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**STATE OF NEVADA  
DEPARTMENT OF BUSINESS AND INDUSTRY  
FINANCIAL INSTITUTIONS DIVISION**

1179 Fairview Drive, Ste. 201  
Carson City, Nevada 89701  
(775) 687-5522

In Re:

SFC of Nevada, LLC, d.b.a. Maverick  
Financial,

Petitioner.

**DECLARATORY ORDER AND  
ADVISORY OPINION REGARDING THE  
MANDATORY DISCLOSURES FOR  
LOANS MADE PURSUANT TO NRS  
604A.480**

**DECLARATORY ORDER AND ADVISORY OPINION REGARDING  
MANDATORY DISCLOSURES FOR LOANS MADE  
PURSUANT TO NRS 604A.480**

Nevada, Department of Business and Industry, Financial Institutions Division (hereinafter "Division") hereby issues its Declaratory Order and Advisory Opinion regarding SFC of Nevada, LLC, d.b.a. Maverick Financial's Petition for Advisory Opinion Pursuant to NRS 233B.120 and NAC 232.040.

**JURISDICTION**

1. Deferred deposit loan services, high interest loan services, title loan services and check cashing services in the State of Nevada are governed by chapter 604A of the Nevada Revised Statutes (NRS) and chapter 604A of the Nevada Administrative Code (NAC). The Division has primary jurisdiction for the licensing and regulation of persons operating and/or engaging in deferred deposit loan service, high interest loan service, title loan service and check cashing service activities or persons seeking to evade the application of NRS 604A. See generally NRS 604A.020-.030, 604A.050-.060, 604A.080, 604A.095-.110, 604A.200, 604A.300, 604A.400, 604A.600 and 604A.710.

2. The Division also has primary jurisdiction for the licensing and regulation of persons engaging in the business of lending in the State of Nevada where such lending is

1 not governed by NRS 604A. NRS 675.060. Pursuant to the authority vested by NRS 604A,  
2 the Division hereby makes the following Findings of Fact, Conclusions of Law, and Order.

3 **STATEMENT OF FACT**

4 3. Petitioner SFC of Nevada, LLC, d.b.a. Maverick Financial is registered under  
5 the laws of the State of Nevada and has submitted this Petition by and through its attorney,  
6 Jesse A. Wadhams, Esq., of Jones Vargas.

7 4. Petitioner is a company engaged in the business of lending pursuant to NRS  
8 Chapter 604A.

9 5. On November 14, 2009, Petitioner filed its Petition for an Advisory Opinion with  
10 the Division.

11 6. The Petitioner requests and advisory opinion as to whether the mandatory  
12 disclosure required under NRS 604A.410 are applicable to loans made under NRS  
13 604A.480.

14 **STATEMENT OF LAW**

15 7. The rule regarding the issuing of Advisory Opinions by this agency is governed  
16 by NRS 233B.120, which reads as follows:

17 Each agency shall provide by regulation for the filing and prompt  
18 disposition of petitions for declaratory orders and advisory opinions  
19 as to the applicability of any statutory provision, agency regulation  
20 or decision of the agency. Declaratory orders disposing of petitions  
21 in such cases shall have the same status as agency decisions. A  
copy of the declaratory order or advisory opinion shall be mailed to  
the petitioner.

22 8. NAC 323.040(1) establishes the procedure for filing a petition for declaratory  
23 order or advisory opinions as follows:

24 Except as otherwise provided in subsection 4, an interested  
25 person may petition the Director to issue a declaratory order or  
26 advisory opinion concerning the applicability of a statute,  
27 regulation or decision of the Department or any of its divisions.  
28



9. Upon receipt by the Director, the petition is then referred to the Commissioner for the Financial Institutions Division for determination. NAC 232.045.

## STATUTORY BACKGROUND

10. The requirements for the subject loans are set forth in NRS 604A.480 as follows:

**NRS 604A.480 Limitations on using proceeds of new loan to pay balance of outstanding loan; exceptions.**

1. Except as otherwise provided in subsection 2, if a customer agrees in writing to establish or extend the period for the repayment, renewal, refinancing or consolidation of an outstanding loan by using the proceeds of a new deferred deposit loan or high-interest loan to pay the balance of the outstanding loan, the licensee shall not establish or extend the period beyond 60 days after the expiration of the initial loan period. The licensee shall not add any unpaid interest or other charges accrued during the original term of the outstanding loan or any extension of the outstanding loan to the principal amount of the new deferred deposit loan or high-interest loan.

2. This section does not apply to a new deferred deposit loan or high-interest loan if the licensee:

(a) Makes the new deferred deposit loan or high-interest loan to a customer pursuant to a loan agreement which, under its original terms:

(1) Charges an annual percentage rate of less than 200 percent;

(2) Requires the customer to make a payment on the loan at least once every 30 days;

(3) Requires the loan to be paid in full in not less than 150 days; and

(4) Provides that interest does not accrue on the loan at the annual percentage rate set forth in the loan agreement after the date of maturity of the loan;

(b) Performs a credit check of the customer with a major consumer reporting agency before making the loan;

(c) Reports information relating to the loan experience of the customer to a major consumer reporting agency;

(d) Gives the customer the right to rescind the new deferred deposit loan or high-interest loan within 5 days after the loan is made without charging the customer any fee for rescinding the loan:

(e) Participates in good faith with a counseling agency that is:

1 (1) Accredited by the Council on Accreditation for Services  
for Families and Children, Inc., or its successor organization; and

2 (2) A member of the National Foundation for Credit  
Counseling, or its successor organization; and

3 (f) Does not commence any civil action or process of  
4 alternative dispute resolution on a defaulted loan or any extension  
or repayment plan thereof.

5 11. Further, NRS 604A.410 establishes the required disclosures for loan contracts  
6 as follows:

7 NRS 604A.410 Written loan agreement required; contents.

8 1. Before making any loan to a customer, a licensee shall  
9 provide to the customer a written loan agreement which may be  
kept by the customer and which must be written in:

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

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

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

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

14 (b) The nature of the security for the loan, if any;

15 (c) The date and amount of the loan, amount financed, annual  
16 percentage rate, finance charge, total of payments, payment  
schedule and a description and the amount of every fee charged,  
17 regardless of the name given to the fee and regardless of whether  
the fee is required to be included in the finance charge under the  
Truth in Lending Act and Regulation Z;

18 (d) A disclosure of the right of the customer to rescind a loan  
pursuant to the provisions of this chapter;

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

20 (f) A disclosure stating that, if the customer defaults on the  
loan, the licensee must offer a repayment plan to the customer  
before the licensee commences any civil action or process of  
21 alternative dispute resolution or, if appropriate for the loan, before  
the licensee repossesses a vehicle; and

22 (g) Any other disclosures required under the Truth in Lending  
23 Act and Regulation Z or under any other applicable federal or state  
statute or regulation.

24 12. The question presented requests that the Division resolve the disparity  
25 between the two statutes.



### **QUESTION PRESENTED**

13. The Petitioner presents the following question for an advisory opinion: Is a loan made pursuant to NRS 604A.480 required to disclose that the "licensee must offer a repayment plan to the customer before the licensee commences any civil action or process of alternative dispute resolution or, if appropriate for the loan, before the licensee repossesses a vehicle" as required by NRS 604A.410.

14. The Petitioner points out that NRS 604A.410 requires "any loan" to make the disclosure that a repayment plan must be offered prior to civil action or alternative dispute resolution.

15. However, civil action and alternative dispute resolution are specifically prohibited in loans made pursuant to NRS 604A.480,

16. NRS 604A.410.(2)(f) states that the licensee can "not commence any civil action or process of alternative dispute resolution on a defaulted loan or any extension or repayment plan thereof."

### **LEGAL ANALYSIS**

17. While this issue has been the source of ongoing confusion and dispute, this is the first time the Division has had an opportunity to address it as an Advisory Opinion or Declaratory Order.

18. The answer to this question requires a review of the rules of statutory construction.

19. The Nevada Supreme Court stated in *V and S Ry. LLC v. White Pine County*, 211 P.3d 879, 882 (Nev.,2009), "In Nevada, "words in a statute should be given their plain meaning unless this violates the spirit of the act." (*Id citing McKay v. Bd. of Supervisors*, 102 Nev. 644, 648, 730 P.2d 438, 441 (1986)).

20. In *Sheriff, Clark County v. Burcham*, 198 P.3d 326, 329 (2008), "statutory construction should always avoid an absurd result." (Footnotes omitted).

1           21.     While this issue was not directly addressed in the legislative hearings, it is clear  
2 the spirit of the legislation was to provide protection from abuses by lenders in the collection  
3 of loans. Assemblywoman Barbara Buckley, the sponsor of the bill, stated that existing law  
4 did not provide adequate protections for consumers in the collection of deferred deposit  
5 loans.

6                     Deferred-deposit loans are governed by chapter 604 of the NRS  
7 and the protections were added to our statutes in A.B. No. 431 of  
8 the 70th Session. It has a prohibitive-practice section which says  
9 you cannot threaten criminal prosecution and you cannot charge  
10 any fees that a lender cannot generally collect. Also, upon default  
11 you get prime plus 10 percent. What is not in this bill is the fair  
12 debt-collection practice, military protections, more specific  
13 protections like making up imaginary fees or adding garnishment  
14 fees of \$1,200, and there is no remedy section. There is no  
enforcement when a bad actor does these things. These are all in  
chapter 604 of the NRS. Chapter 675 of the NRS is the general  
installment-loan chapter so any lender falls under that and there  
are no specific protections for high-cost, short-turnaround loans at  
all. The title-pawn industry provisions on the last slide of Exhibit E  
are all new.

15                     (Hearing on A.B. 384 Before the Senate Committee on Commerce and Labor, 2005 Legis.,  
16 73<sup>rd</sup> Sess. 11 (May 6, 2005)).

17           22.     The intent to regulate collection practices are somewhat related to the  
18 question presented because the consumer should not feel that he is subject to civil action  
19 when, in fact such actions are prohibited by law.

20           23.     It is important to note that the Fair Debt Collection Practices Act (FDCPA)  
21 prohibits "the threat to take any action that cannot legally be taken or that is not intended to  
22 be taken." 15 U.S.C. § 1692e(5). This provision is made applicable to licensees pursuant to  
23 NRS 604A.415(1).

24           24.     With this legislative intent in mind, it would be an absurd result to require that a  
25 licensee making a loan under NRS 604A480 be required to have a contractual provision  
26  
27  
28



1 stating that a repayment plan be offered prior to initiating a civil proceeding or alternative  
2 dispute resolution when those actions are prohibited by law.

3 25. Consequently, the Division believes that the potential for abuse and  
4 misunderstanding are substantial and that no contract under 604A.480 should state or  
5 insinuate that a civil action could be taken against a borrower or that a borrower could be  
6 subject to alternative dispute resolution should a default occur.

7 **CONCLUSION**

8 26. Therefore, the Division's opinion is that a contract made pursuant to NRS  
9 604A.480 should not mention civil action or process of alternative dispute resolution in its  
10 disclosure requirements under NRS 604A.410.

11 27. Nothing in this opinion shall preclude or effect any other disclosures required  
12 under NRS 604A.410.

13 28. Nothing in this opinion shall effect the requirement that a borrower be offered a  
14 repayment plan upon a default of a loan made pursuant to NRS 604A.480.

15 29. Finally, this opinion does not preclude a licensee from disclosing that civil  
16 actions or processes of alternative dispute resolution are prohibited in loans made pursuant  
17 to NRS 604A.480.

18 30. Because this issue has been a source of controversy, the Division issued its  
19 decision in the form of a declaratory order and will provide this opinion on its website, located  
20 at [www.fid.state.nv.us](http://www.fid.state.nv.us), so it may be used as a source of reference in future examinations.

21 DATED this 10th day of December, 2009.

22 STATE OF NEVADA  
23 DEPARTMENT OF BUSINESS AND INDUSTRY,  
24 FINANCIAL INSTITUTIONS DIVISION

25 By: \_\_\_\_\_

26 GEORGE E. BURNS,  
27 Commissioner  
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