

A Summary of Chapter 604A

Chapter 604A of the Nevada Revised Statutes regulates deferred deposit loans, high-interest loans, title loans and check-cashing services. The providers of these loans and services are regulated by the Financial Institutions Division and are referred to as 'licensees'. The Legislature created and revised this chapter in order to regulate this quickly growing industry. While the chapter itself does not place a limit on interest rates that can be charged [commonly called a usury rate] the chapter does set forth very specific procedures for what a licensee can do in case of default on one of these loans. They include procedures for repayment plans, limitations on post-default interest and the rescission of a loan by the court if the licensee fails to follow the rules and regulations.

Definitions

"Deferred Deposit Loan" means 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 loan" means a loan made to a customer charging an interest rate greater than 40%. Additional fees etc, must be figured into the determination of the 40%. See NRS 604A.0703 & 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 Loan" means a loan agreement that charges of 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." The definitions of "short-term" loans and loan services have been *deleted* from the chapter. 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.

Exemptions

There are generally 17 exemptions to the chapter. The regulations do not apply to:

1. Except as otherwise provided in [NRS 604A.200](#), a person doing business pursuant to the authority of any law of this State or of the United States relating to **banks** . . . ,

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

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

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

3. A person while performing any act authorized by a license issued pursuant to [chapter 671](#) of NRS.

4. A person who holds a **nonrestricted gaming license** issued pursuant to [chapter 463](#) of NRS while performing any act in the course of that licensed operation.

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

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

7. A **pawnbroker**, unless the pawnbroker operates a check-cashing service, deferred deposit loan service, high-interest loan service or title loan service.

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

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

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

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

12. Any firm or corporation:

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

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

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

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

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

15. A person who makes a **refund anticipation loan**, unless the person operates a check-cashing service, deferred deposit loan service, high-interest loan service or title loan service.

16. A person who exclusively extends credit to any person who is not a resident of this State for any business, commercial or agricultural purpose that is located outside of this State.

17. A provider licensed to provide earned wage access services pursuant to NRS 604D.

NRS 604A.250.

Regulation of Business Practices

Interest Rate Calculation. In order to determine whether a loan is a high-interest loan, the actual rate is determined by not only the interest rate on the face of the loan but additionally any application fees, fees for participation in credit plans and any prepaid finance charges. Not included in the calculation are fees for bounced checks, interest accrued after default, late payment fees or insurance fees. NRS 604A.5035. This is not an issue with the loans we see in excess of 300 or 400%. It can come into question on loans of 39.99%. A calculation will have to be made to see if any additional fees or costs push the rate up to 40% or reduce it accordingly.

Terms of Loans. High-interest and deferred deposit loans cannot generally exceed 35 days except as otherwise set forth in the chapter. High-interest loans may be up to 90 days if certain requirements are met. A licensee is not permitted to establish or extend the period for repayment, renewal or refinancing or reconsolidation of an outstanding deferred deposit loan or high-interest loan for a period that exceeds 90 days after the origination of the loan. NRS 604A.501.

Ability to Repay. The licensee must require the customer to prove a reasonable ability to repay the loan by the following factors: income; current employment including a pay stub or bank deposit; credit history; amount due under the original term of the loan, the monthly payment, or the potential repayment plan if customer defaults, and other evidence such as bank statements, etc. NRS. 604A.5011.

Agreement in Writing. The loan agreement must be in writing, fully set forth the terms of the loan and explain that if the customer defaults the licensee must offer a repayment plan to the customer **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 by Licensee

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.

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 and . . . NRS 604A.5018.

Accepting Certain Collateral, Failing to Make Disclosures, Incomplete Instruments, Purchase of Insurance or Other Goods or Services, Fail to Comply with a Payment Plan or Charge a Fee to Cash Certain Checks. A licensee 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.
- 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 payment plan.
- Charge any fee to cash a loan check.

NRS 604A.502, NRS 604A.5048, and NRS 604A.5071.

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.

NRS 604A.5021, NRS 604A.5049, and NRS 604A.5072.

TITLE LOANS

Restrictions on Duration of Loan and Extensions. 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(1) and (2). The original term of a title loan may be up to 210 days if the loan is not subject to extensions and certain other conditions are met. NRS 604A-5074(3).

Prohibited Acts by Licensee Regarding Title Loans. A licensee who makes title loans shall not :

- Make a loan that exceeds the fair market value of the vehicle.
- Make a loan on a vehicle not legally owned by the a customer.
- 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.
- Make a loan on a vehicle with multiple owners without consent of each owner.

NRS 604A.5076.

Title Loan Remedies. The Uniform Commercial Code applies to title loans. 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.

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, Payment in Full and Partial Payments.

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.

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. 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.

- 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%.

[Further requirements omitted.] NRS 604A.5083

Limitations on Loan Proceeds, Amounts Collectable and Fees.

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 60 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.5085.

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.480.
- *Interest thereafter* at the prime rate + 10% for a period not to exceed 90 days.
- Any fees pursuant to NRS 604A.5086 for bad checks.
- **The sum of the permitted interest plus the bad check fees must not exceed the principal amount of the loan.**

Except for the interest and fees permitted pursuant to this section and expressly permitted by NRS 604A.5074 and 604A.5083 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.5085.

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 2 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.5086.

Remedies and Penalties.

Except as noted below, 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,

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.

Unless 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.