

STATE OF NEVADA



STEVE SISOLAK
Governor

DEPARTMENT OF BUSINESS AND INDUSTRY

TERRY REYNOLDS
Director

SANDY O'LAUGHLIN
Commissioner

FINANCIAL INSTITUTIONS DIVISION

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Advisory Opinion- NRS 604A-High-Interest Refinance under NRS 604A.5057(2)

The State of Nevada Financial Institutions Division (“NFID”) issues this advisory opinion concerning refinancing high-interest loans under Nevada Revised Statutes (“NRS”) Chapter 604A section 5057 subsection 2 (NRS 604A.5057(2)). NRS 604A and NAC 604A grants the authority to NFID to regulate lending activity such as high-interest loans. This advisory opinion is being issued due to numerous misinterpretations of law for refinancing high-interest loans underwritten under NRS 604A.5057(2).¹ This advisory opinion is limited to the loans specifically mentioned.

Issue Presented

Does NRS 604A allow a loan underwritten pursuant to NRS 604A.5057(2) to be refinanced?

Short Answer

No. NRS 604A.5057(2) loans are subject to each of the provisions in subsections (a) through (f). NRS 604A.5057(2)(a)(4) provides that such loans may not accrue interest after the maturity date. NRS 604A.5057(2)(f) provides that no civil action or alternative dispute resolution process may be used to enforce any default of such a loan. Based on the requirements for the loan under NRS 604A.5057(2) and the Legislative purpose for NRS 604A, NRS 604A.5057(2) loans may not be refinanced under NRS 604A.5057 or any other provision of NRS 604A.

The Law

NRS 604A.5057 Limitations on using proceeds of new deferred deposit loan or high-interest loan to pay balance of outstanding high-interest loan; exceptions.

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 high-interest loan by using the proceeds of a new deferred deposit loan or high-interest loan to pay the balance of the outstanding high-interest 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 high-interest loan or any extension of the outstanding high-interest 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 NRS 604A.5029 mirrors NRS 604A.5057 for deferred deposit loans and the same analysis applies.

- (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;
- (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.
- (Added to NRS by [2005, 1696](#); A [2007, 940](#)) — (Substituted in revision for part of NRS 604A.480)

Analysis

Legislative Background:

In 2005, the Nevada Legislature passed Assembly Bill 384 (“AB384”), a consumer protection law for short-term lending, creating a new chapter - NRS 604A. One of the primary drivers behind the law was to stop the “debt treadmill.”² This problem can occur when a customer continues to take out loans to pay the principal and interest incurred from a prior loan, because of the inability for the customer to pay the loan in full or a desire for additional funds.

NRS 604A.5057(2) was originally enacted in 2005 as part of AB384³ and was intended to accommodate a high-interest loan product existing at the time that had provisions to protect consumers. Additionally, in 2007, Assembly Bill 478 (“AB478”) tightened up loopholes and provided additional consumer protection. For example, the Bill replaced “short-term” loan with “high-interest” loan, revised the length of the term of certain loans, and added the term “new” in NRS 604A.5057(2).

NRS 604A.5057 Specifics:

NRS 604A.5057 sets forth the requirements for using a new high interest loan to pay off the balance of an outstanding loan. NRS 604A.5057(2) (“Subsection 2”) details very specific requirements for the loan that do not apply to other high-interest loans. In particular, Subsection 2 loans must be for a term of at least 150 days and charge less than 200% annual interest. Other high-interest loans may exceed 200% interest (NRS 604A.0703) but must not exceed 90 days. (NRS 604A.5037).

The interest for a Subsection 2 loan may not accrue after the maturity date in the loan agreement and the lender may not commence a civil action or any dispute resolution upon default. This type of loan product existed in the market at the time Subsection 2 was enacted. As NRS 604A was intended to protect consumers and the Subsection 2 loan product included consumer protection provisions, the Nevada Legislature allowed this loan product to exist as specifically set forth in Subsection 2.

² See Testimony of Barbara Buckley, Assembly Committee on Commerce and Labor, Assembly Bill 384 (2005), Minutes dated April 6, 2005 at 46 and Senate Committee on Commerce and Labor, Minutes dated May 6, 2005 at 7.

³ NRS 604A.5057 was originally codified as NRS 604A.480.

NRS 604A.5057(1) (“Subsection 1”) provides for using proceeds of a new loan to pay the outstanding balance of a high-interest loan except as otherwise provided in Subsection 2. Subsection 1 limits refinances of a loan to 60 days from the initial loan term.

Subsection 2 loans cannot be refinanced.

NRS 604A.5057 sets forth the requirements for using a new high interest loan to pay off the balance of an outstanding high interest loan. The Nevada Supreme Court discussed the provisions of Subsection 1 and Subsection 2. *Financial Institutions Division v. Dollar Loan Center, LLC*, 134 Nev. 112 (2018)). In the Dollar Loan Center case, the Court held that the provisions of NRS 604A.5057(2)(f) apply to the new loan such that the new loan may not be enforced through a civil action or alternative dispute resolution process. Subsection 2 loans are exempt from the 60-day maximum provided in Subsection 1, but each of the provisions of Subsection 2 apply to the new loan.

The loan created pursuant to Subsection 2 could not be paid off by a subsequent loan through a refinance as doing so would be contrary to the express requirements for the loan. NRS 604A.5057 does not provide for a way to refinance the loan created under Subsection 2. Refinancing would allow interest to be charged after the date of maturity. Refinancing also keeps the debtor on the debt treadmill as there would be no maximum term for the loan. Surely, an informed consumer would not agree to refinance the loan and pay additional interest if he or she truly understood that interest stops accruing as of the maturity date and no court action could be taken for enforcement. These limits on the Subsection 2 loan are because they are an exception to the consumer protection provisions of NRS 604A generally. Compared to a high-interest loan under NRS 604A.5037, Subsection 2 loans have a lower interest rate, but longer term and weaker enforcement ability.

NFID sees refinancing occur prior to the maturity date of Subsection 2 loans and interest accrued up to that point is collected from the consumer. This practice circumvents the provision that interest may not be charged after the date of maturity of the loan. It also looks likely that the consumer does not fully understand the loan terms. The public policy of Chapter 604A is to protect consumers by limiting the amount of interest they pay and help them stay off the debt treadmill. Allowing a Subsection 2 loan to be refinanced, thereby allowing for the establishment of a new maturity date, prolongs the repayment of the loan allowing the lender the opportunity to collect interest beyond the original maturity date. All loans under NRS 604A have a limited term. Subsection 1 loans cannot extend beyond 60 days and NRS 604A.5037(3) limits the loan to 90 days maximum. Permitting refinancing of Subsection 2 loans with no maximum term is contrary to keeping debtors off the debt treadmill.

Conclusion

Refinancing a Subsection 2 loan violates the legislative intent behind NRS Chapter 604A and the express provisions for such loans.

Sincerely,



Sandy O'Laughlin
Commissioner
Financial Institutions Division