

NRS Chapter 604A

High Interest Rate Loans

Chief Judge Kevin Higgins
Sparks Justice Court

January 30, 2025

Civil Case Review Checklist

Review the Parties

- Does everyone have the right to file a complaint or be sued?

Civil Case Review Checklist

- Jurisdiction
 - Within NRS 4.370?
 - Relief amount?
 - Statute of Limitations?
 - Correct Court?

Civil Case Review Checklist

- Service of Process
 - Within 120 days pursuant to JCRCPC 4(e)(2)?
 - Return of Summons with proof of service?
 - Type of Service?

Civil Case Review Checklist

- Brought to Trial within 2, 3 or 5 years of filing JCRCPC 41(e)
 - Notice of Intent to Dismiss
 - Discretionary after 2 years
 - Mandatory after 5 years
 - Dismissal with Prejudice

History of High Interest Rate Loans

- Nevada no longer has a usury rate
- 2005 “Short Term Loans”
 - Loopholes
- 2007 “High Interest Rate Loans”
- Regulated by the Division of Financial Institutions

Types of Loans

- Deferred Deposit Loans
- High-Interest Rate Loans
- Title Loans
- Short-term loans

Deferred Deposit Loans

- A loan agreement where the customer tenders in advance a check or written authorization for the transfer of money and the lender provides a loan for the amount of the check or authorization, less any fees; and the lender agrees not to cash the check or execute the transfer for a certain time period.

NRS 604A.050

High-Interest Loans

- A loan made to a customer charging an interest rate greater than 40%. Additional fees etc., can be figured into the determination of the 40%. See NRS 604A.5035. This term does not include: deferred deposit loans, refund anticipation loans or title loans which or dealt with in other sections of the chapter.

NRS 604A.0703

Title Loans

- A loan agreement that charges more than 35% interest and requires the customer to secure the loan by giving the title to a vehicle to the licensee or allowing the licensee to perfect a security interest in it.

NRS 604A.105

Short-Term Loans

- Any claim of exemption from a licensee that it does not issue short-term loans is null and void. The term of the loan no longer has any force or effect in the enforcement of the terms of Chapter 604A.

Scope and Applicability

- The provisions of the Chapter are intended to apply to any persons who seek to evade its application by any device, subterfuge or pretense including without limitation calling the loan by any other name, using agents to avoid the provisions of the chapters or having an affiliation or business arrangement with an entity that is exempt from NRS 604A.250. NRS 604A.200.

Exemptions to Chapter 604A

- Banks
- Retail Sale of Goods or Services
- Chapter 671 [Transmission of money]
- Non-restricted gaming licensee
- Check-cashing service for out-of-state-checks
- Check-cashing service in this State since July 1, 1973
- Pawnbrokers

More exemptions . . .

- REIT
- Employee benefit plan
- Attorney at Law
- Real Estate Broker
- Mortgage Broker
- Loans secured by a lien on real property
- Credit secured by a mortgage
- A refund anticipation loan unless the person runs a check-cashing service, etc.

More exemptions . . .

- ❑ A person who extends credit to any person not a resident of Nevada for any business located outside the State.
- ❑ A provider licensed to provide earned wage access services pursuant to NRS 604D.

NRS 604A.250

NOT Exempt

- Chapter 675 Installment Loans
- Not on the list, not exempt

Interest Rate Calculations

- ❑ Effective rate includes rate on the face of the loan **plus** any application fees, participation fees and prepaid finance charges.
- ❑ Does not include bounced check fees, post judgment interest, late fees or insurance fees. NRS 604A.5035.
- ❑ 39.99% loans?

Terms of Loans

- ❑ High-interest and deferred deposit loans cannot generally exceed 35 days . . .
- ❑ High-interest loans may be up to 90 days if certain requirements are met.
- ❑ The consolidation or renewal or refinancing or reconsolidation for more than 90 days is not permitted.

NRS 604A.501

Agreement in Writing

- ❑ Lender is required to first make a determination of customer's ability to repay the loan. NRS 604A.5011
- ❑ Loan must be in writing, set forth fully the terms of the loan and explain that if the customer defaults **the licensee must offer a *repayment plan* before commencing any civil action.**

NRS 604A.5012

Attorneys' Fees and Venue

- ❑ If the licensee commences a civil action the court may award court costs, standard service of process charges and reasonable attorney's fees.
- ❑ The civil cause of action must be commenced in the Township where the loan was made unless the customer agrees otherwise.

NRS 604A.5014

Prohibited Acts

- **Amount of Loan.** A licensee shall not make a deferred deposit loan or high interest loan that exceeds 25% of the expected gross monthly income of the customer.

NRS 604A.5017

Prohibited Acts

- ❑ **Multiple Loans to Same Customer.** A licensee shall not make more than one deferred deposit loan, single-advance, single-payment loan to the same customer at the same time before the first loan is paid in full unless the loan does not exceed the limits set forth in NRS 604A.5017.

NRS 604A.5018

Prohibited Acts

A lender shall not:

- ❑ Accept collateral as security for a loan [except a title to a vehicle for a title loan]; an assignment of wages; a check for security for a high-interest or title loan; more than one check or electronic transfer authorization for each deferred deposit loan; or, a check or electronic transfer authorization for any deferred deposit loan in an amount that exceeds the total payments set forth in the mandatory disclosure statement.

More Prohibited Acts

A lender shall not:

- Take any note without full disclosure of the terms including TILA and Regulation Z.
- Take any note with blanks to be filled in later.
- Make any loan contingent on the purchase of insurance.
- Fail to comply with a payment plan.
- Charge any fee to cash a loan check.

NRS 604A.502

Improper Lending and Collection Practices

A licensee shall not :

- Threaten the use of the criminal process to collect a loan.
- Commence a civil action before the customer defaults.
- Take a confession of judgment or power of attorney.
- Include in any written agreement a hold harmless agreement, confession of judgment or waiver of any claim or defense under this chapter.

Improper Lending and Collection Practices

- ❑ Engage in any deceptive trade practice as defendant in NRS 598.
- ❑ Advertise any false, misleading or deceptive statement with regard to rates, terms, or conditions.
- ❑ Reinitiate an electronic debit transaction that has been returned by the bank.
- ❑ Use or attempt to use any agent to avoid requirements of NRS 604A.5021.

Title Loans

Restrictions on Duration of Loan

- ❑ The original term of a title loan cannot exceed 30 days. It may be extended for 6 additional 30 day periods if certain conditions are met.

NRS 604A.5074

Title Loans

Prohibited Acts

A licensee who makes title loans shall not :

- ❑ Make a loan that exceeds the fair market value of the vehicle.
- ❑ Make a loan without regard to the ability of the customer to repay, including the customer's income, obligations and employment.
- ❑ Make a loan without requiring the customer to sign an affidavit which states that the customer has provided truthful information and has the ability to repay the loan.

Title Loan Remedies

- Except as noted below, if a customer defaults on a title loan or repayment plan **the sole remedy** is to repossess and sell the vehicle. The licensee **may not** pursue the customer personally for:
 - Payment of the loan, unless the licensee proves that the customer prevented the repossession and sale by any means including hiding.
 - Any deficiency after repossession and sale unless the licensee proves that the customer damaged or caused waste to the vehicle.

Title Loan Remedies

- If a vehicle is repossessed the licensee shall make reasonable efforts to return the customer's personal property.
- The licensee may bring a civil cause of action if the customer used fraud to secure the title loan or sells the vehicle to a third party before the loan is paid off.

NRS 604A.5078

Rescission

- A customer may rescind a loan on or before the close of business on the next day of business at the location where the loan was initiated. He must pay a sum of money equal to the face value of the loan less any fees charged or return the original check. If the original check is returned the licensee shall refund any loan origination fees. No fee can be charged for rescinding the loan.

NRS 604A.5079

Payment of Loan in Full

- A customer may pay a loan or extension in full at anytime without any additional charges or fees before the due date. The licensee shall provide a receipt with full information.

NRS 604A.508

Partial Payments

- A customer may make a partial payment on a loan or extension at any time without an additional charge or fee. The licensee shall provide a receipt with full information.

NRS 604A.5081

Repayment Plan -- Offer

- **Before** a licensee attempts to collect the balance of a loan in default or repossess a vehicle by commencing a civil action the licensee shall offer the customer the opportunity to enter into a repayment plan. The offer must be available for 30 days after the default. The licensee is not required to make such an offer more than once for each plan.

NRS 604A.5083

Repayment Plan

- **Commencement of Civil Action.** If a licensee intends to commence a civil action or repossess a vehicle to collect on a defaulted loan, the licensee **shall** deliver to the customer, **not later than 15 days after the default** or 5 days for a bad check, whichever is later, written notice of the opportunity to enter into a repayment plan.

NRS 604A.5083

Repayment Plan Notice

- ❑ The notice must:
- ❑ Be in English if initial transaction was in English or in Spanish if it was in Spanish.
- ❑ State the date the customer must act by to enter into a repayment plan.
- ❑ Explain the procedures the customer must follow to enter into a plan.
- ❑ If the licensee requires an initial payment to enter into the plan, explain it.
- ❑ Explain that the plan has a term of at least 90 days after the date of the default.
- ❑ Include the amounts of: total payments on remaining balance on original loan; any payments made; any charges added to the loan amount as allowed by 604A and the total amount due.

NRS 604A.5083

Repayment Plan -- Acceptance

- The customer must enter into a repayment plan within 30 days of the default, unless the licensee agrees to more time; the licensee must allow at least 90 days for the repayment, unless the customer agrees to less time; the licensee may require an initial payment of not more than 20%.

NRS 604A.5083

Limitations on Loan Proceeds

- Except as otherwise provided, if the customer agrees in writing to establish or extend the period of the loan, or refinance or consolidate existing loans, the licensee shall not extend the period for more than 90 days after the expiration of the original period. The licensee shall not add any unpaid interest or other charges accrued during the original period to the principal of the new loan.

NRS 604A.5037

Limitations on Amounts Licensee May Collect After Default

If a customer defaults the licensee may collect only the following amounts, less any payments made before or after the default:

- ❑ The unpaid principal amount of the loan.
- ❑ The unpaid interest, if any, *accrued before the default* at the annual rate set forth in the TILA disclosure and Regulation Z form provided to the customer. The licensee may collect interest at that rate for not more than 60 days after the expiration of the loan period, unless allowed by NRS 604A.5029.
- ❑ *Interest thereafter* at the statutory rate for a period not to exceed 90 days.
- ❑ Any fees pursuant to NRS 604A.5031 for bad checks.

NRS 604A.503

Total Collectable Amount

- ***The sum of the permitted interest plus the bad check fees must not exceed the principal amount of the loan.***
 - For example, on a \$250 loan the maximum collectable amount is \$500.

Excess Fees

- ❑ Except for the interest and fees permitted pursuant to this section and expressly permitted by NRS 604A.5018 and 604A.5027 the licensee shall not charge any other amount directly or indirectly to the customer . . . including any other interest charges or other fees whatever they are called.

NRS 604A.503

Limitations on Fees for Unpaid Checks

- ❑ A licensee may collect a fee of not more than \$25 for a bounced check or failed electronic funds transfer due to insufficient funds or a closed account.
- ❑ No more than two such fees may be collected no matter how many times the check bounces. Only 1 such fee can be collected for a closed account.
- ❑ A customer is not liable for treble damages pursuant to NRS 41.620 or criminal prosecution pursuant to chapter 205 of the NRS unless the customer acted with criminal intent.

NRS 604A.5031

Remedies and Penalties

- ❑ If a licensee willfully:
- ❑ Enters into an agreement for an amount of interest or other charge or fee that violates this chapter;
- ❑ Demands, collects or receives an amount of interest or other charge or fee that violates this chapter; or
- ❑ Commits any act or omission that violates this chapter . . .

Remedies and Penalties

THE LOAN IS VOID AND THE LICENSEE IS NOT ENTITLED TO COLLECT, RECEIVE OR RETAIN ANY PRINCIPAL OR INTEREST OR OTHER CHARGES OR FEES WITH RESPECT TO THE LOAN.

NRS 604A.900

Remedies and Penalties

The remedies do not apply if:

- ❑ The licensee can show by a preponderance of the evidence that the violation was not intentional and resulted from a computational error, notwithstanding their procedures to avoid such errors and
- ❑ Within 60 days after discovering the error the licensee notifies the customer of the error and corrects it.

NRS 604A.900(2)

Is that it?

- Unconscionable
- Common law remedy
- “Shock the conscience of the court.”
- Every contract enforceable no matter what?
- How high is too high?
- Contract of adhesion
- Equal bargaining power?

What to do . . .

- Enforce Chapter 604A.
 - How far to go with a non-appearing defendant?
 - Require the lenders to meet the statutory requirements to commence a civil action and request a default.
- Determine whether your conscience has been shocked.
 - 300%, 500% or 2200%?

Handouts

- ❑ A Summary of Chapter 604A
- ❑ A condensed version of Chapter 604A
- ❑ Defaulted Loan Information Sheet
- ❑ High-Interest Loan Default Worksheet

Chief Judge Kevin Higgins

Sparks Justice Court

khiggins@washoecounty.us

775-353-7620