



JIM GIBBONS
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STATE OF NEVADA
FINANCIAL INSTITUTIONS DIVISION
DEPARTMENT OF BUSINESS AND INDUSTRY

GEORGE E. BURNS
Commissioner
STEVEN W. KONDRUP
Deputy Commissioner

May 28, 2010

Dennis P. Whelpley, Esq.
Oppenheimer Wolff & Donnelly, LLP
Plaza IV, Ste. 5300
15 South Seventh Street
Minneapolis, Minnesota 55402

RE: Petition for Advisory Opinion Regarding NRS 675.060

Dear Mr. Whelpley:

This letter constitutes the response by the Financial Institutions Division, State of Nevada Department of Business and Industry (hereafter the "Division") regarding your request for an advisory opinion. The request was made pursuant to Nevada Administrative Code (NAC) 232.040, *et seq.*

STATEMENT OF ISSUES

Mr. Whelpley has made a request for an advisory opinion based upon his assertion that he is representing an anonymous client, who allegedly engages in the business of selling agricultural equipment "*primarily* for business or agricultural purposes, and not for personal, family or household purposes." (Emphasis added). His clients wish to provide financing for the retail sales of its equipment. Because Mr. Whelpley does not provide any information regarding the equipment or even the name of the client or any documentation, the Division will review this matter as a hypothetical.

Mr. Whelpley presents two questions for the Division as follows:

1. Does NRS Section 675.035 contain an exhaustive list of entities to which NRS Chapter 675 (the Nevada Installment Loan and Finance Act) applies, such that NRS Chapter 675 only applies to entities described by all three of sub clauses 1, 2, and 3 of NRS Section 675.035?

CARSON CITY
P.O. Box 3239
Carson City, NV 89702
(775) 687-5522 Fax (775) 687-5523

Web Address: <http://fid.state.nv.us>

LAS VEGAS
Office of the Commissioner
2785 E. Desert Inn Rd., Suite 180
Las Vegas, NV 89121
(702) 486-4120 Fax (702) 486-4563

2. Can a retail seller of agricultural equipment for business or agricultural purposes and not for personal, family or household purposes make installment credit sales of such agricultural equipment, incorporating a time-price differential, without being engaged in the business of lending in Nevada and thus being subject to the licensing requirements of NRS Chapter 675?

ANALYSIS

A. *NRS 675.310 was enacted to close a loophole, not limit the entire application of NRS Chapter 675 to a small insular segment of the lending business in Nevada.*

Petitioner argues that NRS 675.035 limits the application of NRS Chapter 675 to only those organizations which are associated with other financial institutions and attempting to evade the provisions of NRS Chapter 675. Further, Petitioner attempts to assert that the provisions of the statute which concern the business of lending are "ambiguous" because they conflict with the analysis which limits the chapter. The provisions of NRS 675.035 was meant to be inclusive rather than exclusive and asserting the statute which was meant to close a loophole and require licensing for certain entities should be read to exclude every other form of lending is contradictory to the legislative history.

NRS 675.035 reads as follows:

NRS 675.035 Applicability of chapter. The provisions of this chapter apply to any person who:

1. Makes installment loans that are not subject to regulation pursuant to chapter 604A of NRS;

2. Is an affiliate, subsidiary or holding company of a bank, national banking association, savings bank, trust company, savings and loan association, credit union, development corporation, mortgage broker, mortgage banker, thrift company or insurance company; and

3. Seeks to evade its application by any device, subterfuge or pretense, including, without limitation:

(a) Calling a loan by any other name;

(b) Using any agents, affiliates or subsidiaries in an attempt to avoid the application of the provisions of this chapter; or

(c) Having any affiliation or other business arrangement with an entity that is exempt from the provisions of this chapter pursuant to subsection 1 of NRS 675.040, the effect of which is to evade the provisions of this chapter, including, without limitation, making a loan while purporting to be the agent of such an exempt entity where the purported agent holds, acquires or maintains a material economic interest in the revenues generated by the loan.

This provision as well as others contained in Assembly Bill 478 (2007) was enacted to “close certain loopholes in the current payday loan law...” Hearing on A.B. 478 Before the Assembly Committee on Commerce and Labor, 2007 Legis., 74th Sess. 21 (March 28, 2007). To that end, NRS 675.035 and 675.040 were inserted “to provide the protections for consumers taking out installment loans under that chapter.” Hearing on A.B. 478 Before the Senate Committee on Commerce and Labor, 2007 Legis., 74th Sess. 14 (May 15, 2007).

The Legislature defined the purpose and scope of NRS Chapter 675 to “bring under public supervision those engaged in the business of making loans.” NRS 675.030(3)(a). Finally, any question as to what activities are covered under NRS Chapter 675 are clearly answered in NRS 675.060, which requires a license under this chapter for anyone engaged in the “business of lending.”

NRS 675.060 Unlicensed dealing in loans prohibited; license required for each office or other place of business.

1. No person may engage in the business of lending in this State without first having obtained a license from the Commissioner pursuant to this chapter for each office or other place of business at which the person engages in such business, except that if a person intends to engage in the business of lending in this State as a deferred deposit loan service, high-interest loan service or title loan service, as those terms are defined in chapter 604A of NRS, the person must obtain a license from the Commissioner pursuant to chapter 604A of NRS before the person may engage in any such business.

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

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

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

The intent and language of NRS Chapter 675 states that anyone engaged in the business of lending not covered under NRS Chapter 604A is required to have a license under NRS Chapter 675. The addition of NRS 675.035 in 2007 did not limit the applicability of the chapter. As the Nevada Supreme Court stated, “One tenet of statutory construction requires statutes to be “construed as a whole and not be read in a way that would render words or phrases superfluous or make a provision nugatory.” *Law Offices of Barry Levinson, P.C. v. Milko*, 184 P.3d 378, 386 - 387 (Nev., 2008).

B. Loans for Agricultural and Business purposes are not exempt from the provisions of NRS Chapter 675.

Additionally, Petitioner asks whether credit sales are covered under NRS Chapter 675. He argues that credit sales, or "time paper," are distinguishable and that some Nevada statutes distinguish those transactions from the business of lending. Additionally, Petitioner asserts that sales of agricultural equipment for business or agricultural use are exempt from the requirements of NRS Chapter 675. However, there is no exemption for "time paper" transactions contained in NRS Chapter 675.

The exemptions to NRS Chapter 675 are listed in NRS 675.040 and read as follows:

NRS 675.040 Applicability of chapter; exemptions. This chapter does not apply to:

1. Except as otherwise provided in NRS 675.035, a person doing business under the authority of any law of this State or of the United States relating to banks, national banking associations, savings banks, trust companies, savings and loan associations, credit unions, development corporations, mortgage brokers, mortgage bankers, thrift companies, pawnbrokers or insurance companies.

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

3. 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.

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

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

6. Except as otherwise provided in this subsection, 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.

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

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

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

10. A person licensed to do business pursuant to chapter 604A of NRS with regard to those services regulated pursuant to chapter 604A of NRS.

No exemption is listed for transactions involving the sale of agricultural equipment for commercial or agricultural use. Further, there is no requirement that loans must be used for personal, household or family purposes. Finally, sales where the payment is secured by an interest in the goods sold are specifically defined as a loan and are covered under NRS 675.330.

The payment of money, credit, goods or things in action, as consideration for any sale, assignment or order for the payment of wages, salary, commissions or other compensation for services earned or to be earned, shall, for the purposes of regulation under this chapter, be deemed a loan of money secured by the sale, assignment or order. The amount by which the compensation so sold, assigned or ordered paid exceeds the amount of the consideration actually paid shall, for the purposes of regulation under this chapter, be deemed interest or charges on the loan from the date of the payment to the date the compensation is payable. Such a transaction is subject to the provisions of this chapter.

While Petitioner argues that time paper was not covered under this chapter, NRS 675.330 appears to specifically include the time-price differential stated in NRS 675.330 as "interest or charges on the loan from the date of the payment to the date the compensation is payable." As such, in transactions where the purchase of goods is financed and secured through the goods being sold is subject to provisions of NRS Chapter 675.

CONCLUSION

Based upon the foregoing, it is the opinion of the Financial Institutions Division, State of Nevada Department of Business and Industry, that NRS Chapter 675 was created to regulate the business of lending in this state. While the statutes provide for specific exemptions, there are no exclusions for financing the sale of goods.

Sincerely,

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



GEORGE E. BURNS,
Commissioner