



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

Guidance Reference: FID AB163-03152019

Issued: March 15, 2019

Summary: In 2017, Assembly Bill No. 163 (AB163) was adopted, amending Chapter 604A of the Nevada Revised Statutes (NRS). The Financial Institutions Division (FID) received several requests for clarification on specific sections of AB163. To assist its licensees with understanding the requirements of AB163, FID is issuing the below guidance on those specific inquiries.

Statutes and laws. At the state level, “statutes” and “laws” are interchangeable terms that refer to legislation after it has been passed by both houses of the Nevada legislature and signed into law by the Governor.

Regulations and rules. Nevada regulations refer to rules and administrative codes issued by State of Nevada agencies. Although regulations are not laws, they have the force and effect of law since they are adopted under the authority granted by the Nevada Legislature.

Administrative Guidance. Unlike a statute or regulation, administrative guidance does not have the force and effect of law, and the agencies do not take enforcement actions based on administrative guidance. Rather, the guidance outlines the agencies expectations and articulates the agencies general views regarding appropriate practices for a given subject area.

New language: ***bolded italics***. Omitted language: ~~omitted material~~

Section 1. Chapter 604A of NRS is hereby amended by adding thereto the provisions set forth as sections 1.3 and 1.17 of this act 2 to 13, inclusive, of this regulation.

Sec. 1.3 – NRS 604A.5011, NRS 604A.5038, and NRS 604A.5065

1. A licensee shall not make a loan pursuant to this chapter unless the licensee determines pursuant to subsection 2 that the customer has the ability to repay the loan and that the loan complies with the provisions of NRS 604A.5017, 604A.5045, 604A.5076 or subsection 2 of NRS 604A.5029, 604A.5057, as applicable.

2. For the purposes of subsection 1, a customer has the ability to repay a loan if the customer has a reasonable ability to repay the loan, as determined by the licensee after considering, to the extent available, the following underwriting factors:

(a) The current or reasonably expected income of the customer;

(b) The current employment status of the customer based on evidence including, without limitation, a pay stub or bank deposit;

(c) The credit history of the customer;

(d) The amount due under the original term of the loan, the monthly payment on the loan, if the loan is an installment loan, or the potential repayment plan if the customer defaults on the loan; and

(e) Other evidence, including, without limitation, bank statements, electronic bank statements and written representations to the licensee.

3. For the purposes of subsection 1, a licensee shall not consider the ability of any person other than the customer to repay the loan.

The licensee must reasonably determine the customer will have the ability to repay the full amount of the loan when due, or if applicable, make a payment on the loan when due and consider the customer's net disposable income.

- “Full amount of loan” includes any and all principal, interest, fees and charges which the customer must repay subject to all statutory requirements and legal contractual stipulations.
- “When due” is considered as the date, based upon the payment schedule, subject to all statutory requirements and legal contractual stipulations, that the customer pays the full amount of the loan and extinguishes the debt, or if applicable, pays the full installment amount.
- “Net disposable income” is the verifiable gross income minus (i) any and all deductions from income; and (ii) all verifiable and/or stated expense obligations including, but not limited to, rent or mortgage payments, utilities, groceries, transportation, fuel, and any other debt payments.
- “Extent Available” is considered to be if a document exists, it is presumed to be readily available or easily obtainable in a reasonable amount of time from the customer prior to making the loan.
- The licensee shall consider the customer's credit history in determining the customer's ability to repay the loan by requesting a soft credit inquiry through one of the three nationwide major consumer reporting agencies and considering the loan payment history with the licensee.
- If a licensee verifies a borrower's income by an electronic bank statement, or any other permitted electronic document, the licensee must retain the evidence as a digital or paper copy. The information provided to a licensee must be safeguarded in accordance with Gramm Leach Bliley Act and Chapter 603A of the NRS.
- The licensee must retain, for the statutory and regulatory timeframe, all documents that were considered in determining the ability to repay including, but not limited to, the method used by the licensee to calculate the customer's net disposable income.
- A licensee who makes title loans shall obtain, in addition to documentation required in Sec 1.3, an affidavit signed by the customer which states that the customer has provided true and correct information concerning the customer's income, obligations, employment and ownership of the vehicle, and the customer has the ability to repay the title loan.

Sec. 3.5. NRS 604A.0703 is hereby amended to read as follows:

1. “High-interest loan” means a loan made to a customer pursuant to a loan agreement which, under its original terms, charges an annual percentage rate of more than 40 percent.
2. The term includes, without limitation, any single-payment loan, installment loan, ~~or~~ open-ended loan *or contract for the lease of an animal for a purpose other than a business, commercial or agricultural purpose* which, under ~~its~~ the original terms ~~of~~ of the loan or contract, charges an annual percentage rate of more than 40 percent.
3. The term does not include:
 - (a) A deferred deposit loan;

- (b) A refund anticipation loan; or
- (c) A title loan.

NRS 604A.5048 prohibits a licensee from accepting collateral as security for a high-interest loan. A licensee who enters into a contract for the lease of an animal, shall not:

- Accept the animal for collateral as security for the lease agreement.
- Repossess or rehome the animal.

Sec. 5. NRS 604A.405 is hereby amended to read as follows:

1. A licensee shall post in a conspicuous place in every location at which the licensee conducts business under his or her license:

(a) A notice that states the fees the licensee charges for providing check-cashing services, deferred deposit loan services, high-interest loan services or title loan services.

(b) A notice that states that if the customer defaults on a loan, the licensee must offer a repayment plan to the customer before the licensee commences any civil action or process of alternative dispute resolution or repossesses a vehicle.

(c) A notice that states a toll-free telephone number to the Office of the Commissioner to handle concerns or complaints of customers.

(d) A notice that states the process for filing a complaint with the Commissioner.

↳ The Commissioner shall adopt regulations prescribing the form and size of the notices required by this subsection.

2. If a licensee offers loans to customers at a kiosk, through the Internet, through any telephone, facsimile machine or other telecommunication device or through any other machine, network, system, device or means, except for an automated loan machine prohibited by NRS 604A.400, the licensee shall, as appropriate to the location or method for making the loan, post in a conspicuous place where customers will see it before they enter into a loan, or disclose in an open and obvious manner to customers before they enter into a loan, a notice that states:

(a) The types of loans the licensee offers and the fees he or she charges for making each type of loan; and

(b) A list of the states where the licensee is licensed or authorized to conduct business from outside this State with customers located in this State.

3. A licensee who provides check-cashing services shall give written notice to each customer of the fees he or she charges for cashing checks. The customer must sign the notice before the licensee provides the check-cashing service.

The notice required by paragraph (b) of subsection 1 of NRS 604A.405 must be in substantially the following form:

NOTICE OF RIGHT TO ENTER INTO A REPAYMENT PLAN

If you default on a loan, the licensee must offer you repayment plan in compliance with NRS 604A.5027, NRS 604A.5055 or NRS 604A.5083 before the licensee commences any civil action or process of alternative dispute resolution or repossesses a vehicle.

- If printed, the notice must be in boldface type. Information that must be printed in all upper case letters must be printed in at least 18-point type. All other information must be printed in at least 16-point type.
- If handwritten or displayed digitally or by other electronic means, the notice must be in characters that are equivalent in intensity, legibility and size to the characters required for printed notice.
- A licensee who uses a form or standard loan agreement written in a language other than English should also post this notice in that language. The notice must be translated by an interpreter who is certified by the Court Administrator in accordance with NRS 1.510, and comply with NAC 604A.160.

The notice required by paragraph (d) of subsection 1 of NRS 604A.405 must be in substantially the following form:

**NOTICE OF RIGHT TO FILE A WRITTEN COMPLAINT TO THE
COMMISSIONER OF THE FINANCIAL INSTITUTIONS DIVISION**

You may file a written complaint with the Commissioner of the Financial Institutions Division by submitting a signed complaint form to the Office of the Commissioner. The required complaint form can be found on the homepage of the Financial Institution’s website: www.fid.nv.gov, or you may request a complaint form via telephone by calling the toll-free telephone number: 1 (866) 858-8951, or in-person: 3300 W. Sahara, Suite 250, Las Vegas, Nevada 89102

- If printed, the notice must be in boldface type. Information that must be printed in all upper case letters must be printed in at least 18-point type. All other information must be printed in at least 16-point type.

- If handwritten or displayed digitally or by other electronic means, the notice must be in characters that are equivalent in intensity, legibility and size to the characters required for printed notice.
- A licensee who uses a form or standard loan agreement written in a language other than English should also post this notice in that language. The notice must be translated by an interpreter who is certified by the Court Administrator in accordance with NRS 1.510, and comply with NAC 604A.160.

Sec. 7 . NRS 604A.5076 is hereby amended to read as follows:

A licensee who makes title loans shall not:

1. Make a title loan that exceeds the fair market value of the vehicle securing the title loan.
2. *Make a title loan to a customer secured by a vehicle which is not legally owned by the customer.*
3. Make a title loan without ~~[regard to the ability of the customer seeking the title loan to repay the title loan, including the customer's current and expected income, obligations and employment.~~
—3.] determining that the customer has the ability to repay the title loan, as required by section 1.3 of this act. In complying with this subsection, the licensee shall not consider the income of any person who is not a legal owner of the vehicle securing the title loan but may consider a customer's community property and the income of any other customers who consent to the loan pursuant to subsection 5 and enter into a loan agreement with the licensee.
4. Make a title loan without requiring the customer to sign an affidavit which states that:
 - (a) The customer has provided the licensee with true and correct information concerning the customer's income, obligations, employment and ownership of the vehicle; and
 - (b) The customer has the ability to repay the title loan.
5. *Make a title loan secured by a vehicle with multiple legal owners without the consent of each owner.*

For the purpose of NRS 604A.5076(3), the licensee may consider a customer's community property and the income of a co-borrower who consents to the loan by entering into the loan agreement.

For the purpose of NRS 604A.5076(5), the licensee must obtain written consent from each legal owner of the vehicle securing the title loan. The legal co-owner must be available in-person with a valid government-issued photo ID in order to sign a consent form. The consent form must advise the legal co-owner that if the borrower defaults on the loan and does not enter into a repayment plan, the licensee may seek repossession and sale of the vehicle. It should further disclose that the co-owner has no personal liability to make payments under the title loan agreement and is not personally obligated to repay the title loan, unless the co-owner signed the title loan agreement as the co-borrower.