

STATE OF NEVADA



STEVE SISOLAK
Governor

DEPARTMENT OF BUSINESS AND INDUSTRY

TERRY REYNOLDS
Director

FINANCIAL INSTITUTIONS DIVISION

SANDY O'LAUGHLIN
Commissioner

**Minutes of Second Workshop to Solicit Comments
on Proposed Regulations S.B.432- NRS/NAC 604C**

Date: Wednesday, October 21, 2020

Time: 10:00 a.m.

Location: Webex meeting- videoconference and teleconference

1. Call to Order:

The second workshop to consider S.B.432 was called to order Wednesday, October 21, 2020 at 10:02 a.m. The purpose of the workshop was to receive input with respect to the proposed regulation pertaining to Chapter 604C of the Nevada Administrative Code ("NAC"), as provided by Senate Bill No. 432, requiring the Commissioner of Financial Institutions license and regulate consumer litigation funding in Nevada to customers in this State; and providing other matters properly relating thereto, as described by the Notice of Workshop dated and posted on October 2, 2020.

Financial Institutions Division Staff Present at the Hearing:

Commissioner Sandy O'Laughlin
Deputy Commissioner Mary Young
Deputy Attorney General Vivienne Rakowsky
Examiner Jennifer Ramsay

2. Comments by General Public:

There were four (4) commenters during this public comment period. A total of six (6) written comments were received, of which four (4) of the below commenters submitted written comments.

The comments made during the workshop included, but are not limited to, as summarized below:

- Adam Smith, Money First Lending. Mr. Smith pointed out an error in section 20. It states NRS 659.098 but should state NRS 658.098. He also stated that in section 21, the request of a customer's name for reporting purposes be removed and instead have a customer identification number that the licensee can reference for the division. Concerned to have the names of all its customer's in a central depository. Mr. Smith submitted written comments for the record.
- Eric Schuller, Alliance for Responsible Consumer Legal Funding. Concerned that the document preparation fee cannot be charged per company for one legal claim if a consumer should need to access funds from multiple companies. Requesting section 4 have a longer timeframe than one business day. Requests section 5 be stricken, it would be too hard to have all parties sign at the same time. Request section 7 to be stricken or remove the term "unethical" because it will place time constraints on the company's ability to advertise. Mr. Schuller also requests the names of the customers be removed from the reporting requirement in section 21. Mr. Schuller submitted written comments for the record.
- Kim Halvorsen, Oasis Financial. Ms. Halvorson would like to echo what Mr. Schuller stated regarding striking section 5. She is also concerned with section 9 which she believes suggest that a company cannot communicate with a customer prior to funding of a transaction. She would also request that the complaints referred in section 23 be sent electronically in addition to U.S.P.S and would like longer than 10 business days to reply. Ms. Halvorsen submitted written comments for the record.
- Heather O'Neill, Preferred Capital. She would also request section 5 to be stricken. Ms. O'Neill submitted written comment for the record.

To review and/or listen to comments in its entirety, please refer to the attached written comments and/or the audio recording below. The recording can also be found at: www.fid.nv.gov



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3. Presentation and Discussion of Proposed Regulation:

Since there were significant changes made to the proposed regulation from the workshop held in February 2020, the full regulation was read into the record.

Regulation:

Section 1. Chapter 604C of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 25, inclusive, of this regulation.

Sec. 2. As used in NRS 604C.360 and 604C.380, the Commissioner interprets "promptly" to mean that the delivery of the contract or the forwarding of the notice of the cancellation, as applicable, must occur not later than 1 business day after the contract is executed or cancelled, as applicable.

Sec. 3. 1. A consumer may seek more than one consumer litigation funding contract per legal claim. The total amount of consumer litigation funding provided by a consumer litigation company

to a consumer must not exceed \$500,000 per legal claim, regardless of the number of consumer litigation funding contracts taken on the legal claim.

2. If the consumer seeks more than one consumer litigation funding contract: (a) With a different consumer litigation funding company than the company from which he or she obtained the original consumer litigation funding contract, the different consumer litigation funding company must comply with paragraph (e) of subsection 1 of NRS 604C.300; and

(b) The consumer litigation funding company with which the consumer seeks additional consumer litigation funding contracts must make the disclosure pursuant to paragraph (f) of subsection 1 of NRS 604C.350.

3. Pursuant to NRS 604C.110:

(a) A consumer may pay only one document preparation fee per legal claim, regardless of the number of consumer litigation funding contracts taken on the legal claim; and

(b) A consumer litigation funding company shall not charge a document preparation fee if the consumer has previously paid a document preparation fee with regard to the legal claim. 4.

Pursuant to NRS 604C.310, the amount to be paid to a company under a consumer litigation funding contract must not exceed the funded amount plus charges not to exceed a rate of 40 percent annually. If, pursuant to subsection 1 of NRS 604C.360, the payment schedule in a consumer litigation funding contract contains multiple 180-day periods in 1 year, the charges for the consumer litigation funding contract for each 180-day period must not exceed a cumulative rate of 40 percent annually.

Sec. 4. If a consumer mails a notice of cancellation to the consumer litigation funding company pursuant to subparagraph (2) of paragraph (c) of subsection 1 of NRS 604C.350 and subsection 2 of NRS 604C.360 or if a consumer notifies the consumer litigation funding company as described in subsection 3 of NRS 604C.360, the consumer litigation funding company shall forward such notices to the attorney or law firm retained by the consumer in the legal claim of the consumer not later than 1 business day after receipt of the notice.

Sec. 5. The acknowledgement described in paragraph (g) of subsection 3 of NRS 604C.370 must be signed by the consumer, the attorney retained by the consumer in the legal claim and the consumer litigation funding company at the same time.

Sec. 6. As set forth in a consumer litigation funding contract pursuant to subsection 4 of NRS 604C.360, a consumer litigation funding company shall not collect:

1. Anything if there are no proceeds from the legal claim; and

2. Any amount above the available proceeds from the legal claim if the funded amount and agreed upon charges exceed the proceeds from the legal claim.

Sec. 7. 1. Intentionally advertising materially false or misleading information pursuant to paragraph (c) of subsection 1 of NRS 604C.300 includes, without limitation, advertising by use of false or deceptive statements, results or testimonials.

2. A consumer litigation funding company shall not advertise in any manner that: (a) May tend to confuse the identity of the company with any other consumer litigation funding company; or

(b) States or implies that a consumer litigation funding contract of a prospective consumer with another company will be paid off or that the charges or fees for the consumer litigation funding contract will be reduced if the consumer litigation funding contract is transferred to the consumer litigation funding company which is advertising.

3. No unethical advertising by consumer litigation funding companies will be permitted and the Commissioner reserves the right to require all consumer litigation funding companies to submit

proposed advertising for approval before its dissemination through the press, or by radio, television or the Internet.

Sec. 8. 1. To file a consumer litigation funding contract with the Commissioner pursuant to subsection 5 of NRS 604C.300, a consumer litigation funding company must submit the contract to the Commissioner for approval:

- (a) When the applicant submits his or her application to obtain a license to engage in the business of a consumer litigation funding company;
- (b) When a consumer litigation funding company makes any changes to the consumer litigation funding contract;
- (c) If requested by the Commissioner or his or her authorized representative when making an examination pursuant to NRS 604C.610;
- (d) If requested by the Commissioner when the licensee submits the report required by NRS 604C. 640; and
- (e) At the request of the Commissioner or his or her authorized representative.

2. The consumer litigation funding contract filed pursuant to subsection 1 is a template and must comply with NRS 604C.300 to 604C.400, inclusive, except that the provisions concerning the details of individual consumer litigation funding transactions, including, without limitation, signatures, initials and the amount of the consumer litigation funding transaction, may be left blank. Any required details left blank must be filled in when the consumer litigation funding contract is used to establish a consumer litigation funding transaction.

3. A consumer litigation funding contract filed:

- (a) Pursuant to paragraph (a) of subsection 1 is deemed approved by the Commissioner when the Commissioner issues and delivers a license to the applicant pursuant to NRS 604C.560;
- (b) Pursuant to paragraph (b) of subsection 1 is deemed approved by the Commissioner 30 days after the consumer litigation funding company files the changes to the consumer litigation funding contract with the Commissioner unless the Commissioner notifies the consumer litigation funding company in writing that the changes are not approved or need to be amended; and (c) Pursuant to paragraph (c), (d) or (e) of subsection 1 is deemed approved by the Commissioner upon the filing of the consumer litigation funding contract with the Commissioner. Such approval may be revoked by the Commissioner not later than 30 days after:
 - (1) Such filing if the consumer litigation funding contract fails to conform to the requirements of subsection 2; or
 - (2) An investigation or examination made at the office or place of business of the consumer litigation funding company if the consumer litigation funding company fails to comply with the provisions of this chapter and chapter 604C of NRS.

Sec. 9. Except as otherwise provided in paragraph (c) of subsection 1 of NRS 604C.350 and subsection 2 of NRS 604C.360, once a consumer litigation funding contract is entered into between a consumer and a consumer litigation funding company, the consumer litigation funding company may communicate with the consumer through electronic mail if the consumer consents in writing in the consumer litigation funding contract to such communication through electronic mail.

Sec. 10. 1. A licensee that uses a form or a consumer litigation funding contract written in a language other than English shall have the document translated into English and shall maintain a copy of the document with its English translation.

2. A document translated pursuant to this section must be:

- (a) Translated by an interpreter who is:

- (1) Certified by the Court Administrator in accordance with the provisions of NRS 1.510 and regulations adopted pursuant thereto; or
 - (2) Approved in writing by the Division of Financial Institutions of the Department of Business and Industry.
- (b) Accompanied by a certificate issued by the interpreter. The certificate must:
- (1) Declare that the translated document is a true and complete translation of the document written in a language other than English;
 - (2) Identify the document written in a language other than English and its English translation;
 - (3) Include the date of the translation; and
 - (4) Include the name, address, telephone number and electronic mail address, if any, of the interpreter.
3. The Commissioner may require a licensee to provide a translation of any nonstandard document that is written in a language other than English.
4. The Commissioner may assess a licensee for all costs incurred by the Commissioner to verify the licensee's compliance with this section.

Sec. 11. Each licensee who operates an office or other place of business within this State that is licensed pursuant to chapter 604C of NRS shall make available at the office or place of business within this State the books, accounts, papers, records and files of the office or place of business to the Commissioner or a representative of the Commissioner.

- Sec. 12. 1. An application submitted to the Commissioner pursuant to NRS 604C.500 must be accompanied by:
- (a) A nonrefundable fee of \$1,000 for the application and survey;
 - (b) A nonrefundable investigation fee of \$50 for investigating each individual owner, partner, officer, director and manager or member who acts in a managerial capacity of the business entity applying to be a licensee; and
 - (c) An initial licensing fee of \$1,000.
2. If the Commissioner considers an application withdrawn pursuant to subsection 3 of NRS 604C.500 and the initial licensing fee set forth in paragraph (c) of subsection 1 has been submitted to the Commissioner or if the Commissioner does not grant an application pursuant to NRS 604C.560, the Commissioner shall refund the fee paid pursuant to paragraph (c) of subsection 1 to the applicant not later than 30 days after the withdrawal or denial.

Sec. 13. Upon entering an order granting an application pursuant to NRS 604C.560, the Commissioner will issue and deliver a license to the licensee for each location proposed pursuant to paragraph (d) of subsection 1 of NRS 604C.500. The licensee shall prominently display the license at each location where the licensee proposed to do business pursuant to paragraph (d) of subsection 1 of NRS 604C.500.

- Sec. 14. 1. A licensee who wishes to change the name of the licensee or change an officer, director or manager or member who acts in a managerial capacity of the licensee must, not later than 10 days before making the change, give written notice of the proposed change to the Commissioner.
2. Upon receipt of the proposed change pursuant to subsection 1, the Commissioner will provide written approval of the change and the date of the approval.

Sec. 15. 1. A partner, officer, director, manager or member who acts in a managerial capacity and registered agent of the business entity, if applicable, must satisfy the requirements of NRS

604C.510 at the time a business entity applies for a license pursuant to paragraph (b) of subsection 1 of NRS 604C.500.

2. If the provisions of subsection 1 are not satisfied, the Commissioner will not issue a license to the business entity pursuant to NRS 604C.560.

Sec. 16. A person shall not engage in the business of a consumer litigation funding company unless:

1. The person has been issued a license pursuant to NRS 604C.560; and
2. The location of each office of the business complies with the provisions of any applicable planning and zoning ordinances.

Sec. 17. 1. A license issued pursuant to NRS 604C.560 expires January 31 of the year following its issuance and expires on January 31 of each year thereafter.

2. On or before January 31 of each year, a licensee may renew his or her license upon the approval of the Commissioner if:

(a) The licensee files an application showing that the licensee conforms with the requirements for an initial application as set forth in this chapter and chapter 604C of NRS; and

(b) The licensee pays a fee of \$1,000 for the renewal of the license.

3. If a licensee fails to renew his or her license pursuant to subsection 2 on or before January 31 of each year, the Commissioner will deem the license to be suspended. A licensee shall not engage in the business of a consumer litigation funding company if his or her license is suspended.

4. The Commissioner may reinstate a license that is suspended pursuant to subsection 3 if the licensee whose license is suspended, within 10 business days after his or her license is suspended:

(a) Notifies the Commissioner of his or her intent to reinstate the license; (b) Submits an application pursuant to paragraph (a) of subsection 2; and

(c) Submits the fee pursuant to paragraph (b) of subsection 2.

5. If a licensee fails to reinstate his or her license pursuant to subsection 4, the Commissioner will deem the license to be revoked. A licensee whose license is revoked shall apply for and obtain a new license pursuant to this chapter and chapter 604C of NRS before he or she may engage in the business of a consumer litigation funding company.

6. It is the responsibility of the licensee to renew a license issued pursuant to this chapter and chapter 604C of NRS on or before January 31 of each year. A lack of notice from the Commissioner to any person concerning the expiration of a license or the need to renew a license is not justification or excuse for failure to renew a license on or before January 31 and does not constitute grounds for a waiver of any of the requirements of this chapter or chapter 604C of NRS.

Sec. 18. 1. The Commissioner will charge and collect a fee of \$75 per hour from each licensee for any supervision, examination, audit, investigation or hearing conducted pursuant to chapter 604C of NRS.

2. The Commissioner will bill each licensee upon completion of the activity for the fee established in subsection 1. The fee must be paid within 30 days after the date on which the bill is received. In addition to any other fee allowed by this chapter or chapter 604C of NRS, and except as otherwise provided in this subsection, any payment received after that date must include a penalty of 10 percent of the fee plus an additional 1 percent of the fee for each month, or portion of a month, that the fee is not paid. The Commissioner may waive the penalty for good cause.

3. Failure of a licensee to pay the fee required in subsection 1 as a provided in this section constitutes grounds for revocation of his or her license.

Sec. 19. 1. Except as otherwise provided in NAC 658.030, each licensee shall pay to the Division of Financial Institutions of the Department of Business and Industry an annual assessment of \$300

to cover costs related to the employment of a certified public accountant and the performance of audits and examinations conducted by the Division.

2. The Division shall bill each licensee for the assessment, which must be paid within 30 days after the date on which the bill is received.

3. In addition to any other fee allowed by this chapter or chapter 604C of NRS, a charge of 10 percent of the assessment will be imposed on any licensee whose assessment is received by the Division after the date on which the assessment is due.

Sec. 20. 1. Each licensee shall pay to the Division of Financial Institutions of the Department of Business and Industry the assessment to cover the costs of legal services provided by the Attorney General to the Commissioner and the Division which is imposed pursuant to NRS 659.098.

2. The Division shall bill each licensee for the assessment described in subsection 1. The licensee shall pay the assessment within 30 days after the date on which the licensee receives the bill.

3. A charge of 10 percent of the assessment described in subsection 1 will be imposed on any licensee if payment for an assessment described in subsection 1 is received by the Division after the date on which the assessment is due.

4. Failure to pay the assessment described in subsection 1 constitutes grounds for the revocation of the license of the licensee.

Sec. 21. The report due on or before January 31 pursuant to NRS 604C.640 must:

1. Be filed:

(a) With the Commissioner with the application for renewal required pursuant to section 17 of this regulation; and

(b) On a form prescribed by the Commissioner; and

2. In addition to the number of consumer litigation funding transactions in which the company engaged in this State for the immediately preceding year pursuant to paragraph (a) of subsection 1 of NRS 604C.640, contain for each consumer litigation funding transaction:

(a) The name of the consumer;

(b) The funded amount for each consumer; and

(c) A detail of all charges and the document preparation fee charged to each consumer.

Sec. 22. Except as otherwise provided in subsection 3 of NRS 604C.640, an application for a license and financials records, if any, submitted by an applicant pursuant to the provisions of this chapter and chapter 604C of NRS, financial records or other documents submitted by a licensee pursuant to an audit, examination or investigation conducted by the Commissioner and any report of examination made by the Commissioner are confidential and may be disclosed only to an authorized employee of the Division of Financial Institutions of the Department of Business and Industry or an agency of this State, any other state or Federal Government that is investigating the activities of an applicant or a licensee or a court upon a court order.

Sec. 23. 1. Upon the receipt of a complaint filed pursuant to NRS 604C.820, the Commissioner shall send a copy of the complaint to the licensee named in the complaint.

2. The Commissioner may require the accused licensee or authorized representative of the licensee to file a verified answer to the complaint within 10 business days after sending the copy of the complaint pursuant to subsection 1. The Commissioner may, for good cause shown, extend the time to file a verified answer for a period not to exceed 60 days.

3. If the licensee, or an authorized representative of the licensee, fails to file a verified answer within the time prescribed by the Commissioner pursuant to subsection 2, the licensee is deemed to have admitted to the allegations contained in the complaint.

4. Subject to the discretion of the Commissioner and except as otherwise provided in section 22 of this regulation, a complaint filed with the Commissioner, any documents filed with the complaint and any report or information resulting from an investigation of a complaint are confidential.

Sec. 24. 1. For the purpose of NRS 604C.820, a licensee shall post the notice set forth in subsection 2. The following conditions apply to the notice:

(a) If printed, the notice shall be printed in at least 16-point bold type or font with all upper-case letters being printed in at least 18-point type or font.

(b) If handwritten or displayed digitally or by other electronic means, the notice must be in characters that are equivalent in legibility and size to the type and font required for a printed notice.

(c) If the licensee uses a language other than English for the consumer litigation funding contract, the notice must be posted in English and also in the language other than English.

2. The following notice shall be posted on the Internet website of the licensee, at the physical location where the licensee conducts business and within the body of the consumer litigation funding contract. The notice shall be in substantially the following form:

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

You may file a written complaint with the Commissioner of Financial Institutions by submitting a signed complaint to the Office of the Commissioner. The form required to file a complaint can be found on the following Internet website for Financial

Institutions: www.fid.nv.gov. You can also request the form by calling the following toll-free telephone number: 1 (866) 858-8951.

Sec. 25. 1. If the Commissioner finds that a licensee's records are not maintained pursuant to NRS 604C.600 to 604C.640, inclusive, the Commissioner may require the licensee to deliver an audited financial statement prepared from his or her records by a certified public accountant who holds a certificate to engage in the practice of public accounting in this State.

2. The statement required pursuant to subsection 1 must be submitted within 60 days after the Commissioner requests the statement. The Commissioner may grant a reasonable extension for the submission if the extension is requested before the statement is due.

4. Public Comments:

There were two (2) commenters during this final public comment period. A total of six (6) written comments were received, of which the below two (2) commenters submitted written comments.

Final comments made during the workshop included, but are not limited to, as summarized below:

- Eric Schuller, Alliance for Responsible Consumer Legal Funding. Section 19 of S.B. 432 regarding the 180-day payment schedule was not addressed in the rules. Requesting FID allow companies allow 180-day or 6 month increments with FID's approval. Mr. Schuler submitted written comment for the record.
- Casey Stiteler, Lewis Roca Rothgerber Christie LLP on behalf of American Legal Finance Association. He would like the term "unethical" to be removed from section 7 because it's not necessary. The Commissioner reserves the right to review marketing prior to dissemination but not referenced in S.B.432. Request this be removed. Regarding section 14 and 15, requests that FID define the term "managerial". Section 8.1 (b) regarding any changes made to the contract requiring FID's prior approval be stricken or the term "material changes" added. Mr. Casey submitted written comments for the record.

To review and/or listen to comments in its entirety, please refer to the attached written comments and/or the audio recording above. The recording can also be found at: www.fid.nv.gov

5. Close Workshop (Adjournment):

The workshop pertaining to Senate Bill 432 and Chapter 604C of the Nevada Administrative Code was hereby closed and adjourned on October 21, 2020 at 10:49 a.m.



October 22, 2020

Via E-mail (fidmaster@fid.state.nv.us)
Nevada Financial Institutions Division

Re: Proposed regulations regarding consumer litigation funding

To Whom It May Concern:

We appreciate the Division working so hard on regulations regarding NRS 604C. We further understand this is a difficult and evolving process, and appreciate the Division's incorporation of comments following the last round of proposed regulations. Following the hearing on October 21, 2020, Money First has some additional comments and recommendations.

In Section 5, there is a requirement that the consumer, attorney, and funding company sign at the same time. Hearing the comments of other speakers, this may be construed as requiring signatures at exactly the same time. That would not be plausible as signatories are often in different locations, and health and pandemic restrictions often require injured people to remain separated from others. We would ask that this provision be removed, or if not, that we be given some understanding of why it was added so we can help craft a reasonable alternative that meets the Division's concerns and the public's preference of electronic signatures.

Section 9 states that companies can communicate with consumers electronically "once a consumer litigation funding contract is entered into." We would suggest allowing electronic communication at all stages. This is simply to conform to today's world where communication is commonly made through e-mail and text messaging.

Section 20 references NRS 659.098, which does not exist. Following the hearing we searched and found the reference should probably be to NRS 658.098.

Section 21 requires a report that identifies, among other things, the names of consumers. We would suggest an identifying number that could be matched with company files. We would be concerned about customer information residing in another location that was also tied to their names. While all parties would certainly do whatever they can to keep information confidential, each electronic transmission and storage of that information is an additional opportunity for bad actors to obtain it.

Section 22 explains that the Division can disclose confidential information to state and federal agencies. We would suggest adding the following sentence at the end to clarify those agencies must still keep the information confidential:



“All state and Federal governments, agencies, and employees shall keep these records, documents, and information confidential unless required to disclose the records, documents, and information pursuant to a law that supersedes this regulation.”

Again, we truly appreciate your assistance. If there is any way we can further assist the Division, please let us know.

Very truly yours,

MONEY FIRST LENDING

Adam D. Smith

TO: Nevada Department of Financial Institutions
Mary Young, Deputy Commissioner, FIDmaster@fid.state.nv.us



FROM: The Alliance for Responsible Consumer Legal Funding (ARC)

SUBJECT: Comments on Proposed Rules on SB 432 for Nevada Department of Financial Institutions
Hearing Date: October 21, 2020

The following comments and recommendations are done on behalf of all the members of ARC.

Any comments or clarification of the remarks should be directed to:

Eric Schuller
President
ARC
eschuller@arclegalfunding.org
815-341-9564 (cell)

Section	Comments	Recommendation
<p>Sec. 3.</p> <p><i>2. If the consumer seeks more than one consumer litigation funding contract:</i></p> <p><i>(a) With a different consumer litigation funding company than the company from which he or she</i></p>	<p>Does this mean that if a company buys out a funding from a previous company that did charge a doc prep fee, the second company cannot charge a doc prep fee?</p>	<p>Needs Clarification: It was ARC's understanding that the legislative intent of the statute was to allow the documentation preparation fee per company offering the product. By limiting it to a single document prep fee per legal claim, it will harm consumers in it will prevent or limit their ability to go to</p>

Section	Comments	Recommendation
<p><i>obtained the original consumer litigation funding contract, the different consumer litigation funding company must comply with paragraph (e) of subsection 1 of NRS 604C.300; and</i></p> <p><i>(b) The consumer litigation funding company with which the consumer seeks additional consumer litigation funding contracts must make the disclosure pursuant to paragraph (f) of subsection 1 of NRS 604C.350.</i></p> <p><i>3. Pursuant to NRS 604C.110:</i></p> <p><i>(a) A consumer may pay only one document preparation fee per legal claim, regardless of the number of consumer litigation funding contracts taken on the legal claim; and</i></p> <p><i>(b) A consumer litigation funding company shall not charge a document preparation fee if the consumer has previously paid a document preparation fee with regard to the legal claim.</i></p>		<p>a different company for additional funds or a lower rate.</p>

Section	Comments	Recommendation
<p>Sec. 4. If a consumer mails a notice of cancellation to the consumer litigation funding company pursuant to subparagraph (2) of paragraph (c) of subsection 1 of NRS 604C.350 and subsection 2 of NRS 604C.360 or if a consumer notifies the consumer litigation funding company as described in subsection 3 of NRS 604C.360, the consumer litigation funding company shall forward such notices to the attorney or law firm retained by the consumer in the legal claim of the consumer not later than 1 business day after receipt of the notice.</p>	<p>The one-day notice presents significant operational challenges for companies to comply with this provision, especially those that are working remotely.</p>	<p>Recommend that companies are allowed the same timeframe to notify the attorney of cancellation as the consumer did to cancel the funding with the funding company - i.e. five business days.</p>
<p>Sec. 5. The acknowledgement described in paragraph (g) of subsection 3 of NRS 604C.370 must be signed by the consumer, the attorney retained by the consumer in the legal claim and the consumer litigation funding company at the same time.</p>	<p>The document cannot be signed at the same time with all parties. Almost all the transactions are done remotely, and this would be impossible to accomplish.</p>	<p>Recommend the section be stricken.</p>
<p>Sec. 7. 3. No unethical advertising by consumer litigation funding companies will be permitted and the Commissioner reserves the right to require all consumer litigation funding companies to</p>	<p>This can prohibit companies from doing advertising spontaneously if they need to have it approved by the department.</p>	<p>Recommend the section be stricken as to the reservation by the department to require pre-approval of advertising but add the following: <i>“The Commissioner reserves the right to review all advertising at the time of audit.”</i></p>

Section	Comments	Recommendation
<p>submit proposed advertising for approval before its dissemination through the press, or by radio, television or the Internet.</p>		
<p>Sec. 9. Except as otherwise provided in paragraph (c) of subsection 1 of NRS 604C.350 and subsection 2 of NRS 604C.360, once a consumer litigation funding contract is entered into between a consumer and a consumer litigation funding company, the consumer litigation funding company may communicate with the consumer through electronic mail if the consumer consents in writing in the consumer litigation funding contract to such communication through electronic mail.</p>	<p>This suggests that companies cannot communicate with the consumer via email <i>prior to</i> execution of the contract, which presents an operational impossibility for companies. problematic.</p>	<p>Recommend this section be stricken, and the department authorize companies to communicate with consumers electronically to facilitate execution of the contract.</p>
<p>Sec. 11. Each licensee who operates an office or other place of business within this State that is licensed pursuant to chapter 604C of NRS shall make available at the office or place of business within this State the books, accounts, papers, records and files of the office or place of business to the Commissioner or a representative of the Commissioner.</p>	<p>Does this mean if the company is using a registered agent in the state that all records need to be at the registered agents' Nevada location?</p>	<p>Needs clarification as to the location of the records. If this is referring to the availability of records for purposes of an audit, ARC recommends that it be in-line with NRS 604C.630</p>

Section	Comments	Recommendation
<p>Sec. 20. 1. Each licensee shall pay to the Division of Financial Institutions of the Department of Business and Industry the assessment to cover the costs of legal services provided by the Attorney General to the Commissioner and the Division which is imposed pursuant to NRS 659.098.</p>	<p>The statute cited, NRS 659.098, was not found.</p>	<p>Recommend this section be stricken or corrected and detailed as to what is trying to be accomplished.</p>
<p>Sec. 21. The report due on or before January 31 pursuant to NRS 604C.640 must:</p> <p><i>1. Be filed:</i></p> <p><i>(a) With the Commissioner with the application for renewal required pursuant to section 17 of this regulation; and</i></p> <p><i>(b) On a form prescribed by the Commissioner; and</i></p> <p><i>2. In addition to the number of consumer litigation funding transactions in which the company engaged in this State for the immediately preceding year pursuant to paragraph (a) of subsection 1 of</i></p>	<p>Is this information private? This could make consumers reluctant to get fundings if they know the public and opposition to their legal claim can know if they received funds.</p>	<p>Recommendation is to remove consumers name or replace with identifiable customer number.</p>

Section	Comments	Recommendation
<p><i>NRS 604C.640, contain for each consumer litigation funding transaction:</i></p> <p><i>(a) The name of the consumer;</i></p> <p><i>(b) The funded amount for each consumer; and</i></p> <p><i>(c) A detail of all charges and the document preparation fee charged to each consumer.</i></p>		
<p>Sec. 23. 1. Upon the receipt of a complaint filed pursuant to NRS 604C.820, the Commissioner shall send a copy of the complaint to the licensee named in the complaint.</p> <p>2. <i>The Commissioner may require the accused licensee or authorized representative of the licensee to file a verified answer to the complaint within 10 business days after sending the copy of the complaint pursuant to subsection 1. The Commissioner may, for good cause shown, extend the time to file a verified answer for a period not to exceed 60 days.</i></p>	<p>Can this be sent via electronic and USPS? If there is a delay in receipt of the complaint, via USPS the company may not have the full 10 days to respond to the complaint.</p>	<p>Recommend this should be sent via email and USPS to ensure that the complaint is received by the company. In addition, the company should have 21 days to respond to any complaint to be consistent with Rule 12 of the Nevada Rules of Civil Procedure that allows for a 21 day responds to complaints.</p>

Section	Comments	Recommendation
<p>ADDITIONAL COMMENT Sec 19 (d) <i>A payment schedule to include the funded amount, charges and fees, listing all dates and the amount due at the end of each 180-day period from the funding date, until the date the maximum amount is due to the company by the consumer to satisfy the amount due under the consumer litigation funding contract.</i></p>	<p>The intention was to give the consumer a breakdown of fees charged in twice a year or in 6-month increments. This is difficult to do as 180 + 180 is less than one year.</p>	<p>Recommendation is to allow the company to post a payment schedule in either 180-day increments or 6-month increments, as long as the department approves the contract prior to it being used.</p>

**Comments and Recommendations for the Nevada Department of Financial Institutions re Proposed Rules for SB 432
Oasis Financial - October 28, 2020**

Topic	Proposed Rule	Comment & Recommendation
Consumer acknowledgement signed by all parties	Sec. 5. The acknowledgement described in paragraph (g) of subsection 3 of NRS 604C.370 must be signed by the consumer, the attorney retained by the consumer in the legal claim and the consumer litigation funding company at the same time.	<p>Comment: The plain language of this rule requires the acknowledgement be signed by three parties at the same time – the consumer, the consumer’s attorney, and the funding company. As a practical matter, this creates significant operational challenges as all three parties are rarely, if ever, are physically in the same location when this acknowledgement is signed. This is even more so with COVID restrictions and protocols.</p> <p>Recommendation: The Department approve this acknowledgement be signed in three electronic documents, one signed by the attorney, one signed by the consumer, and one signed by the funding company.</p>
Electronic communication with the consumer prior to execution of the funding contract	Sec. 9. Except as otherwise provided in paragraph (c) of subsection 1 of NRS 604C.350 and subsection 2 of NRS 604C.360, once a consumer litigation funding contract is entered into between a consumer and a consumer litigation funding company, the consumer litigation funding company may communicate with the consumer through electronic mail if the consumer consents in writing in the consumer litigation funding contract to	<p>Comment: As drafted, a consumer must provide the funding company with written consent prior to the funding company being able to communicate with the consumer electronically regarding a funding. Put another way, if written consent is required to communicate with consumers via email, using email prior to obtaining their written consent to facilitate execution of the contract could be considered a violation of this rule. This presents significant operational challenges</p>

**Comments and Recommendations for the Nevada Department of Financial Institutions re Proposed Rules for SB 432
Oasis Financial - October 28, 2020**

Topic	Proposed Rule	Comment & Recommendation
	<p>such communication through electronic mail.</p>	<p>for funding companies who are reliant on electronic communications to conduct business.</p> <p>Recommendation: The Department permit funding companies to obtain oral consent to communicate with consumers electronically. To the extent the Department deems written consent mandatory, allow funding companies to obtain oral consent to facilitate execution of the contract, and require written consent for future electronic communications, which can be memorialized in the contract.</p>
<p>Annual reporting inclusive of client identifying information</p>	<p>Sec. 21. The report due on or before January 31 pursuant to NRS 604C.640 must:</p> <p><i>1.</i> Be filed:</p> <p><i>(a)</i> With the Commissioner with the application for renewal required pursuant to section 17 of this regulation; and</p> <p><i>(b)</i> On a form prescribed by the Commissioner; and</p> <p><i>2.</i> In addition to the number of consumer litigation funding</p>	<p>Comment: Maintaining the privacy of the clients and their agreements is of critical importance to Oasis. Disclosure of client names into a report that could be publicly available violates the client privacy and confidentiality we strive to maintain.</p> <p>Recommendation: The Department permit funding companies to submit identifying numbers instead of consumer names for purposes of this report.</p>

**Comments and Recommendations for the Nevada Department of Financial Institutions re Proposed Rules for SB 432
Oasis Financial - October 28, 2020**

Topic	Proposed Rule	Comment & Recommendation
	<p>transactions in which the company engaged in this State for the immediately preceding year pursuant to paragraph (a) of subsection 1 of NRS 604C.640, contain for each consumer litigation funding transaction:</p> <ul style="list-style-type: none"> (a) The name of the consumer; (b) The funded amount for each consumer; and (c) A detail of all charges and the document preparation fee charged to each consumer. 	
<p>Delivery of complaint and deadline to file an answer to complaint</p>	<p>Sec. 23. 1. Upon the receipt of a complaint filed pursuant to NRS 604C.820, the Commissioner shall send a copy of the complaint to the licensee named in the complaint.</p> <p>2. The Commissioner may require the accused licensee or authorized representative of the licensee to file a verified answer to the complaint within 10 business days after sending the copy of the complaint pursuant to subsection 1. The Commissioner may, for good cause shown, extend the time to file a verified answer for a period not to</p>	<p>Comment: Delay in USPS delivery is commonplace, which encroaches on the ten-day window for funding companies to answer the complaint. Further, ten days is insufficient time to investigate the allegations set forth in the complaint and prepare a sufficient answer. The harsh penalty imposed for failing to answer the complaint within ten days, i.e. the allegations are deemed admitted, buttresses the need for electronic delivery of the complaint, and an extension of time for funding companies to answer.</p>

**Comments and Recommendations for the Nevada Department of Financial Institutions re Proposed Rules for SB 432
Oasis Financial - October 28, 2020**

Topic	Proposed Rule	Comment & Recommendation
	exceed 60 days.	Recommendation: The Department authorize electronic delivery of the complaint and extend the time to answer the complaint to 21 days after receipt of the complaint consistent with Rule 12 of the Nevada Rules of Civil Procedure.
Payment Schedule	<p>Sec 19 (d) A payment schedule to include the funded amount, charges and fees, listing all dates and the amount due at the end of each 180-day period from the funding date, until the date the maximum amount is due to the company by the consumer to satisfy the amount due under the consumer litigation funding contract.</p>	<p>Comment: NRS 604C.360 and Sec. 19(d) of the proposed rules provide for a payback schedule disclosing certain information as applicable “at the end of each 180-day period from the funding date.” By mandating disclosures in periods of 180 days, NRS 604C.360 and Sec. 19(d) are irreconcilably inconsistent with NRS 604C.310, which provides for charges “not to exceed a rate of 40 percent <i>annually</i>” (emphasis added). Annual charges, as contemplated by NRS 604C.310, run for periods of 365 or 366 days, and thus they cannot accurately be disclosed in periods of 180 days. This leaves licensees unable to comply with both NRS 604C.360 and NRS 604C.310.</p> <p>Recommendation: Oasis respectfully requests the Department resolve this statutory inconsistency by permitting disclosures in periods of six months. It is our view that annual charges are best disclosed in periods of six months, as disclosures of annual rates in periods of</p>

**Comments and Recommendations for the Nevada Department of Financial Institutions re Proposed Rules for SB 432
Oasis Financial - October 28, 2020**

Topic	Proposed Rule	Comment & Recommendation
		180 days are confusing for the consumer and leave the licensee in a position of uncertainty.



October 20, 2020

Via Email—fidmaster@fid.state.nv.us

Mary Young, Deputy Commissioner
State of Nevada, Financial Institutions Division
3300 W. Sahara Avenue
Suite 250
Las Vegas, Nevada 89102

Re: LCB File No. R036-20 Proposed Regulations Pertaining to Senate Bill 432
Consumer Litigation Funding Company

Dear Deputy Commissioner Young:

The American Property Casualty Insurance Association (APCIA) is pleased to submit these comments on the proposed regulations of consumer litigation funding companies. APCIA is the primary national trade association for home, auto, and business insurers. APCIA promotes and protects the viability of private competition for the benefit of consumers and insurers, with a legacy dating back 150 years. APCIA members represent all sizes, structures, and regions—protecting families, communities, and businesses in the U.S. and across the globe.

APCIA and our members are familiar with litigation financing and its growing influence on litigation nationwide. Nevada should be commended for its efforts to adopt appropriate regulation and transparency for this sector given that it is in essence betting on the outcome of litigation which, of course, impacts litigants, consumers, businesses, insurers, the courts and regulators.

The Unknowns and Examples of Abuse In Consumer Litigation Financing

Examples of abusive litigation financing abound. Articles on the subject can be found in the press.¹ Courts have found that such arrangements can give the financier undue influence, or “control over litigation strategy or settlement decisions.”²

Some litigation funders even target consumers who are already entitled to fixed compensation after litigation concludes and a settlement is reached. The federal Consumer Financial Protection Bureau (CFPB) and the New York Attorney General exposed this practice in litigation related to the September 11 Victim Compensation Fund and NFL Concussion Litigation Class Settlement. The CFPB cited examples of effective interest rates exceeding 250%. In one instance, a severely disabled 9/11 first responder received an advance of \$35,000 but was required to pay a financier \$63,636—or \$28,636 over the advance—when he received his compensation check only 3 months later.

In Australia, where litigation financing got its start, new regulations governing litigation financiers became effective in August 2020.³ Moreover, an Australian parliamentary investigation of litigation funding has been undertaken by the Joint Committee on Corporations and Financial Services, which is due to report by 7 December 2020.⁴

In the United States, what is best known about litigation financing is how little is actually known about it. Largely unregulated nationwide and using private, foreign and even foreign sovereign investment, litigation financing is a murky endeavor. Nonetheless, we have gleaned that

¹ B. Appelbaum, *Lawsuit Loans Add New Risk for the Injured*, New York Times, January 16, 2011 at <https://www.nytimes.com/2011/01/17/business/17lawsuit.html>; M. Goldstein, J. Silver-Greenberg, *Hedge Funds Look to Profit From Personal-Injury Suits*, New York Times, June 25, 2018 at <https://www.nytimes.com/2018/06/25/business/hedge-funds-mass-torts-litigation-finance.html>; P. Sullivan, *Pandemic Is Expected to Bring More Lawsuits, and More Backers*, New York Times, June 19, 2020 at <https://www.nytimes.com/2020/06/19/your-money/lawsuits-litigation-finance-coronavirus.html?smid=em-share>; J. Gershman, *Lawsuit Funding, Long Hidden in the Shadows, Faces Calls for More Sunlight*, Wall Street Journal, March 21, 2018 at <https://www.wsj.com/articles/lawsuit-funding-long-hidden-in-the-shadows-faces-calls-for-more-sunlight-1521633600>; S. Randazzo, *Lawmakers Taking Closer Look at Litigation Funding*, Wall Street Journal, August 27, 2015 at <https://www.wsj.com/articles/BL-LB-51976>; A. Uribe, L. Scism, *Companies Are Paying a Lot More to Insure Their Directors and Officers*, Wall Street Journal, June 21, 2020 at <https://www.wsj.com/articles/companies-are-paying-a-lot-more-to-insure-their-directors-and-officers-11592731801>.

² *In re Nat'l Prescription Opiate Litig.*, No. 1:17-MD-2804, 2018 WL 2127807, *1 (N.D. Ohio May 7, 2018).

³ Litigation funders to be regulated under the Corporations Act, Department of the Treasury at <https://ministers.treasury.gov.au/ministers/josh-frydenberg-2018/media-releases/litigation-funders-be-regulated-under-corporations>

⁴ *Id.*

litigation financing is growing,⁵ there are examples of abuse, and at least one foreign sovereign wealth fund has invested heavily in the practice.⁶

The Draft Regulations Are Supported in Law and The Division's Broad Grant of Oversight

Given these concerns, these regulations are appropriate and well-crafted. Moreover, the regulations fully conform with your broad authority under the statute, and particularly under sections 17, 20.1 26.1(c), 27.1, 36 and 38 of SB 432 in that:

- they are “regulations for the administration and enforcement of this chapter, in addition to and not inconsistent with this chapter.” See Section 17
- they address the many consumer protections within SB432, including prohibitions on self-dealing, steering, false advertising, and more. See Section 20.1
- they address needed information on the participants within a license applicant and “such other information, as the Commissioner determines necessary” on financial background, responsibilities and activities. See Section 26.1
- they address the applicant’s honesty, trustworthiness, integrity, competency to transact the business and more. See Section 27.1
- they address the annual reporting requirement. See Section 38.1

These regulations are defensible and appropriate, and legitimate litigation financiers should have no problems complying with them and the statute.

Several Items Should Be Added to the Annual Report and Application Processes

We would strongly suggest that certain elements provided for in SB 432 similarly be accounted for in the proofs necessary under Section 27.1, and in the annual report under Section 38 of the Bill. For example, a variety of activities are prohibited under Section 20.1, and yet there is no means to confirm compliance. We suggest that the various elements of 20.1 be included in the annual report provided under Section 38.

Likewise, Section 29 of SB 342 provides that the receipt of certain court orders will result in the suspension of litigation financiers. Similarly, section 22 voids financing contracts if a court determines a financier has willfully committed a deceptive and abusive violation of the chapter. On these bases, as well as your broad statutory authority to obtain such information, it certainly seems appropriate that the annual report under section 38 should include such orders, and indeed, judgments rendered against litigation financiers or situations in which litigation

⁵ According to Bloomberg and the New York Times, an estimated \$9-10 billion has been committed to litigation financing in the United States including a commitment of \$500 million to one financier from Harvard University. M. Goldstein, J. Silver-Greenberg, *Hedge Funds Look to Profit From Personal-Injury Suits*, New York Times, June 25, 2018 at <https://www.nytimes.com/2018/06/25/business/hedge-funds-mass-torts-litigation-finance.html>; M. McDonald, "Harvard Invests in Litigation Strategy That Posted Big Gains," *Bloomberg.com*, June 26, 2019.

⁶ Neil Rose, *Burford unveils \$1bn investment from sovereign wealth fund*, *Litigation Futures* (December 1, 2018) at <https://www.litigationfutures.com/news/burford-unveils-1bn-investment-from-sovereign-wealth-fund>.

financiers have obtained judgments against consumers of their products. In the absence of their inclusion, how can the Division be sure to be informed about such rulings?

Moreover, as foreign sovereign investment in litigation financing may constitute inappropriate and dangerous interference with our civil justice system, we believe the identity of all foreign⁷ citizen and foreign sovereign investment should be disclosed in all applications, as well as in the annual report, to comport with the overall remedial and protective nature of SB 432. We believe that must include the investing entities or individuals and the amount invested on a transactional and net basis. Our society simply has no chance of understanding, let alone managing, potential foreign influence in our civil justice system if we do not measure its participation.

Thank you for considering our comments. We believe SB 432 and the draft regulations are an excellent set of protections against consumer abuse, and t we also believe a bit more is necessary to fully accomplish the transparency and protection at the heart of the law. We applaud the Division for its efforts and are happy to discuss these comments further should you wish.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Mark Sektnan', with a long horizontal flourish extending to the right.

Mark Sektnan
Vice President

American Property Casualty Insurance Association

⁷ Foreign governments can and often do act through foreign private citizens.

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October 21, 2020

VIA E-MAIL

Mary Young
Financial Institutions Division
3300 W. Sahara Avenue, Suite 250
Las Vegas, Nevada 89102
mmyoung@fid.state.nv.us

FIDmaster@fid.state.nv.us

RE: Comments Regarding Notice of Second Workshop to Solicit Comments on Proposed Regulations Pertaining to Senate Bill 432 (S.B. 432) – Consumer Litigation Funding Company

Dear Ms. Young:

Our firm represents the American Legal Finance Association, which represents the leading consumer legal funding companies in the United States, some of which are seeking and some of which have received licensure with the Financial Institutions Division (the “FID”) as consumer litigation funding companies under Senate Bill 432, enrolled as NRS Chapter 604C. Below is a summary of concerns and suggestions related to the proposed regulations provided for the Second Workshop on October 21, 2020, pertaining to NRS Chapter 604C (the “Proposed Regulations”).

1. Section 7: Section 7(3) states that “[n]o unethical advertising by consumer litigation funding companies will be permitted and the Commissioner reserves the right to require all consumer litigation funding companies to submit proposed advertising for approval before its dissemination through press, or by radio, television, or the Internet.” NRS 604C.300(c) states that a consumer litigation funding company shall not “[i]ntentionally advertise materially false or misleading information regarding the products or services of the consumer litigation funding company” and Section 7(2) of the Proposed Regulations generally clarifies the language in NRS 604C.300(c). However, Section 7(3) of the Proposed Regulations inserts the undefined term “unethical” which creates ambiguity and unnecessarily broadens the scope of NRS 604C.300(c). More importantly, the term “unethical” is used in the context of the Commissioner’s reservation of the right to require litigation funding companies to submit proposed advertising for approval *before dissemination* – without providing any terms, requirements, schedules, or timeframes for which review and approval will take place. Section 7(3) of the Proposed Regulations creates unnecessary ambiguity and grants to the Commissioner unfettered authority to regulate commercial speech without cause or notice, which is not granted in the text of NRS Chapter 604C. Notwithstanding the foregoing, the combination of the undefined term

“unethical” and the reservation of authority to the Commissioner to pre-approve advertising creates significant concerns regarding First Amendment considerations for commercial speech.

We would propose the deletion of Section 7(3) of the Proposed Regulations in order to avoid creating unnecessary ambiguity, granting authority not contemplated in the text of NRS Chapter 604C, and creating potential First Amendment concerns.

2. Section 8: Section 8 of the Proposed Regulations requires a consumer litigation funding company to submit any form of consumer litigation funding contract to the Commissioner for approval (1) when an application for licensure is submitted, (2) when any changes are made to the consumer litigation funding contract, (3) if requested by the Commissioner when making an examination pursuant to NRS 604C.610, and (4) if requested by the Commissioner when the licensee submits the annual report required under NRS 604C.640. In each instance, the Commissioner shall have thirty (30) days to review and approve the form of the consumer litigation funding contract.

Consumer Litigation Funding Companies regularly alter, amend and modify consumer litigation funding contracts based on market conditions and business considerations and must have the flexibility to make such modifications in order to provide services to consumers in a timely and efficient manner. Requiring consumer litigation funding companies to obtain approval from the Commissioner any time that “any changes” are made to a consumer litigation funding contract creates an unreasonable obstacle for consumer litigation funding companies to provide services.

We would proposed deleting Section 8(1)(b) in its entirety. Alternatively, we would propose that the language in Section 8(1)(b) be limited to those circumstances in which the material terms of a consumer litigation funding contract, which are regulated by NRS Chapter 604C, have been modified.

3. Section 14 and 15: Section 14 of the proposed regulations requires that the a consumer litigation funding company provide notice to the FID if it is going to change “an *officer or manager or member who acts in a managerial capacity* of the licensee” at least ten days prior to making such change. Similarly, Section 15 of the proposed regulations also requires any “*partner, officer, director, manager or member who acts in a managerial capacity*” to complete the licensing application process for a consumer litigation funding company. The language used in Sections 14 and 15 is inconsistent as to when notice and the application process is required. Additionally, the term “managerial capacity” is undefined, which creates ambiguity. Notably, “managerial capacity” is also undefined in NRS 604C.500.

We would propose limiting Sections 14 and 15 to “officers, directors, and members” for consistency. We would further propose that “managerial capacity” be defined as “having the authority to direct the management and business activities of the licensee” to provide clarity in the Proposed Regulations and NRS Chapter 604C.

Thank you for the opportunity to provide comments and suggestions regarding the Proposed Regulations. Please feel free to contact me should you have any questions or require any clarifications.

Sincerely,

Casey Stiteler

Casey J. Stiteler
Lewis Roca Rothgerber Christie LLP

CJS



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October 22, 2020

VIA EMAIL FIDmaster@fid.state.nv.us

Nevada Department of Financial Institutions
Attention: Mary Young, Deputy Commissioner

**Re: Comments on Proposed Rules on SB 432 for
Nevada Department of Financial Institutions
Hearing Date: October 21, 2020**

Dear Ms. Young:

Preferred Capital Funding – Nevada, LLC submits the attached comments and recommendations regarding the proposed rules.

Should you have any questions or need further clarification, please do not hesitate to contact me at 630/660-3845.

Sincerely,

Brian T. Garelli

Brian T. Garelli
President
brian@pfcash.com

Enclosure

Preferred Capital Funding - NV, LLC

Comments on Proposed Rules on SB 432 for Nevada Department of Financial Institutions

Section	Comments	Recommendation
<p>Sec. 5. The acknowledgment described in paragraph (g) of subsection 3 of NRS 604C.370 must be signed by the consumer, the attorney retained by the consumer in the legal claim and the consumer litigation funding company at the same time.</p>	<p>It is impossible for the document to be signed by all parties at the same time. Almost all transactions are done remotely and many use electronic signatures which prohibits the parties from signing simultaneously. Especially now in the COVID-era with many operations being done remotely, this is impossible to accomplish.</p>	<p>Recommend that this section be stricken.</p>
<p>Sec. 9. Except as otherwise provided in paragraph (c) of subsection 1 of NRS 604C.350 and subsection 2 of NRS 604C.360, once a consumer litigation funding contact is entered into between a consumer and a consumer litigation funding company, the consumer litigation funding company may communicate with consumer through electronic mail if he consumer consents in writing in the consumer litigation funding contract to such communication through electronic mail.</p>	<p>This section suggests that companies may not communicate with potential customers via email <i>prior to</i> them signing the funding agreement. This presents a huge problem for funding companies as many consumers prefer to communicate via email during all stages of the funding process, including before entering into the agreement.</p>	<p>Recommend that this section be stricken and that companies be authorized to communicate with consumers via electronic mail at all stages of the funding process.</p>