

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

**NAC 604A WORKSHOP**

**October 10, 2012**

**Minutes**

A public hearing set forth by the Commissioner of the Financial Institutions Division regarding the proposed changes to regulations for Chapter 604A of the Nevada Administrative Code (NAC) in conjunction with Nevada Revised Statutes (NRS) 604A was held on October 10, 2012 at the Grant Sawyer Building 555 E. Washington Ave., Room 4412, Las Vegas, NV 89101 with video conference at Legislative Counsel Bureau 401 S. Carson St., Room 2135, Carson City, NV 89701.

Financial Institutions Division staff in attendance:

**Las Vegas:**

Commissioner: George E. Burns  
Deputy Commissioner: Carla C. Kolebuck  
Acting Supervisory Examiner: Matt O'Brien  
Division Counsel: Sr. Deputy A.G.: David Pope  
Division Counsel: Deputy A.G.: Daniel Edihara  
Associate Examiner: Christopher Hui  
Associate Examiner: Felix Luna  
Associate Examiner: Harveen Sekhon

**Carson City:**

Certified Public Accountant: Christopher Schneider  
Supervisory Examiner: Doug Liveringhouse  
Supervisory Examiner: Monica Villines

**1) Call to Order**

Deputy Commissioner Carla Kolebuck commenced the workshop of Chapter 604A of the Nevada Administration Code (NAC) on October 10, 2012 at 10:03 am referencing the agenda and proposed regulations for consideration at the hearing.

**2) Public Comment**

No public comment was received.

**3) Possible Action Regarding Ability to Repay**

3-A-1

Deputy Commissioner Carla Kolebuck stated the agenda and the proposed regulation referenced as Exhibit A which defines the “ability to repay” under NRS 604A.450 to include any renewal and repayment periods submitted by interested members of the industry.

3-A-2

Acting Supervisory Examiner Matt O’Brien read the proposed regulation Exhibit A.

3-A-3

No public comment was received.

3-B-1

Deputy Commissioner Carla Kolebuck stated the agenda and the proposed regulation referenced as Exhibit B defining “ability to repay” submitted by the Division.

3-B-2

Acting Supervisory Examiner Matt O’Brien read the proposed regulation Exhibit B.

3-B-3

Deputy Commissioner Carla Kolebuck introduced examples prepared by the Division to illustrate the proposed definition of “ability to repay” in the context of a 30-day loan and a 210-day loan to be shown on the projector screen, with hard copies distributed to Workshop attendees.

3-B-3

Commissioner George Burns discussed the language being introduced in the proposed regulation defining ability to repay as standard underwriting concepts to ensure that the customer can afford to repay the loan that they are taking out from the lender; to ensure responsible lending; and to eliminate predatory lending as much as possible. The Commissioner then went over the examples illustrating application of the proposed definition shown on the projector screen and the handouts.

3-B-4

Public comment was given by Dan Wulz from Legal Aid Center of Southern Nevada. Mr. Wulz stated that they fully support the Division’s proposal in Exhibit B and its definition of ability to repay. He stated that a consumer must be judged on the ability to repay based on the original term of the loan, and not a longer period that includes renewal periods and repayment periods. Mr. Wulz stated that if the industry had requested the ability to repay to be considered over a 7 month period on a 30-day loan, then he would have no doubt that there would have been more negotiation as to whether permitting 6 additional periods of extension would be good policy. He

further stated that repayment plan periods should never be included in the ability to repay since that plans for a default which is not appropriate. It is difficult to believe that the legislature had any such intention regarding ability to repay in a title loan.

3-B-5

Former Assembly Speaker Barbara Buckley, author of the payday loan legislation and currently Executive Director of Legal Aid Center of Southern Nevada stated she is in support of Financial Institution Division's proposed regulation governing ability to repay. She indicated that the intent and policy of the legislation was to permit a short term high interest loan, but upon default, there would be a change in interest rate to prevent the "debt treadmill." Ms. Buckley further stated that allowing interest to accrue during a repayment plan as part of ability to repay would be contrary to legislative intent.

3-B-6

Robert Frimet from Advantage Check Cashing stated that as a lending industry, they should be able to collect interest upon default as permitted in mortgage lending. Mr. Frimet stated that the industry is there to serve as a viable business and serve the public. He further stated concerns about how to determine and satisfy requirements for "verifiable/stated expenses."

3-B-7

Commissioner George Burns stated the intent for the language is to allow as much flexibility as possible for the industry to conduct their business. As far as verifiable/stated expenses, the language is verifiable and/or stated since it is understood that not all expenses are verifiable. However, reasonable and prudent business practices should be followed, along with the customer's affidavit. The Commissioner further stated that the proposed language is not intended to overburden the licensee, but it is to ensure the customer can afford to pay back the loan and to promote good public policy and good business practices. He noted that it is anticipated that another workshop will be held before having a final product on these regulatory proposals.

3-B-8

Brian Schmidt with TMX Finance stated they do not support the Division's Exhibit B indicating that they had submitted a compromise proposal the previous week and wanted to ensure that the Division received it.

Deputy Commissioner Carla Kolebuck stated that the Division had received the proposal but not in time to incorporate it into the agenda.

Brian Schmidt then stated that they would like the Division to consider the extension and repayment periods within the ability to repay; he believes their practices are in full compliance with the statutes. He also stated that the detail concerning verified/stated expenses may not be a practical solution since many folks do not keep track of all expenses and are not verifiable. In addition, debts owed by customers may be paid by another individual. Mr. Schmidt stated that his "modified gross income" proposal incorporates a more practical approach to expenses that

could be deducted. He had an additional comment regarding the interpretation of NRS 604A.045 defining “default.” Mr. Schmidt stated that several things must occur for a default, requiring repayment plan periods, extensions and grace periods to be taken into consideration.

#### **4) Possible Action Regarding Grace Periods**

##### 4-A-1

Deputy Commissioner Carla Kolebuck stated the agenda and the proposed regulation referenced as Exhibit C submitted by interested members of the industry regarding accrual of contract interest during a grace period.

##### 4-A-2

Acting Supervisory Examiner Matt O’Brien read the proposed regulation Exhibit C.

##### 4-A-3

No public comment was received.

##### 4-B-1

Deputy Commissioner Carla Kolebuck stated the agenda and the proposed regulation Exhibit D regarding accrual of contract interest during a grace period submitted by the Division.

##### 4-B-2

Acting Supervisory Examiner Matt O’Brien read the proposed regulation Exhibit D.

##### 4-B-3

Deputy Commissioner Carla Kolebuck stated the proposed regulatory language submitted in Exhibit D was due to concerns raised by members of the title loan industry regarding an installment loan scenario where late paying borrowers end up paying less interest over time than on time borrowers due to contract rate of interest ceasing to accrue after a default. It was stated that the Division acknowledges some ambiguity exists in the statutes, and that a possible interpretation would permit the contract rate of interest to be charged during a grace period so long as it is not considered “additional interest or fees” on the loan. The Division drafted this proposal in an attempt to address this concern and to expand its coverage to include other 604A lenders, not just title lenders.

##### 4-B-4

John McCloskey from Select Management Resources had questions on how the proposed regulation Exhibit D would affect a 30-day loan or a 210-day loan and when interest would still accrue.

Deputy Commissioner Carla Kolebuck stated that the proposed language does not affect single payment loans; it would only affect loans that involve multiple payments provided that a grace period during the loan term is incorporated in the loan agreement.

4-B-5

Dan Wulz of Legal Aid Center of Southern Nevada stated that they fully support the Division's submission of Exhibit D and that it is in accordance with 604A.210 and 604A.070 concerning what can be charged during a grace period. He further stated "grace period" means any period of deferment offered gratuitously by a licensee to a customer, and that gratuitously means without charge and there can be no accrual of the contract rate during any grace period.

4-B-6

Former Assembly Speaker Barbara Buckley, author of the payday loan legislation currently Executive Director of Legal Aid Center of Southern Nevada stated she agrees with Mr. Wulz's statement of the legislative intent on grace period. She indicated that some lenders wanted to work with customers to ensure that payments were received upon a default and to work something out in the contracts. The idea of grace period was intended as a period of grace, not as an opportunity to charge more fees. With that, she supports the Division's proposed regulation.

#### **5) Possible Action Regarding Interest that May be Collected During a Repayment Plan.**

5-A-1

Deputy Commissioner Carla Kolebuck stated the agenda and the proposed regulation referenced as Exhibit E submitted by interested members of the industry concerning accrual of interest during a repayment plan.

5-A-2

Acting Supervisory Examiner Matt O'Brien read the proposed regulation Exhibit E.

5-A-3

No public comment was received.

5-B-1

Deputy Commissioner Carla Kolebuck stated the agenda and the proposed regulation referenced as Exhibit F defining the amount of interest that may be collected during a repayment plan.

5-B-2

Acting Supervisory Examiner Matt O'Brien read the proposed regulation Exhibit F.

#### 5-C-1

Deputy Commissioner Carla Kolebuck stated the proposed regulatory language is intended to clarify and incorporate into regulation the Division's Declaratory Order and Advisory Opinion regarding interest that can be collected during a repayment plan period. Then she gave a synopsis of the examples that would be illustrated involving a 30-day loan and a 210-day loan.

#### 5-C-2

Acting Supervisory Examiner Matt O'Brien went over the examples on the projector screen and in handouts to Workshop attendees illustrating the Division's proposal of what can or cannot be collected during a repayment plan.

#### 5-C-3

Deputy Commissioner Carla Kolebuck added that under the proposed regulation, a lender may recover the total amount of unpaid interest under the repayment plan, provided that the plan is structured to not exceed the APR of the original agreement.

#### 5-C-4

Dan Wulz of Legal Aid Center of Southern Nevada stated that they fully support the Division's submission of Exhibit F, concerning what can be collected during a repayment plan. He understands that it is in accordance with the Division's 2009 advisory opinion and that fully explains the Division's rationale which is fully supported by the law. Mr. Wulz further stated that the principle matter as evidenced by the statutory scheme is getting someone off the "debt treadmill" and allowing accrual of contract interest during a repayment plan does not accomplish this.

#### 5-C-5

Former Assembly Speaker Barbara Buckley, author of the payday loan legislation and currently Executive Director of Legal Aid Center of Southern Nevada stated the whole idea behind the repayment plan was to get the customer off the "debt treadmill", to take the principal and the interest that accrued over a short period of time and come up with a way to allow them to repay the funds. Allowing interest to accrue at the original loan rate during a repayment plan means that the consumer would not be able to make the terms of the repayment plan. Accrual of contract interest during a repayment plan vitiates the rationale for a repayment plan, since after a default, interest drops to prime plus 10%. Ms. Buckley further stated that she fully supports the Division's proposed regulation which meets and serves the legislative intent.

#### 5-C-6

Jonathan Patterson of Cash Plus had questions on the examples given concerning NSF fees and if such fees could be recovered on repayment plan without lengthening the term.

Acting Supervisory Examiner Matt O'Brien stated that the fee can be collected in a repayment plan under the condition that APR does not exceed the original contract rate.

## **6) Possible Action Regarding the Proposed Regulations LCB File No. R130-08**

6-A-1

Deputy Commissioner Carla Kolebuck introduces the next agenda item regarding LCB File No. R130-08.

6-A-2

Acting Supervisory Examiner Matt O'Brien read section 1.

6-A-3

No public comment was received.

6-B-1

Acting Supervisory Examiner Matt O'Brien read section 2.

6-B-2

Jacqueline Bryant Rombardo with Holland and Hart representing Dollar Loan Center LLC asked the Division to consider providing the licensee with notice and the opportunity to demonstrate that the interest of the public does not outweigh that of the licensee if the Commissioner determines to disclose confidential information.

Deputy Commissioner Carla Kolebuck stated an example would be if the information requested is the subject of a subpoena, the Division would be required to provide the information, or if there was a purchaser of the business, it might be outweigh the licensee's interest in non-disclosure.

Ms. Rombardo questioned whether the applicant or licensee may be able to demonstrate that their interest might outweigh the public's interest in disclosure.

Commissioner George Burns made a statement regarding Chapter 604A, indicating that currently 604A licensees have absolutely no confidentiality of their information. The Division is seeking to bring to 604A licensees similar provisions concerning confidentiality that are provided to other types of licensees and to bring uniformity in those regulations for all licensees so all are treated in an equitable manner.

Ms. Rombardo stated she also has written comments that she is submitting.

6-B-3

Former Assembly Speaker Barbara Buckley questioned why the Division would keep reports of examination confidential.

Commissioner George Burns stated that maintaining the confidentiality of the report, also maintains the integrity of the examination process. It is far more productive that the licensee understands that the findings remain confidential for their diligent correction. When that confidentiality cannot be ensured, every finding the Division finds may bring litigation and it also brings resistance instead of cooperation. It is a much more conducive process if the licensee understands that confidentiality exists for them to rectify those matters that the Division has found. If the findings or conclusions involve an egregious violation of law, then the Division may issue disciplinary action such as a Cease and Desist Order, issue fines or 233B hearings. Licensees would not be able to get away with violations that are severe.

Former Assembly Speaker Barbara Buckley stated she would like the Commissioner to consider that when there are findings that might not bring disciplinary action but are also not corrected by the licensee, to allow such information to be given to the public in order to allow consumers to research and make resourceful decisions.

6-C-1

Acting Supervisory Examiner Matt O'Brien read section 3.

6-C-2

No public comment was received.

6-D-1

Acting Supervisory Examiner Matt O'Brien read section 4.

6-D-2

No public comment was received.

6-E-1

Acting Supervisory Examiner Matt O'Brien stated that the Division is hereby withdrawing the proposed language of section 5.

6-E-2

Commissioner George Burns stated the Division proposes deletion of this section clarifying certain requirements for deferred deposit and high interest loans made pursuant to NRS 604A.480 since these matters are the subject of a pending Attorney General's Opinion.

6-E-3

No public comment was received.

6-F-1

Acting Supervisory Examiner Matt O'Brien read section 6.

6-F-2

No public comment was received.

6-G-1

Acting Supervisory Examiner Matt O'Brien read section 7.

6-G-2

No public comment was received.

6-H-1

Acting Supervisory Examiner Matt O'Brien read section 8.

6-H-2

No public comment was received.

6-I-1

Acting Supervisory Examiner Matt O'Brien read section 9.

6-I-2

No public comment was received.

6-J-1

Acting Supervisory Examiner Matt O'Brien read section 10.

6-J-2

No public comment was received.

6-K-1

Acting Supervisory Examiner Matt O'Brien read section 11.

6-K-2

No public comment was received.

6-L-1

Acting Supervisory Examiner Matt O'Brien read section 12.

6-L-2

No public comment was received.

6-M-1

Acting Supervisory Examiner Matt O'Brien read section 13.

6-M-2

No public comment was received.

6-N-1

Acting Supervisory Examiner Matt O'Brien read section 14.

6-N-2

No public comment was received.

6-O-1

Acting Supervisory Examiner Matt O'Brien read section 15.

6-O-2

No public comment was received.

6-P-1

Acting Supervisory Examiner Matt O'Brien stated that the Division is withdrawing the proposed changes to Subsections 1 through 5 of Section 16 relating to NAC 604A.090. He then read Section 16.

6-P-2

Commissioner George Burns stated that the Division proposes the deletion of amendments to Subsections 1-5 of Section 16 that proposed increasing fees for examinations, license applications, renewals and license reinstatement due to current economic conditions.

6-P-3

Robert Frimet from Advantage Check Cashing stated he would like the Division to consider performing examinations after notice to the licensee rather than surprise examinations without notice due to overburdening the licensee.

6-P-4

Jacqueline Bryant Rombardo with Holland and Hart representing Dollar Loan Center LLC had questions with subsections 7 and 8. She asked how the CPA assessment is applied, on a per licensee or per branch basis.

Commissioner George Burns stated that the statute providing for the CPA assessment allows the Division to charge \$300 per licensee; however the Division has only been charging the main branch of the office the amount needed to fund the operations of the CPA and that the assessment has been far below the \$300 amount allowed.

Jacqueline Bryant Rombardo with Holland and Hart questioned section 8, regarding attorney general assessment asking how that assessment is determined.

Commissioner George Burns stated that the AG assessment is charged per location in order to spread out the cost over a greater number. He indicated that the most recent AG assessment was a 38 percent reduction from the previous year, and was also due in part to the increase of licensees the Division currently regulates. Licensees each paid 1/1000<sup>th</sup> of the total assessment, or .001%.

Jacqueline Bryant Rombardo with Holland and Hart questioned if the AG fee is once a year and fluctuated based on the costs associated with the assessment.

Commissioner George Burns stated that is correct.

6-Q-1

Acting Supervisory Examiner Matt O'Brien read section 17.

6-Q-2

No public comment was received.

6-R-1

Acting Supervisory Examiner Matt O'Brien read section 18.

6-R-2

No public comment was received.

6-S-1

Acting Supervisory Examiner Matt O'Brien read section 18.

6-S-2

No public comment was received.

6-T-1

Acting Supervisory Examiner Matt O'Brien read section 19.

6-T-2

No public comment was received.

6-U-1

Acting Supervisory Examiner Matt O'Brien read section 20 subsections 1-3, then he stated subsection 4 relating to NRS 604A.425 is being withdrawn.

6-U-2

Commissioner George Burns stated the Division proposes deletion of subsection 4 clarifying the amounts to be included in the calculation of a deferred deposit loan for purposes of the limitation imposed under NRS 604A.425 because the 1<sup>st</sup> Judicial Court of Nevada has ruled on the matter, and it is currently on appeal to the Nevada Supreme Court.

6-U-3

No public comment was received.

6-V-1

Acting Supervisory Examiner Matt O'Brien stated the proposed changes set forth in section 21 relating to NAC 604A.220 is being withdrawn by the Division.

6-V-2

Commissioner George Burns stated the Division proposes the deletion of section 21 clarifying the prohibition of accepting a check as security for a high-interest loan since it is unnecessary and duplicative.

6-V-3

No public comment was received.

6-W-1

Acting Supervisory Examiner Matt O'Brien stated the Division is withdrawing the proposed changes to NAC 604A.230 listed in Section 22.

6-W-2

Commissioner George Burns stated the Division proposes the deletion of Section 22 restricting loans made to repeat borrowers, internet lending and the imposition of additional collection fees since it appears that these matters appear to have been rectified in the industry in a way that is acceptable to the Division.

6-W-3

No public comment was received.

6-X-1

Deputy Commissioner Carla Kolebuck stated that the Commissioner will hear comments and take possible action regarding whether NAC 604A.220 should be deleted in its entirety. The Division proposes the deletion in its entirety of NAC 604A.220 since it is unnecessary and duplicative of NRS 604A.435.

6-X-2

Acting Supervisory Examiner Matt O'Brien read NAC 604A.220.

6-X-3

No public comment was received.

#### **7) Additional Public Comment**

Alfredo Alonso with Lewis and Roca stated they plan to submit comments on behalf of CFSA and others in the next few days and look forward to working on the proposed regulations.

#### **8) Adjournment**

Meeting adjourned on October 10, 2012 at 11:45 am.