution on which the initiative or referendum is demanded.

Signature of Circulator

Subscribed and sworn to or affirmed before me this

_____ day of _____, _____, by _____.

Notary Public or person authorized to administer oath

EXHIBIT 3

Michael R. Kalish, Esq., declares as follows:

1. I am over the age of 18 years and have personal knowledge of the facts stated herein, except for those stated upon information and belief, and as to those, I believe them to be true. I am competent to testify as to the facts stated herein in a court of law and will so testify if called upon.

2. I am one of the counsels for Plaintiffs in this lawsuit.

3. I am an attorney, licensed to practice law before the Courts in the State of Nevada since 2012, and offer the following statements in support of *Plaintiffs' Complaint For Declaratory And Injunctive Relief Challenging Initiative Petitions S-01-2024 and S-03-2024*.

4. Attached to the Complaint as Exhibit 1 is a true and correct copy of the Notice of Intent Statewide Initiative or Referendum Petition designated as S-01-2024 entitled "Initiative Petition – Statewide Statutory Measure" that was downloaded from the Nevada Secretary of State's website at (<https://www.nvsos.gov/sos/elections/2024-petitions>), last visited: January 26, 2024.

5. Attached to the Complaint as Exhibit 2 is a true and correct copy of the Notice of Intent Statewide Initiative or Referendum Petition designated as S-03-2024 entitled "Initiative Petition – Statewide Statutory Measure" that was downloaded from the Nevada Secretary of State's website at (<https://www.nvsos.gov/sos/elections/2024-petitions>), last visited: January 26, 2024.

Pursuant to NRS 53.045, I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

Dated this 26th day of January, 2024.


Michael R. Kalish, Esq.