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George E. Burns, Commissioner
State of Nevada
Department of Business and Industry
Financial Institutions Division
2785 E. Desert Inn Rd., #180
Las Vegas, Nevada 89121

Dear Mr. Burns:

You have requested an opinion from the Office of the Attorney General regarding the interpretation and application of NRS 604A.480.

QUESTION

Is the prohibition against civil suits or alternative dispute resolution set forth in NRS 604A.480(2)(f) applicable to a new deferred deposit loan or high-interest loan made pursuant to NRS 604A.480(2) to pay the balance of an outstanding loan, or does it only limit actions to collect on the outstanding loan?

ANALYSIS

Nevada Revised Statutes Chapter 604A regulates short term lending in the State of Nevada. The chapter recognizes three forms of lending: deferred deposit loans, high-interest loans, and title loans.¹ A deferred deposit loan is a transaction in which the customer provides the licensee² with a check or authorization for electronic transfer of funds on a future date in exchange for immediate receipt of a lesser sum of money from

¹ For the purposes of this analysis, title loans are not relevant.

² "Licensee" means any person who has been issued one or more licenses to operate a check-cashing service, deferred deposit loan service, high-interest loan service or title loan service pursuant to the provisions of this chapter." NRS 604A.075.

the licensee. NRS 604A.050. A high-interest loan is a loan which has single or multiple installments and charges more than 40 percent in annual interest rate. NRS 604A.0703. The original loan term of a deferred deposit loan or high-interest loan usually does not exceed 35 days. NRS 604A.408(1). Further, the licensee cannot extend either type of loan contract beyond 90 days from the date of execution of the loan contract. NRS 604A.408(3).³ A high-interest loan may be made for a period of 90 days as long as it requires fully amortized installments, is not subject to extension, and does not contain a balloon payment. NRS 604A.408(2).

Nevada Revised Statutes 604A.480 is separated into two subsections and reads in full as follows:

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

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

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

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

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

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

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

³ "Notwithstanding the provisions of NRS 604A.480, a licensee shall not agree to establish or extend the period for the repayment, renewal, refinancing or consolidation of an outstanding deferred deposit loan or high-interest loan for a period that exceeds 90 days after the date of origination of the loan."

- (b) Performs a credit check of the customer with a major consumer reporting agency before making the loan;
- (c) Reports information relating to the loan experience of the customer to a major consumer reporting agency;
- (d) Gives the customer the right to rescind the new deferred deposit loan or high-interest loan within 5 days after the loan is made without charging the customer any fee for rescinding the loan;
- (e) Participates in good faith with a counseling agency that is:
 - (1) Accredited by the Council on Accreditation of Services for Families and Children, Inc., or its successor organization; and
 - (2) A member of the National Foundation for Credit Counseling, or its successor organization; and
- (f) Does not commence any civil action or process of alternative dispute resolution on a defaulted loan or any extension or repayment plan thereof.

NRS 604A.480 (emphasis added).

The first subsection establishes the rule that a licensee can only extend a deferred deposit loan or high-interest loan through the proceeds of a new⁴ deferred deposit loan or high-interest loan for an additional 60 days beyond the term of the original loan. NRS 604A.480(1). The limitation on the term of deferred deposit and high-interest loans thus protects customers from falling into a cycle of debt.

The second section establishes that the restrictions set forth in NRS 604A.480(1) do not apply if the licensee satisfies all of the applicable requirements. Among them, subsection 2(f) prohibits certain collection actions by a licensee. Specifically, it bars a licensee from commencing a civil action or process of alternative dispute resolution "on a defaulted loan or any extension or repayment plan thereof." NRS 604A.480(2)(f). The question that you ask is whether this language bars collection only of the outstanding loan; or, as well, the new loan used to pay the balance of the outstanding loan.

To begin the analysis, deference is given to an interpretation of the agency charged with administering a statute, in this case the Financial Institutions Division (Division). See *Pyramid Lake Paiute Tribe of Indians v. Washoe County*, 112 Nev. 743, 747-48, 918 P.2d 697, 463 (1996) ("An agency charged with the duty of administering

⁴ The term "new deferred deposit or high-interest loan" as used herein and in the statute means the source of proceeds for "the repayment, renewal, refinancing or consolidation of an outstanding loan" NRS 604A.480(1).

an act is impliedly clothed with power to construe it as a necessary precedent to administrative action. Further, great deference should be given to the [administrative] agency's interpretation when it is within the language of the statute") (internal citations and quotation marks omitted).

On December 10, 2009, the Division issued a Declaratory Order and Advisory Opinion Regarding Mandatory Disclosures for Loans Made Pursuant to NRS 604A.480 (Advisory Opinion). In it, the Division concluded that (1) 604A.480(2)(f) bars collection action on *any* loan, new or outstanding. Advisory Opinion at 7.

The Division's interpretation is reasonable. First, if a statute is clear and unambiguous, this court gives effect to the plain and ordinary meaning of the statute's language. . . ." *Western Sur. Co. v. ADCO Credit, Inc.*, 127 Nev. ___, ___, 251 P.3d 714, 716 (Adv. Op. 8, March 17, 2011). In this case, the statute provides that a licensee who utilizes the exception in section 2 may not commence a civil action or process of alternative dispute resolution "on a defaulted loan or any extension or repayment plan thereof." NRS 604A.480(2)(f). The statute does not confine the prohibition to the outstanding loan; it applies to "a defaulted loan or any extension or repayment plan thereof." The bar reasonably applies to either an outstanding loan or a new loan used to pay the balance on an outstanding loan. Therefore on its face the statute is clear and there is no occasion for statutory construction. "[W]here there is no ambiguity in a statute, there is no opportunity for judicial construction and the law must be followed regardless of result." *Krahn v. State, Dep't of Motor Vehicles and Pub. Safety*, 108 Nev. 1015, 1016, 842 P.2d 728, 729 (1992) (internal citations and quotation marks omitted). See also *Washoe County v. Baker*, 75 Nev. 335, 338, 340 P.2d 1003, 1004 (1953) ("[w]e shall not, then, permit a resort to legislative history for the purpose of rendering ambiguous that which otherwise appears to be both clear and reasonable").

Even if ambiguity did exist and construction were necessary, two canons of statutory construction would require the same result. First a statute is construed "in line with what reason and public policy would indicate the legislature intended." *Bacher v. State Eng'r*, 122 Nev. 1110, 1117, 146 P.3d 793, 798 (2006) (internal quotation marks omitted).

Originally enacted in 2005, one of the main goals of NRS Chapter 604A was to stop what was called the "debt treadmill." This problem occurs when a customer who is unable to repay the original loan either continues to make interest-only payments just to keep the loan current; or takes out another, larger loan to pay the principal and interest incurred from the first loan. The result is a cycle of debt in which the customer becomes trapped. See Hearing on A.B. 384 Before the Assembly Committee on Commerce and Labor, 2005 Leg., 73rd Sess. 46 (April 6, 2005).

Removing the ability to pursue civil action and alternative dispute resolution methods is reasonably related to the legitimate purpose of ensuring that licensees make

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loans in amounts and under terms the customer can repay. *Silver State Elec. Supply Co. v. State ex rel. Dep't of Taxation*, 123 Nev. 80, 84, 157 P.3d 710, 712 (2007) ("When a party contends that a statute violates its equal protection rights but does not allege the involvement of a suspect class or fundamental right, the statute is constitutional if the classification scheme created by that statute is rationally related to furthering a legitimate state interest").⁵


CONCLUSION

The prohibition against civil suits or alternative dispute resolution under NRS 604A.480(2)(f) is applicable to all loans made pursuant to NRS 604A.480(2). It applies to both an outstanding loan as well as a new loan the proceeds of which are used to extend the "repayment, renewal, refinancing or consolidation of an outstanding loan." NRS 604A.480(1). All loans made pursuant to this section must comply with all of the requirements under subsection (2), including waiving the ability to pursue civil action or alternative dispute resolution procedures if the customer defaults.

Sincerely,

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⁵ Cf. *Guralnick v. Sup. Ct. of New Jersey*, 747 F. Supp. 1109 (D.N.J., 1990) (compulsory attorney fee arbitration system does not unconstitutionally impair attorneys' contractual rights; impairment of attorney-client contract was not substantial. Further, such impairment was justified by legitimate state purpose of maintaining public confidence in judicial system. State action which substantially impairs contracts entered into by private parties is nevertheless constitutional if justified by significant and legitimate public purpose, based on reasonable conditions and of character appropriate to public purpose justifying its adoption) (relying on *Energy Reserves Grp, Inc. v. Kansas Power & Light Co.*, 459 U.S. 400 (1983) establishing three-part test requiring (1) a substantial impairment of the contractual relationship, (2) that is justified by a significant and legitimate public purpose, and (3) is based on "reasonable conditions and [is] of a character appropriate to the public purpose justifying [the legislation's] adoption." *Id.* at 411-12).