

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.201- NRS/NAC 604A**

Date: Wednesday, September 16, 2020

Time: 10:00 a.m.

Location: Webex meeting- videoconference and teleconference

1. Call to Order:

The second workshop to consider S.B.201 was called to order Wednesday, September 16, 2020 at 10:05 a.m. The purpose of the workshop was to receive input with respect to the proposed regulation pertaining to Chapter 604A of the Nevada Administrative Code ("NAC"), as provided by Senate Bill No. 201, requiring the Commissioner of Financial Institutions to develop, implement and maintain a database storing certain information relating to deferred deposit loans, title loans and high-interest loans made to customers in this State; and providing other matters properly relating thereto, as described by the Notice of Workshop dated and posted on August 31, 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 eight (8) commenters during this public comment period. Two (2) were in support of the regulation as written and six (6) were opposed to the regulation as written. A total of eleven (11) written comments were received, of which seven (7) of these commenters submitted written comment and/or the company they represented submitted comments. One (1) of these commenters did not submit a written comment for the record.

The comments in opposition included, but are not limited to, as summarized below:

- Janet Phillips, USA Cash Services. The regulations are written from the perspective that the database will determine and tell the lender the eligibility of the loan, this is beyond legislative intent. Request sections 18-25 be entirely stricken from the proposed regulations. Ms. Phillips submitted written comments for the record.
- Matt Kownacki, American Financial Services Association. Concerned that the database includes traditional installment loans, which are safe and affordable loans. Regulations should reflect the differences between traditional installment loans and deferred deposit and high-interest loans. FID is going beyond what is written in S.B.201. Current language will increase compliance burden for lenders and will cause new costs to be passed down to the consumers. Mr. Kownacki submitted written comments for the record.
- Victoria Newman, TitleMax of Nevada Inc. Appreciate the changes FID has made but still concerned how the proposed regulation is written. FID has gone well beyond the legislative intent and FID is exceeding their rulemaking responsibility. Written comment was submitted by Lewis Roca on behalf of TitleMax of Nevada, Inc. for the record.
- William Horne, Strategy 360, representing Enova. FID is exceeding its authority by adding a new methodology of determining the borrower's ability to repay. The term "obligations" is not defined. Urges FID to remove all references to borrower obligations. Mr. Horne submitted written comment for the record.
- Heidi Welch, USA Cash Services. FID requesting too much data to be in the database and could accomplish the same with a simple yes or no question. FID is overreaching, specifically in section 18. Janet Phillips with USA Cash Services submitted written comment for the record.
- Julie Townsend, Purpose Financial, Parent company of Advance America. Appreciate the recent revisions but concerned FID is still exceeding its authority. FID is requesting too much data points. Concerned the database vendor will be acting as credit reporting agency. Ms. Townsend submitted written comments for the record.

The comments in support included, but are not limited to, as summarized below:

- Barbara Paulsen, Nevadans for the Common Good. Its extremely important to have upfront consumer protections in place. We need strong state laws, we cannot rely on federal laws. Even more now with the economic crisis. Urges us to implement the database ASAP. Ms. Paulsen submitted written comment for the record.
- Peter Aldous, Legal Aid of Southern Nevada. Database is not taking over the lender's underwriting role. It's just enforces existing law that mandates that a lender must not make certain loans including loans that exceed the 25% limit. Lenders still make independent underwriting decisions to determine if the loan is legal prior to going to the database. FID has an obligation to prohibit lenders from violating the law, and the database does this in conjunction with FID. The database must make certain aspects of the underwriting decisions. NRS 604A.710 allows FID to investigate a licensee at any time and section 8 of S.B. 201 says FID can obtain "any other information necessary." As a consumer advocate, installment loans are not safe. Had 100s of borrowers file for bankruptcy. If the lenders ensured the borrower could afford to repay the loan under 604A, they would have not had needed to file bankruptcy.

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



recording sb 201.wrf

3. Presentation and Discussion of Proposed Regulation:

The changes to the proposed regulations as stated below during the hearing. The complete proposed regulation can be found at www.fid.nv.gov

Regulation:

Section 8 language was added to this section “or federal”. Section 8 now reads “Identifying customer information” means the name of the customer, his or her social security number or alien registration number, driver license number, or other state or federal-issued identification number entered into the database.

Section 11 a new subsection was added, subsection d. Section 11 now reads: the service provider shall do all the following:

- (a) Retain data in the database only as required to ensure licensee compliance with this chapter and chapter 604A of NRS;
- (b) Archive data in the database concerning a customer transaction within two years after a customer transaction is closed unless notified by the Commissioner that such data is needed for a pending investigation or enforcement action;
- (c) Delete data and any identifying customer data concerning a customer transaction from the database 3 years after the customer transaction is closed unless notified by the Commissioner that such data is needed for a pending investigation or enforcement action; and
- (d) Immediately notify the Office of the Commissioner if the database is unavailable for any reason.

Section 17 deletion of the sentence “A licensee must immediately notify the Office of the Commissioner when the database is unavailable.” Section 17 now reads:

During any period that the database is unavailable due to technical issues on the service provider side, a licensee may rely on a customer's written representation and assess the customer’s ability to repay by obtaining the documentation required by this chapter to verify that making the loan applied for is permissible under the provisions of this chapter. A customer’s written representation includes, without limitation, a customer does not have any outstanding loans at the time the loan was made. If a customer does have an outstanding deferred deposit and/or high-interest loan, the customer affirms that an additional deferred deposit or high-interest loan they are about to enter into would not cause the customer to exceed 25% of the expected monthly gross income and they have the ability to repay the loan. If a customer has an outstanding title loan, the customer affirms that they have the ability to repay the outstanding loan and the additional title loan that they are about to enter into, and that the title is not perfected with another lender or licensee. If a licensee makes a loan to a customer during a time the database is unavailable, whether scheduled or for technical issues, a licensee must:

- (a) Enter the loan into the database within 24 hours of the system being operational;
- (b) Notate on the loan file that such loan was originated during a period the database was unavailable; and

(c) Retain all record of the loan transaction as required for any loan made by a licensee pursuant to this chapter and chapter 604A of NRS.

Section 18, formerly section 21 in prior workshop, deletion of the language “and verify eligibility of the loan” and subsections (e) the customer’s gross income; and (f) the customer’s total obligations. Section 18 now reads:

Before making a deferred deposit loan, title loan or high-interest loan, a licensee shall query the database. The query shall be retained by the service provider for the Office of the Commissioner’s review. The database shall allow a licensee to make a deferred deposit loan, title loan or high-interest loan only if making the loan is permissible under the provisions of this chapter and chapter 604A of NRS. At a minimum, the query should include the below to verify the identity of a customer:

- (a) The customer’s full name: first and last name, and middle initial;
- (b) The customer’s social security number or alien registration number;
- (c) The customer’s valid government-issued photo ID number;
- (d) The customer’s date of birth, mm/dd/yyyy;

Section 19, formerly section 18 in prior workshop, added language “prescribed in NRS 604A, section 303, subsection 1(a)-(d), which” and “if these factors” and deletion subsections (a) Whether a customer has a deferred deposit loan, title loan or high-interest loan outstanding with more than one licensee;

(b) Whether a customer has had such a loan outstanding with one or more licensees within the 30 days immediately preceding the making of a loan;

(c) Whether a customer has had a total of three or more such loans outstanding with one or more licensees within the 6 months immediately preceding the making of the loan.

Section 19 now reads

The database will provide the licensee information prescribed in NRS 604A, section 303, subsection 1(a)-(d), which a licensee must consider in determining a customer’s ability to repay a loan under chapter 604A of NRS and in conjunction with all other available information, if these factors will make a customer ineligible for a loan and only approve the loan if permissible under the provisions of this chapter and chapter 604A of NRS.

Section 20, formerly was section 19 in prior workshop, added a sentence “the ineligibility notice does not preclude or replace any disclosure required by federal law” and deletion of the sentence “The licensee must also provide the customer with an Adverse Action Notice pursuant to Regulation B” section 20 now reads

Upon a licensee's query, the database shall inform a licensee whether a customer is eligible for a new loan and, if the customer is ineligible, the reason for such ineligibility. If the database informs a licensee that a customer is ineligible for a loan, then a licensee shall provide written notice to a customer with the reason for ineligibility, the database provider’s contact information, and a statement advising the customer to submit an inquiry to the database provider should they have questions regarding the specific reason for such ineligibility. The ineligibility notice does not preclude or replace any disclosure required by federal law.

Section 21, formerly section 20 in prior workshop, moved the placing of “when permissible” in this section, added the term “rollovers”. Section 21 now reads

A licensee shall enter into the database, in real time, all loans originated under the provisions of chapter 604A of NRS; when permissible, all renewals, extensions, rollovers, and refinances; grace periods; payments; when a repayment plan offer is sent; when a repayment plan is entered into;

declined loans; and any transaction pertaining to the loan, as applicable, and in compliance with this chapter and chapter 604A of NRS.

Section 22 deletion of “In addition to items (a)-(g) in Section 21” and the language “prior to”. Added the sentence “when a transaction takes place as prescribed in NRS 604A, Sections 5983-5987 and Section 303, Subsections 2 and 5 for” and added additional information, which was originally in section 18, (m) The customer’s gross income and (n) The customer’s total obligations. Section 22 now reads

A licensee shall enter the following information in the database, in real time, when a transaction takes place as prescribed in NRS 604A, Sections 5983-5987 and Section 303, Subsections 2 and 5 for each loan made pursuant to NRS 604A.501- NRS 604A.5034 and NRS 604A.5035- NRS 604A.5064, without limitation:

- (a) If the customer is a covered service member;
- (b) If the customer is a dependent of a covered service member;
- (c) The origination date of the loan; (d) The term of the loan;
- (e) The principal amount of the loan;
- (f) The total finance charge associated with the loan;
- (g) The fee charged for the loan;
- (h) Due date of the loan;
- (i) The annual percentage rate of the loan;
- (j) The scheduled payment amount;
- (k) The payment details as described in section 24;
- (l) Type of loan product;
- (m) The customer’s gross income; and
- (n) The customer’s total obligations

Section 23 Deletion of “In addition to items (a)-(g) in Section 21” and the language “prior to” and the sentence in (n) “the total amount of the loan cannot exceed the fair market value of the vehicle”. Added the sentence “when a transaction takes place as prescribed in NRS 604A, Sections 5983-5987 and Section 303, Subsections 2 and 5 for” Section 23 now reads

A licensee shall enter the following information in the database, in real time, when a transaction takes place as prescribed in NRS 604A, Sections 5983-5987 and Section 303, Subsections 2 and 5 for each loan made pursuant to NRS 604A.5065- NRS 604A.5089, without limitation:

- (a) Verification that the customer is the legal owner of the vehicle securing the loan;
- (b) If the customer is a covered service member;
- (c) If the customer is a dependent of a covered service member;
- (d) The origination date of the loan;
- (e) The term of the loan;
- (f) The principal amount of the loan;
- (g) The total finance charge associated with the loan;
- (h) The fee charged for the loan;
- (i) Due date of the loan;
- (j) The annual percentage rate of the loan;
- (k) The scheduled payment amount;
- (l) The payment details as described in section 24;
- (m) The year, make, model, and Vehicle Identification Number (VIN) of the vehicle;
- (n) The fair market value of the vehicle from a third-party vendor; and
- (o) The legal co-owner’s name and consent from co-owner, if applicable.

Section 24 Added “and date” in section 24 (f). section 24 now reads

A licensee shall enter the following information in the database, in real time, for each payment made on the loan, without limitation:

- (a) The scheduled payment amount;
- (b) The scheduled date of the payment;
- (c) The actual payment amount;
- (d) The date the payment was made;
- (e) The allocation of the total payment, dollar amount applied to principal and dollar amount applied to interest and fees;
- (f) Amount and date of payment received from a customer when the loan is paid in full;
- (g) If a scheduled payment was missed:
 - (1) The new interest rate, if applicable;
 - (2) Whether or not a repayment was offered;
 - (3) Did a customer enter a repayment plan; and
 - (4) The duration of the grace period, if applicable.

If a customer enters into a loan agreement requiring installment payments, the licensee shall enter the information required pursuant to this section for each installment payment.

4.Public Comments:

There were five (5) commenters during this final public comment period. Five (5) were opposed to the regulation as written. A total of eleven (11) written comments were received, of which five (5) of these commenters submitted written comment and/or the company they represented submitted comment.

Final comments in opposition included, but are not limited to, as summarized below:

- Neal Tomlinson, Brownstein Hyatt, representing Dollar Loan Center. Unclear if FID has selected a provider, what the specifications will be, and if they will make the underwriting decisions. There will be adverse costs since these data points don’t currently exist in their database. Request FID to conduct another small business impact survey. Unsure how FID envisions section 20 the approval process will work. Mr. Tomlinson submitted written comment for the record.
- Jim Marchesi, Check City. Need to focus on two main items. 1) Compliance within the scope of S.B. 201 and 2) Practical to implementation. Regulation as written is missing detail information that would be in line with the statute. Couple examples is section 12, there is not a definition of the permitted staff that may access the database. The saving of the query should be saved by the provider. Need more definitions. Mr. Marchesi submitted written comments for the record.
- Trent Matson, Moneytree, Inc. Section 19 creates new ability to repay requirements, which is not authorized in legislation, FID has not authority to add this requirement. Mr. Matson submitted written comments for the record, and a separate submittal from Moneytree with additional comments was also received.
- Heidi Welch, USA Cash Services. Concerns excessive datapoints and requests another small business impact questionnaire. Janet Phillips with USA Cash Services submitted written comment for the record.
- Melissa Soper, CURO Financial dba Rapid Cash. The proposed regulation exceeds beyond legislative intent. Request the rules to be revised to align with S.B. 201. Aaron Mansfield with CURO submitted written comment on behalf of CURO Financial dba Rapid Cash.

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



recording sb 201.wrf

5.Close Workshop (Adjournment):

The workshop pertaining to Senate Bill 201 and Chapter 604A of the Nevada Administrative Code was hereby closed and adjourned on September 16, 2020 at 11:04 a.m.

September 16, 2020

Mary Young
Deputy Commissioner
Nevada Financial Institutions Division
300 W. Sahara Avenue
Suite 250
Las Vegas, NV 89102

Re: Proposed Regulations Pertaining to Senate Bill 201(S.B.201)-Revises Provision Governing Loans-NRS 604A Database

Dear Ms. Young:

On behalf of the American Financial Services Association (AFSA),¹ thank you for the opportunity to comment on the Division's proposed regulations pertaining to Senate Bill 201. While we understand these rules implement the legislation's requirements, we continue to have grave concerns about the expansion of lending databases to include data on traditional installment loans. Far from enhancing consumer protections in the state, these expansive requirements will only needlessly increase the compliance burden on Nevada's traditional installment lenders, affecting their ability to offer safe and affordable loans to borrowers who rely on them. This will decrease opportunities for financial mobility for individuals and families in Nevada who now face higher costs for credit in the state.

The database requirements do not reflect the significant differences between the state's traditional installment lenders and its deferred deposit and title lenders. Traditional installment loans (TILs) are widely recognized by consumer groups and others as a safe and affordable alternative to deferred deposit and title loans. This has been demonstrated most recently by the willingness of the federal Consumer Financial Protection Bureau (CFPB) to exclude TILs from the provisions of their Payday Rule. This appreciation for TILs as tools of financial capability and even mobility, hinges on the fact that unlike deferred deposit or title loans, TILs do not rely for repayment on a single payment on a certain due date, and instead are repaid in regularly scheduled, equal payments of principal and interest, after an underwriting process that includes a calculation of the borrower's ability to repay a loan out of their monthly budget. Importantly, unlike deferred deposit or title loans, TIL performance is reported directly to credit bureaus and are a vital tool for borrowers looking to build a credit history and become more financially mobile. This key distinction makes the database reporting requirements duplicative and unnecessary for TILs.

¹ Founded in 1916, the American Financial Services Association (AFSA), based in Washington, D.C., is the primary trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including direct and indirect vehicle financing, traditional installment loans, mortgages, payment cards, and retail sales finance. AFSA members do not provide payday or vehicle title loans.

Although the database comes with no additional consumer protection, it does come with additional new costs for consumers. On top of the mandated additional fees levied to maintain the database and directly passed on to consumers, the requirement that lenders submit detailed information never before sought by Nevada regulators for compilation in a database will create a costly compliance burden. The additional compliance burden for Nevada lenders would involve establishing the means for collection and submission of complex information in every lender's office in the state and may necessarily mean higher credit costs for all borrowers in the state.

The establishment of a database also raises important security concerns at a time when criminal elements show a relentless appetite for personal financial data. Lending databases contain sensitive information about lenders and their current and prospective borrowers, including social security numbers. This type of data is of significant value to criminals who would seek access to it. Without adequate oversight of the database providers themselves, there is no way to be sure that the information is held securely and in keeping with data security best practices.

Because of the significant differences between traditional installment loans and deferred deposit and title loans, we believe the best way for the state code to distinguish between them is a separate section of law with requirements that better reflect the characteristics unique to traditional installment lenders and the safe, affordable credit they offer to borrowers.

Thank you for your consideration of our comments. If you have any questions or if AFSA can be of any further assistance to you as you move forward, please do not hesitate to contact me at 202-469-3181 or mkownacki@afsamail.org.

Sincerely,



Matthew Kownacki
Director, State Research and Policy
American Financial Services Association
919 18th Street NW, Suite 300
Washington, DC 20006

September 15, 2020

Original VIA US Mail with copy
to: fidmaster@fid.state.nv.us

Ms. Sandy O’Laughlin
Commissioner of Financial Institutions
3300 W. Sahara Ave., Suite 250
Las Vegas, Nevada 89102

In re: Comments on Proposed Regulations Pertaining to Senate Bill 201 (S.B. 201)- Revises Provision Governing Loans- NRS 604A Database

Dear Ms. O’Laughlin:

Check City supports the reasonable interpretation of laws and the adoption of regulations that promote consumer protection and the availability of safe, regulated credit. We have worked closely together with the FID for years with respect to regulatory matters. The primary intent of the FID with regards to this new regulation is to provide very clear, implementable, succinct guidelines and direction to licensees with regard to the implementation of SB 201. We understand a database will be implemented. Check City and other Licensees understand, based on actual experience with similar-purpose databases, the size and scope of the project with which the FID has been tasked. We provide our comments with the intent that the FID will make changes to the Proposed Regulations, so licensees have clear, irrefutable direction for execution once regulations are adopted. Check City stands at the ready to engage in constructive dialog and collaboration with the FID in the spirit of advancing the identification and resolution of the multiple problematic provisions of the current Proposed Regulations.

We appreciate you providing licensees the opportunity to comment on the Proposed Regulations pertaining to Senate Bill 201 (the “Proposed Regulations”). Given the ongoing pandemic, and the impact of the Governor’s Emergency Directives¹, we would like to request additional time to assemble data and submit additional comments regarding the Proposed Regulations. Our participation as a stakeholder, and others have been hampered by the Governor’s Emergency Directives.

Although we recognize that certain regulations will benefit consumers, licensees, and the Nevada Financial Institutions Division (“FID”), we have concerns about several provisions of the Proposed Regulations as they (i) exceed the FID’s statutory authority,

¹ [http://gov.nv.gov/News/Emergency_Orders/2020/2020-08-31_-_COVID-19_Declaration_of_Emergency_Directive_031_\(Attachments\)/](http://gov.nv.gov/News/Emergency_Orders/2020/2020-08-31_-_COVID-19_Declaration_of_Emergency_Directive_031_(Attachments)/)

(ii) lack a sufficient statutory basis, (iii) impose impermissibly broad requirements, and (iv) change the plain meaning of the statutes. As such, those provisions of the Proposed Regulations would be deemed arbitrary and capricious rulemaking if challenged.

In addition, we respectfully reassert our comments in our letter dated April 28, 2020, and our letter dated July 6, 2020, and supplement our comments as set forth herein.

Therefore, as provided below, we respectfully request that the FID hold a public hearing, delay all actions related to the Proposed Regulations until the termination of the Governor’s Emergency Directives, and consider our comments to the Proposed Regulations.

1. Summary of Senate Bill 201. The Legislature amended NRS 604A to implement a database for one purpose only—to allow lenders access to a common database to verify a consumers outstanding loans (deferred, high interest, and title) with all licensees. Checking the database would allow licensees to comply with the new requirements prohibiting the making of a deferred deposit loan or high interest loan, in combination with any other outstanding loan, that would exceed 25 percent of the expected gross monthly income of the customer when the loan is made.²

The specific provisions involve NRS 604A.5017 and 604A.5045 and require that licensees check a newly authorized “database” created by statute to ensure the making of the loan does not exceed 25% of the customer’s expected gross monthly income. The Legislature did not create authority for the FID to design and impose an entirely new underwriting methodology that goes beyond the new gross monthly income limitations in NRS 604A.5017 and NRS 604A.5045.

In order to accomplish its purpose, the Legislature mandated licensees to submit limited loan information into a statewide database that will be queried during a request for credit to identify other outstanding 604A loans, if any, and the amount of such outstanding loans. A Licensee will then use that information to underwrite the customer—either denying credit if the consumer has reached his or her maximum loan amount or extending credit to the customer up to his or her maximum loan amount. Subject to the maximum loan amount, the actual amount of credit extended will be determined by each lender’s own underwriting systems and models.

The word “database” is mentioned 13 times in the statute in 3 different sections—11 times in NRS 604A.303, the new section describing the creation of a database and requirements of licensees to upload information, and the other two times in NRS 604A.5017 and NRS 604A.5045 respectively, in which licensees are required to check

² See Synopsis of the Act provided by the Nevada Advance Legislative Services.

the database to ensure compliance with gross income limitations. The Legislature understood that one common database tracking all deferred deposit, high interest, and title loans, would provide lenders with the necessary information for compliance with NRS 604A.5017 and NRS 604A.5045.

As a result, the Legislature in amending NRS.604A directed the Commissioner:

- a. to contract with a service provider to develop, implement and maintain a database of information;³
- b. to require that the database’s information relate to certain deferred deposit, title loans, and high interest loans made by licensees,⁴
- c. to establish standards for the retention, access, reporting, archiving and deletion of information entered into or stored by the database,⁵
- d. to establish the amount of the fee charged by the database,⁶
- e. to prescribe the specifications for the database information used by the Commissioner for statistical purposes, and used by licensees to comply with the new gross monthly income requirements;
- f. to “adopt any other regulations as necessary to carry out the provisions of this chapter;⁷
- g. to adopt regulations that are necessary for the administration of the database;⁸

By requiring licenses to query the database prior to making a loan⁹, the Legislature in amending NRS.604A directed licensees to timely update the following information in the database for each loan (hereinafter the “Statutory Database Fields”):

- (a) *The date on which the loan was made;*
- (b) *The type of loan made;*
- (c) *The principal amount of the loan;*
- (d) *The fees charged for the loan;*
- (e) *The annual percentage rate of the loan;*
- (f) *The total finance charge associated with the loan;*
- (g) *If the customer defaults on the loan, the date of default;*

³ NRS 604A.300 1.

⁴ *Id.*

⁵ NRS 604A.300 5. (b)

⁶ NRS 604A.300 3.

⁷ NRS 604A.300 2. (b)

⁸ NRS 604A.303 5. (d)

⁹ See, NRS 604A.5017 and NRS 604A.5045

- (h) *If the customer enters into a repayment plan pursuant to NRS 604A.5027, 604A.5055 or 604A.5083, as applicable, the date on which the customer enters into the repayment plan; and*
- (i) *The date on which the customer pays the loan in full.*¹⁰

The Legislature knew that these NRS 604A.303 database fields would provide licensees with information to comply with the new NRS 604A.5017 (deferred deposit) and NRS 604A.5045 (high interest) limitations.

The Legislature cautiously guarded the confidentiality of the database information by prohibiting disclosure under NRS 239.010, and allowing information to be used by the Commissioner for “*statistical purposes if the identity of the persons is not discernible from the information disclosed.*”¹¹

Given the legislative directive to adopt reasonable, necessary regulations to carry out the database provisions of the statute, the FID has now proposed rules relating to the database and seeks comments on such rules. Rather than reasonable and necessary regulations, the FID is attempting to leverage the database by subverting its statutory purpose, and convert it into massive data gathering tool which imposes significant additional restrictions that are not authorized by SB 201.

2. General Comments on the Proposed Regulations.

The Proposed Regulations and timetable for comment have been rushed during a statewide pandemic, and we are concerned that has resulted in denial of an opportunity to appear in person to make public comments.

The Governor’s Emergency Directives have also inhibited the ability of the industry from adequately collecting data and assessing the impact of the rulemaking in changing economic conditions.

The FID’s Proposed Regulations are arbitrary and capricious because the provisions:

- a. are broad and far exceed the limited statutory basis as expressly required for the database;
- b. create new loan qualification requirements or ability to repay requirements not authorized by the statute;
- c. issue directives that change the plain meaning of the Statute;
- d. impermissibly expand the FID’s statutory enforcement authority;
- e. shift loan qualification decisions from the licensee to the database service provider and/or other licensees;

¹⁰ NRS 604A.303 2. (a) – (i)

¹¹ NRS 604A.303 4.

- f. require the maintenance of sensitive customer information for time periods that exceed those prescribed by statute;
- g. are vague, imprecise, and impracticable and will lead to restrictions in the manner licensees may operate, inconsistent implementation and enforcement;
- h. requires massive amounts of data transmission (much of which is outside of the scope of data collection authorized by SB 201) on a continuous and "real time" basis;
- i. require licensees to incur tremendous costs of time and funds to implement changes which lack any statutory basis or authority;
- j. not reasonably necessary to administer the database or carry out the provisions of the statute;
- k. pose an unprecedented operational and technological challenge for our Company given both the sheer volume of information we would be required to collect and the frequency of reports to the database;
- l. do not provide licensees with adequate time prior to the database launch date to interface with the database provider;
- m. create new and odious limitations on the availability of credit, in that these provisions will force licensees out of business.

The FID's Proposed Regulations are arbitrary and capricious because the FID failed to review the Proposed Regulation to determine whether its provisions go beyond the FID's rulemaking authority. The FID should address the scope of its rulemaking authority and limit the provisions of the Proposed Regulation to what is authorized in SB 201.

The FID's Proposed Regulations are arbitrary and capricious because the FID has ignored testimony that implementation of a database is a lengthy and technical process that requires advance planning and coordination with the database provider. It requires the exchange of technical specifications and documentation; and it relies on pre-launch and post-launch testing. Licensees cannot interface with a database provider until all of this work is completed, and the interface and data exchange are proven accurate and timely. Failure to allow adequate time for all licensees to build and test the interface will very likely result in erroneous data and inaccurate lending decisions causing customer harm.

The FID's Proposed Regulations are arbitrary and capricious because the FID has not considered the significant costs to licensees associated with providing information to the database because "the database will interface with Licensees current system." That is simply incorrect. No matter how well the Database interfaces with a licensee's current lending software, each licensee must incur significant setup and programming expenses to "interface" with the database. For example, many of these data points simply are not stored in Check City's existing software, and we assert other Licensees are in a similar position. The FID has completely brushed aside the

significant implementation costs and has further ignored the maintenance costs of compliance going forward. Licensees will be responsible to monitor the data transmissions to ensure proper compliance and issues such as interruptions in Internet service in rural areas as well as potential server issues need to be corrected on a regular basis. Programming changes in other areas of the software need to be tested as well to make sure that they do not interfere with this process. These costs, based on the proposed Regulation as written, will have a devastating financial impact on Licensees. Yet, the Division has undertaken no fact finding whatsoever to actually determine if there will be a financial impact on Licensees, and to what extent that impact will be. It has simply chosen to rely upon unsupported assumptions instead of data, and forgetting that rulemaking requires more than speculation. Worst of all, the Division has ignored Licensees' comments that the proposed Regulation is cost prohibitive and will put many Licensees out of business.

The FID's Proposed Regulations are arbitrary and capricious because the FID has not included any provision which requires the FID to (i) notify licensees in writing via email or USPS that the database has been completed by the service provider and is functioning properly; and (ii) give the licensees a reasonable number of days to complete their software upgrades to link to the database, test the data transmission, before a final compliance implementation date. That is, the Proposed Regulations should not become final immediately, but rather should contain a specific provision delaying implementation of the database (uploading of information by licensees) to give licensees a reasonable amount of time for compliance before a final effective date.

Furthermore, even the Legislative Counsel's Digest notes that NRS 604A.303 requires the Commissioner "to develop, implement and maintain, by contract with a vendor or service provider or otherwise, a database of all deferred deposit loans, title loans and high- interest loans in this State, for the purposes of ensuring compliance with existing law governing these types of loans."

In addition, Check City incorporates all of the Comments in Opposition outlined in the Minutes of the Workshop to Solicit Comments on Proposed Regulations S.B. 201 – NRS/NAC604A dated Wednesday, July 8, 2020 including, but are not limited to, the following:

- The FID is exceeding legislative intent.
- FID going beyond what is written in S.B.201.
- FID was not given the authority to request some of the data points being requested in the proposed regulation.
- FID is overreaching, specifically in section 18.
- The database was not created as an eligibility check database but only to check for what other loans the customer may have, to ensure all loans would not exceed 25% of the customer's gross monthly income and adding

- protections for military personal.
- The proposed language would seem that FID and/or the database service provider would be underwriting the loans and not the lenders.
- FID is requesting a huge amount of information that is not needed for compliance.
- As written, these regulations will hurt consumers and push them to unlicensed illegal lenders.
- Section 19 can cause confusion with a customer if two notices are being issued to a customer, both the Regulation B adverse action notice and notice from a licensee that the consumer is ineligible for the loan.
- Not clear if a sold loan to a 3rd party will remain a closed loan or left open in the database.
- FID should not require "real-time" entry into the database but instead "timely" upload.
- S.B.201 did not call for changes to current NRS 604A statutes.
- S.B.201 does not refer to ability to repay, therefore, the proposed regulations should not include it. Nor should it include total obligations to determine a customer's ability to repay.
- How will the database affect the approval/denial process that the military database already has? If one database says a loan is eligible or ineligible and the other one says differently.

Regulations expanding the scope of an authorizing statute are invalid or void.¹² Under the Nevada Administrative Procedures Act, NRS 233B.040 ("NAPA") an "agency may adopt reasonable regulations to aid it in carrying out the functions assigned to it by law and shall adopt such regulations as are necessary to the proper execution of those functions." Under standard administrative law principles, Courts invalidate administrative rules adding to the statute they are intended to implement.¹³ Courts reviewing the reasonableness of the Proposed Regulations under NAPA would follow such standards. Nevada Courts would invalidate any provisions of the Proposed Regulations enlarging or adding to the statutory requirements.

Below we will outline specific comments on each section of the Proposed Regulations which further address our general comments, concerns and objections; however, all of the following confirm that the Proposed Regulations are arbitrary and capricious as set forth above and as follows:

1. The statute's sole purpose for the database is to allow licensees to verify a consumers outstanding loans (deferred, high interest, and title) with all licensees, and thereby comply with the new gross

¹² 2 Am Jur 2d Administrative Law § 224.

¹³ 2 Am Jur 2d Administrative Law § 224.

monthly income limitations.¹⁴ During a time when cyber criminals have repeated illegally obtained access to consumer’s proprietary confidential information contained within 3rd party databases¹⁵, the FID seeks to expand in excess of statutory limits rather than restrict the confidential data of Nevada residents within the database to the statutory mandates. Instead of archiving and deleting the information as soon as practicable, the Regulations provide for retention of data far beyond statutory requirements.¹⁶ The statute created 9 database fields authorized by the statute¹⁷, but the FID has outlined 50 plus database fields.¹⁸ The FID has turned the database into consumer reporting agency under federal law¹⁹ by requiring the reporting of declined loans,²⁰ collecting of data regarding all payments, timely or untimely,²¹ collection status of loans,²² and a requirement to give a letter to the consumer when the database determines the customer is ineligible for a loan.²³ Although the statute limited the use of the database by the FID to statistical purposes²⁴, the Proposed Regulations have turned what should be a very limited database into a broad repository of consumer information which it can use as an “enforcement tool”²⁵ when examining licensees.

2. Underwriting is unique to each licensee doing business in Nevada.²⁶ Because only licensees may make loans, only licensees may underwrite loans. The statute’s restrictions on licensees

¹⁴ See Synopsis of the Act provided by the Nevada Advance Legislative Services.

¹⁵ <https://www.ftc.gov/enforcement/cases-proceedings/refunds/equifax-data-breach-settlement>

¹⁶ Sections 11 and 13.

¹⁷ 604A.303 2. (a)-(i).

¹⁸ Sections 18, 21, 22, 23, 24, 25

¹⁹ 15 U.S.C 1681a (f) The term “consumer reporting agency” means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

See also, 15 U.S.C 1681a (d) CONSUMER REPORT.-- (1) IN GENERAL.--The term “consumer report” means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer’s credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer’s eligibility for--(A) credit or insurance to be used primarily for personal, family, or household purposes;

²⁰ Section 21

²¹ Section 22, 23, and 24

²² Section 25

²³ Section 20

²⁴ NRS 604.303 4.

²⁵ Sections 11 and 16

²⁶ Anti-trust laws prohibit competing licensees from making an agreement upon underwriting factors.

underwriting deferred,²⁷ high interest²⁸ and title loans involve very specific “ability to repay” safe harbor provisions. However, the FID has (i) created new underwriting requirements which the Legislature never intended,²⁹ and (ii) shifted the underwriting from licensees to the database.³⁰

The Legislature has clearly spoken on “ability to repay” and limitations on underwriting, and the FID cannot arbitrarily require that which licensees proprietary underwriting criteria must consider. The Proposed Regulations exceed the statutory language by requiring a licensee to consider “total obligations”³¹ which is not even defined in the regulations or statute, and also refer to “gross income”³² when the statute refers to expected gross monthly income.³³ A licensee has total discretion whether or not to consider these items in its proprietary underwriting criteria, and to require same without statutory approval subjects licensees to claims of “antitrust” activities.³⁴ Likewise, licensees, not the database, must determine whether a customer is eligible or ineligible for a loan.

3. For regulations to be necessary to administer the statute, such regulations must be fair, precise, and practical. The Proposed Regulations are completely devoid of the “how” and “when” to upload information. As such, the FID never considered the practical effects of its Proposed Regulations and has drafted vague requirements which will lead to inconsistent compliance and great expense to licensees. For example, the Proposed Regulations not only require licensees to query the database before making a loan, but also enter certain information before making a loan that is just not workable or possible. That is, the APR exists only after a loan is made. Is impractical to enter the APR on a loan before it is made. The Proposed Regulations further require that a licensee must enter the status of the loan into the database, including if the loan is in collection (whether first party or third party), and payment

²⁷ NRS 604.5011, NRS 604.5017, NRS 604.5029 2.,

²⁸ NRS 604.5038, NRS 604.5045, NRS 604.5029 2.,

²⁹ Section 19 The database will provide the licensee information prescribed in NRS 604A, Section 303, subsection 1(a) –(d), which a licensee **must consider** in determining a customer’s ability to repay a loan under chapter 604A of NRS and in conjunction with all other available information, if these factors will make a customer ineligible for a loan and only approve the loan if permissible under the provisions of this chapter and chapter 604A of NRS.

³⁰ Section 20 provides that the database shall inform a licensee on whether a consumer is eligible. Section 18 the database “shall allow” a licensee to make a loan.

³¹ Section 22(n)

³² Section 22(m)

³³ NRS 604A.5017, NRS 604A.5045, Section 22 (m) and (n).

³⁴ Sherman Anti-Trust Act of 1890. Federal Trade Commission Act.

history.³⁵ Payment history implies that payments that have been made in the past (and not uploaded) must be uploaded.³⁶ That is, if the licensee transfers an account to a 3rd party for collection, and the 3rd party collector collects payments, then the licensee must upload such “payment history” into the database. However, Section 25 does not provide when such payment history information must be entered into the database. To require that the licensee upload the information in “real time” is impracticable. The Regulations do not even define “real time.”³⁷ Payment history³⁸ implies payments have been made sometime in the past and have not been entered—therefore to require payment history to be uploaded in real time is impracticable in that 3rd party collectors have no access to the database³⁹ Thus, to upload payments to a 3rd party collector in real time would require licensee and each 3rd party collector to have proprietary software in which the 3rd party would notify licensee in real time of the collection payment, and then the licensee’s must have proprietary software that will take the information from such 3rd party and notify the database of such payment in real time. Similar issues arise for the requirement to upload the “verification that the customer is the legal owner of the vehicle securing the loan”⁴⁰ and “consent from the co-owner”⁴¹. All of these requirements are impracticable, vague, and exceed any statutory basis. Attached as Exhibit A is a list of practical implementation issues that the FID has failed to consider in the Proposed Regulations.

3. Specific Comments on Various Sections of the Proposed Regulations.

Section 3

Section 3 includes within the definition of “due date⁴²” the following language which is unclear:

the datesubject to all statutory requirements and legal contractual stipulations” the customer is schedule to make

³⁵ Section 25 (1)

³⁶ However, as the Proposed Regulations require all payments to be entered into the database—one must ask why would entering a “payment history” be necessary.

³⁷ Sections 21, 22, 23 and 24.

³⁸ Section 25

³⁹ Section 12. 1—only licensees and the FID have access to database information.

⁴⁰ Section 23 (a).

⁴¹ Section 23 (o).

⁴² Sec. 3 “Due Date” is defined as the date, based upon the payment schedule, subject to all statutory requirements and legal contractual stipulations, that the customer is scheduled to make a payment, either to pay the full amount of the loan (principal, finance charge and fees) and extinguish the debt, or if applicable, makes an installment payment.

For example, does this mean the payment schedule must comply with all statutory requirements? Or does it mean the “due date” might vary or be altered via a contractual stipulation as long as the contractual stipulation is deemed “legal” and compliant with “statutory requirements”? The language is unclear and should be stricken.

We propose that “due date” be defined simply as “the date on which the customer is contractually scheduled to make a payment.”

Section 4.

The word “immediately” is found 9 times in NRS 604A⁴³, and 2 times in the Proposed Regulations. The proposed definition of the word “immediately” is inconsistent with standard dictionary definitions, and cannot be consistently applied for each use in the statute and regulation. Defining the word “immediately” in NRS 604A.303 (b) and (c) to mean “the action must occur within one business day” is hard to reconcile with its use in such sentences, in that such definition is nonsensical construction, bound to create compliance inconsistencies for enforcement and compliance purposes. In addition, “business day” is not defined. Therefore, Section 4 should be stricken as it causes confusion, is not needed, and changes the plain meaning of the Statute.

Section 5.

The definition of “Extent Available” in Section 5 is impermissibly broad, changes the plain meaning of the statute, and provides the FID with unauthorized enforcement presumptions. Section 5 impermissibly changes the plain meaning of statutes by taking away a licensee’s discretion to qualify a customer for credit, beyond the statutory limits.

NRS 604A.5011, NRS 604A.5038, and NRS 604A.5065 give licensees complete discretion in qualifying consumers for a loan.⁴⁴ In each of these sections, the words “extent available” occur within a context that allows a licensee complete discretion “after considering, to the extent available,” the certain factors listed in the statute to approve and make a loan. Since each customer is different and may or may not have certain documents relating to his or her creditworthiness, each statutory provision lists a number of items licensees may review “to the extent available” in making such assessment, including but not limited to:

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

⁴³ NRS 604A.045, 604A.303, 604A.5026, 604A.503, 604A.5058, 604A.5085, 604A.605, 604A.645.

⁴⁴ See, NRS 604A.5011, NRS 604A.5038, and NRS 604A.5065.

- (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 high-interest loan, the monthly payment on the high-interest loan, if the high-interest loan is an installment loan, or the potential repayment plan if the customer defaults on the high-interest loan; and*
- (e) *Other evidence, including, without limitation, bank statements, electronic bank statements and written representations to the licensee.⁴⁵*

Each statute⁴⁶ does not require that the licensee review and obtain each of these items in every transaction, with every customer. By using the terms, “to the extent available,” the Legislature delegated to the lender and customer, the authority to determine whether certain materials are in fact available. Each statute⁴⁷ recognizes that this list of items are only examples of information the licensee should consider reviewing at the time of conducting its loan underwriting, and that not all of these items will be available or are necessary to review.

By contrast, without express authority to contradict the Legislature, the FID’s definition changes the plain meaning of the statute, and now creates a “presumption” to use against licensees when auditing for compliance—namely that if a document which exists (a pay stub, bank deposit, credit report, etc.) and was not produced at closing (hereinafter a “post-closing document”), such document “*is presumed to be readily available or easily obtainable in a reasonable amount of time from a customer prior to making the loan.*”

In other words, the FID when auditing the loan qualification can look at a post-closing document (a pay stub or bank deposit, credit report, etc.) and now “presume” upon the licensee that such post-closing document was “obtainable from a customer prior to making the loan.” Thereby, providing justification to the FID for any claims that that licensee failed to follow the loan qualification provisions in the statute. This presumption is without any statutory basis, and directly conflicts with the plain language of the statute. Allowing such definition will provide justification for the FID to impose its judgment (after the fact use of a different set of criteria) into each loan underwriting decision by each licensee, despite lack of statutory authority to do so.

Therefore, we request that you strike Section 5.

Sections 8 and 9.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

Section 8 defines the words “identifying customer information;” but these words “identifying customer information” are not found in the current regulations (NAC 604A), the statute, or in any other part of the Proposed Regulations. Section 9 defines the words “closed loan,” but these words “closed loan” are not found in the current regulations (NAC 604A), NRS 604A, or in any other part of the Proposed Regulations. In addition, within the definition of “closed loan” are the words “active” or “charged-off loan.” However, these words are not defined. What it means to “charge off” a loan may be different for each licensee. If a licensee is still trying to collect on a loan, does this mean it is “active”? The definitions of “identifying customer information” and “closed loan” are not reasonably necessary to administer the database or carry out the provisions of the statute, and should be stricken. For regulations to be necessary to administer the statute, such regulations must be fair, precise, and practical. Check City has repeatedly made this comment, yet the FID has consistently chosen to ignore same in proposing additional changes to the Regulations. Clearly, no one in good faith can argue that defining a term and then never using the term again within the Regulation provides licensees with Regulations that are precise and practical. By contrast, such action shows the FID’s blatant disregard for the comments received to date from members of the industry, and a total unwillingness to make even the simplest of changes, even when a licensee points out a clear error by the FID. Such inattention to detail, lack of valuing the process of receiving and reviewing fair and reasonable comments, not only shows the FID’s calcitrant position of proposing regulations that are irresponsible, unauthorized, and impractical, but also shows a lack of good faith in violation of its mission statement.⁴⁸ By contrast, in the last call, numerous members of the Industry repeatedly asked for an audience with the FID to work through such issues, with the goal being clear, concise, understandable, and practical regulations that will provide an equitable means to administer statutory database requirements, which will benefit all citizens, licensees, and the FID.

Section 10.

Section 10 addresses the fee charged by the service provider. In doing so, it creates confusion and inconsistency in the consumer disclosures because it does not clarify whether the database fee is a finance charge under Regulation Z, or whether it may be excluded from the definition of finance charge. For consistency purposes in auditing licensees, the FID should revise the language clarify this issue so that all licensees will give consistent disclosures to consumers. In addition, in order to reasonably administer the database and carry out the provisions of the statute, Section 10 should also be revised to give licensee’s prior notice of a change in the amount of

⁴⁸ The mission of the Financial Institutions Division is to maintain a financial institutions system for the citizens of Nevada that is safe and sound, protects consumers and defends the overall public interest, and promotes economic development through the efficient, effective and equitable licensing, examination and supervision of depository, fiduciary, and non-depository financial institutions. See, <http://fid.nv.gov/About/About/>

the database fee. Failing to give prior notice of a change in the amount of the fee, can result in unanticipated programming issues for licensees. Surprising licensees with programming changes could lead to significant, unanticipated costs.

Sections 11 and 13.

Section 11 requires the maintenance of sensitive customer information for time periods that exceed those prescribed by statute, and as such Section 11 is broad and far exceeds the limited statutory basis as expressly required for the database.⁴⁹ Keeping data for more than 1 year is not needed to fulfill the requirements and limitations in NRS 604A.303. The plain language of the statute specifically implemented the database to allow the licensees to make an underwriting decision that would provide accurate and timely information with respect to loans outstanding. In addition, the language of Section 11, would require the service provider to retain all of the information outlined in the Proposed Regulations (which exceeds statutory restrictions) for these periods and as such is broad and far exceeds the limited statutory basis as expressly required for the database. Section 13 requires the maintenance of sensitive customer information by the licensee for time periods that exceed those prescribed by statute and as such is broad and far exceeds the limited statutory basis as expressly required for the database.⁵⁰ Furthermore, to keep such information longer than the statute requires creates an unnecessary risk of such information be improperly disclosed as a result of a data breach. For example, federal privacy and unfair trade practices law requires that persons retain confidential personal information for only as long as is reasonably necessary to fulfill the purpose for which the information was collected, and ensure proper destruction thereafter.⁵¹ To reasonably administer the database or carry out the provisions of the statute, Section 11 should be amended to delete the data after 1 year, and Section 13 should be amended to retain the data in accordance with NRS 604A.700.

Section 14

According to Section 10 of the Proposed Regulations, the service provider charges and collects a fee from licensee for each loan licensee enters and approves in the database. Section 14 requires a fee cannot be charged for a voided or rescinded loan. Instead of providing that the service provider fee cannot be charged for a voided or rescinded loan, the regulations should provide that the service provider must refund to licensees – and licensees must refund to the customer – the service provider fee charged for a voided or rescinded loan.

⁴⁹ NRS 604A.700 requires that licensees shall preserve all such books and accounting records for at least 2 years after making the final entry.

⁵⁰ NRS 604A.700 requires that licensees shall preserve all such books and accounting records for at least 2 years after making the final entry.

⁵¹ See, <https://www.ftc.gov/tips-advice/business-center/guidance/protecting-personal-information-guide-business>, <https://www.ftc.gov/news-events/media-resources/protecting-consumer-privacy/privacy-security-enforcement>, and <https://www.ftc.gov/news-events/blogs/business-blog/2018/05/under-coppa-data-deletion-isnt-just-good-idea-its-law>

Section 16.

Section 16 provides that the “Office of the Commissioner:

shall have access to and utilize the database as an enforcement tool to ensure licensees’ compliance with the provisions of this chapter and chapter 604A of NRS.” (Emphasis added.)

Such provision (i) is broad and far exceeds the limited statutory basis as expressly required for the database; (ii) impermissibly expands the FID’s statutory enforcement authority; (iii) is not reasonably necessary to administer the database or carry out the provisions of the statute, and (iv) will require licensees to incur tremendous costs of time and funds to respond to additional enforcement questions from the FID. Therefore, it should be stricken from the Proposed Regulations.

Section 16 is especially egregious because the Commissioner in Sections 21 through 25 of the Proposed Regulations has sought numerous unnecessary additional data fields that far exceed the limited statutory database fields Statutory Database Fields. By adding those unnecessary additional data fields, the Commissioner has turned the database into a government database full of excessive amounts of information about consumers that serves no statutory purpose. This is a significant leap for a database intended to serve as a repository for licensees to use for compliance with gross income limitations. The Legislature did not intend any purpose for the database, other than the qualification of consumers pursuant to its legislative efforts.

Attempting to unlawfully collect and retain unnecessary consumer information, without the assent of the legislative process sets a dangerous precedent for bureaucratic agencies partnering with private third-party databases. At a time when several states and Congress are looking to reduce risks related to transmitting sensitive consumer data, its inexplicable that the Proposed Regulations attempt to assemble any data that is not necessary under the statute. It’s a dangerous information grab that would not likely survive litigation that would emerge from not only members of industry, but also consumer privacy advocates.

The Legislature has specifically chose to limit the Commissioner in proposing regulations that “carry out” the provisions of the chapter⁵² and are reasonably necessary for the administration of the database.⁵³ The Legislature went one step further, and even specified the data fields (the Statutory Database Fields) that are

⁵²NRS 604A.300 states: 1. The Commissioner may establish by regulation the fees that a licensee who provides check-cashing services may impose for cashing checks. 2. The Commissioner shall adopt: (a) Regulations to administer, carry out and enforce the provisions of *NRS 604A.5983, 604A.5985 and 604A.5987*. (b) Any other regulations as are necessary to carry out the provisions of this chapter. (Emphasis added.)

⁵³ NRS 604A.303.

necessary for the database—while leaving some additional authority for the Commissioner to propose additional fields necessary to administer the database. Note, the Legislature didn’t authorize any fields of interest. The statute narrowly established a list of database fields, and allowed fields necessary to administer the database described in its list.

As such, the FID in proposing additional data fields should follow the longstanding legal maxim of *Ejusdem generis*—which is Latin for “of the same kind.”⁵⁴ That is, in this case because the statute lists very specific data for the database that licensees should access and upload, followed by a general right of the FID propose additional items necessary to administer the database, the FID when adding data fields is limited to the types of things identified by the specific words of the statute and which fulfill the limited purposes of administering the database. Certainly, Nevada courts would not construe the legislative intent to be one of expanding the fields beyond those necessary to administer the database. No consumer would ever anticipate a government agency and its private contractor retaining vast amounts of sensitive consumer data beyond the information legislative authorized.

If the Legislature had desired to give the Commissioner an unlimited ability to require any database fields, even beyond those necessary, it would have included such right within the statute, and would not have included within the statute text a list of very specific database fields (Statutory Database Fields), and the clear limitation “necessary to administer the database.” That is, the Legislature would have no reason to list any database field, if the intent was to give the Commissioner free reign require whatever data base fields it wanted. Clearly, the Legislature desired to limit the information of Nevada residents within the database to only that information which truly would help serve the purpose of the database, which is for licensees to comply with the gross income limitations and make an ability to repay determination.

The language in NRS 604A.303.1(d)⁵⁵ coupled with NRS 604A.303.5(d)⁵⁶ together provide a commonsense catch-all provision that allows for certain data fields that are necessary in order to effectively implement the Statutory Database Fields, not an invitation to add new and unnecessary fields. For example, a technical reading of the Statutory Database Fields⁵⁷ does not require the name, address, identifying

⁵⁴ For example, if a law refers to automobiles, trucks, tractors, motorcycles, and other motor-powered vehicles, a court might use *ejusdem generis* to hold that such vehicles would not include airplanes, because the list included only land-based transportation.

⁵⁵ NRS 604A.303.1(d) allows the licensee and Commissioner to obtain information from the database necessary “to determine whether a licensee has complied with the provisions of this chapter.”

⁵⁶ NRS 604A.303.5(d) allows the licensee and Commissioner to adopt regulations that are necessary for the administration of the database.

⁵⁷ The database fields include: (a) *The date on which the loan was made;* (b) *The type of loan made;* (c) *The principal amount of the loan;* (d) *The fees charged for the loan;* (e) *The annual percentage rate of the loan;*

identification information (such as state ID). However, certainly those fields are necessary to an effective administration of the database for all licensees and the Commissioner.

The statutory verbiage prevents regulations that would require licensees to upload numerous additional categories of information that are not necessary to administer the database, and are far in excess of the limited fields as specified in Statutory Database Fields. These unnecessary fields coupled with the ability of using the database for purposes beyond administering the database far exceeds legislative intent, places Nevada residents' personal information at risk, and wields inappropriate access to the Commissioner and a third-party contractor. In addition to the foregoing statutory and consumer concerns, we note that currently examiners review licensees once per year, and expanding the FID's authority so that it has an endless review of unnecessary data, will significantly expand compliance costs for licensees, despite any lack of statutory authority to do so.

As such, we request that Section 16 be stricken.

Section 17.

Section 17 states that "a licensee may rely on "a customer's written representation" during any period when the database is not operational. This language is contrary to the statutory authorization to rely on customers' written representations in assessing their ability to repay.⁵⁸ As noted above, licensees are not required to search the database for any particular information, and furthermore licensees can rely on customers' written representations regardless of whether the database is operational. In addition, there is no prohibition on making a title loan to a customer who has other outstanding loans. If the licensee wishes to accept the risk of having its interest subordinate to another lender, that is its choice and the statute does not prohibit such activity. As outlined in our Exhibit A, the FID should strike the requirement to enter the loan into the database within 24 hours, as such is not practical, and does not take into consideration that licensees do not operate 7 days a week, 24 hours a day. Given

(f) The total finance charge associated with the loan; (g) If the customer defaults on the loan, the date of default; (h) If the customer enters into a repayment plan pursuant to NRS 604A.5027, 604A.5055 or 604A.5083, as applicable, the date on which the customer enters into the repayment plan; and (i) The date on which the customer pays the loan in full.

⁵⁸ NRS 604A.5076. **Prohibited acts by licensee regarding amount of loan, ownership of vehicle and customer's ability to repay loan.** A licensee who makes title loans shall not:

* * *

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.

some licensees do not operate on Sundays and holidays, such provision should be revised. Therefore, the FID should revise Section 17 accordingly.

Sections 18 and 20.

Section 18 requires that licensees query the database before making a loan, and retaining the query as part of its customer records. However, the Proposed Regulation requires that the

database shall allow a licensee to make a deferred deposit loan, title loan or high-interest loan only if making the loan is permissible under the provisions of this chapter and chapter 604A of NRS.

Section 20 states:

Upon a licensee’s query, the database **shall inform a licensee whether a customer is eligible** for a new loan and, if the customer is ineligible, the reason for such ineligibility.

Furthermore, Section 20 requires after the database determines a consumer is “ineligible” for the loan, and relays such information to the licensee, that the licensee provide the consumer with a written notice:

with the reason for ineligibility, the database provider’s contact information, and a statement advising the customer to submit an inquiry to the database provider should they have questions regarding the specific reason for such ineligibility.

Only licensees are authorized to make loans under NRS 604A, and as such only licensees are authorized to determine whether a consumer is “eligible” or “ineligible” for a loan. These provisions impermissibly shift the underwriting responsibilities from licensees to the database and directly conflict with the statutory requirements upon licensees. The Legislature **never** contemplated shifting the responsibility of making customer qualification determinations away from the licensees offering credit. Throughout the statute, the licensee not the service provider or database is responsible for underwriting, that is, determining whether a consumer is eligible for a loan, and if so, the amount and type of loan.⁵⁹ Sections 18 and 20 should be stricken accordingly.

Section 19.

Section 19 as revised states that the database will provide the licensee with information “prescribed in NRS 604A, section 303, subsection 1(a)-(d).” Furthermore,

⁵⁹ See, NRS 604A.5017, NRS 604A.5045, and NRS 604A.5076.

Section 19 requires that the licensee “must consider” these factors and other available information in determining a consumer’s “ability to repay” for all loan types—deferred deposit, high interest and title loans. By contrast, the Legislature clearly limited a licensee’s requirement to review such information only to deferred deposit and high interest loans. Please note NRS 604A.5017(2)(b) sets forth the requirement that licensee use such information received under NRS 604A, section 303, subsection 1(a)-(d):

to ensure that the deferred deposit loan, in combination with any other outstanding loan of the customer, does not exceed 25 percent of the customer’s expected gross monthly income when the deferred deposit loan is made⁶⁰.

Likewise, note the statute in NRS 604A.5045(2)(b) sets forth the requirement that licensee use such information received under NRS 604A, section 303, subsection 1(a)-(d):

to ensure that the terms of the high-interest loan, in combination with any other outstanding loan of the customer, do not require any monthly payment that exceeds 25 percent of the customer’s expected gross monthly income when the loan is made.⁶¹

The Legislature chose **not** to revise the ability to repay provisions of the title loan sections of the statute to include a similar requirement. Likewise, the Legislature has delegated to licensees, guided by the statutes, to determine their underwriting criteria—not the Commissioner.

Furthermore, NRS 604A.303 is not an ability to repay provision and the information listed is **permissive** and – not mandatory.⁶² The statute specifically says:

The information the Commissioner and licensees **may obtain** includes. . . . (emphasis added.)

NRS 604A.303 does **not** require that the license “**must consider**” such information, only that the licensee “may” consider such information. That is, these provisions do not require a 30 day cooling off period after a customer pays off a loan,

⁶⁰NRS 604A.5017(2)(b)

⁶¹NRS 604A.5045(2)(b)

⁶² The information the Commissioner and licensees may obtain includes, without limitation:

(a) Whether a customer has a deferred deposit loan, title loan or high-interest loan outstanding with more than one licensee;

(b) Whether a customer has had such a loan outstanding with one or more licensees within the 30 days immediately preceding the making of a loan;

(c) Whether a customer has had a total of three or more such loans outstanding with one or more licensees within the 6 months immediately preceding the making of the loan; and

(d) Any other information necessary to determine whether a licensee has complied with the provisions of this chapter.

or restriction upon lending to consumers who have obtained and successfully repaid three or more loans in the prior six months. The FID's restrictions on credit were not mandated by the Nevada Legislature in SB 201. Instead, the Legislature approved only two **new** considerations for licensees when determining whether to extend a deferred deposit loan or high interest loan: (1) whether the consumer is a covered military borrower or dependent of a covered military borrower; and (2) whether the applied-for loan will exceed 25% of the consumer's GMI taking into consideration amounts outstanding with other licensees.

The Legislature never intended for the provisions of SB 201 to put industry members out of business. Sections 604A.5011, 5038, and 5065 contain very clear language about what a licensee **must consider** in determining that a borrower has the ability to repay. SB 201 did not amend, modify or alter any of these sections. Instead, the *Legislature left these provisions completely unchanged in SB 201*. Had the Legislature intended to impose new ability to repay considerations, it would have done so in the provisions explicitly addressing ability to repay. Rather, SB 201 created "safe harbors" from violations of the 25% caps found in Sections 12 and 13 of SB 201:

A licensee who operates a [deferred deposit] [high-interest loan] service is not in violation of the provisions of this section if . . . The licensee has utilized the database established pursuant to section 8 of this act to ensure that the [deferred deposit loan] [terms of the high-interest loan], in combination with any other outstanding loan of the customer, [does not exceed 25 percent of the customer's expected gross monthly income when the deferred deposit loan is made] [do not require any monthly payment that exceeds 25 percent of the customer's expected gross monthly income when the loan is made.]

There would be no need for a safe harbor, if licensees **must consider** the factors outlined in Section 8 of SB 201 in determining a borrower's ability to repay. Rather, a licensee can choose to review such information if it so desires. Some licensees may as part of its underwriting consider whether a consumer has taken out and successfully repaid a loan in the prior 30 days, viewing such history as demonstrating the consumer does have an ability to repay. Likewise, if a consumer has taken out and successfully repaid three loans in the prior six months, some Licensees may view such demonstrates the consumer does have the ability to repay. Other licensees may view such information negatively, as evidence that the consumer does not have the ability to repay. Ultimately, it is the licensee that must make this decision, not the Commissioner or database.

Such Proposed Regulations directly conflict with the statutory requirements and impermissibly shift the underwriting and making of a loan from the licensee to the Commissioner. As such, the proposed regulation exceeds statutory authority and should be stricken.

Section 21.

Section 21 is a broad provisions that exceed the limited data fields in NRS 604A.303, that requires licensees to enter into the database in real time all loans, renewals, extensions, rollovers, refinances, grace periods, payments, sending of payment plan offers, entering into of payment plans, declined loans, and **any** transactions relating to the loans. The Regulations fail to specify “any transaction relating to the loan.” Licensees have no way to understand what is meant by such language. For example, a customer who has failed to enter into a written repayment plan pursuant to NRS 604A.5027 and has been in default for 90 days, may call a licensee in response to a collection letter and agree verbally and informally with licensee to payment plan. Does this language “**any** transactions relating to the loans” now require licensees to update the database in real time the moment it mails a collection letter, and in real time after having a call in which the licensee and customer have informally entered into a payment plan? This vague requirement will result in inconsistent interpretations across different licensees and create a trap for erroneous compliance requirements as the FID now can make up requirements under this broad language.

In addition, the statute does not authorize the reporting of “declined loans”, and such requirement exceeds the limited statutory basis as expressly required for the database, and issues directives that change the plain meaning of the statute. Arguably, the reporting of declined loans, and the making of such information available to licensees causes the database to be a consumer reporting agency⁶³ under Fair Credit Reporting Act (“FCRA”). As such, licensees as reporters of such information become a “furnisher” under the FCRA, and subject to a number of requirements.⁶⁴ This far exceeds the Legislative intent in creating a database, and as such Section 21 should be stricken.

⁶³ Section 603 (f) of the FCRA defines a “consumer reporting agency” as:

any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

Section 603 (f) of the FCRA defines a “consumer report” as:

any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer’s credit worthiness. . . which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer’s eligibility for (A) credit . . .

⁶⁴ See, FCRA § 623. Responsibilities of furnishers of information to consumer reporting agencies [15 U.S.C. § 1681s-2]

Sections 22 and 23.

Sections 22 and 23 were recently updated⁶⁵ as follows:

<p>Sec. 24. Sec. 22. In addition to items (a) – (g) in Section 18-17-21, a licensee shall enter the following information in the database, in real time, <u>for prior to when a transaction takes place as prescribed in NRS 604A, Sections 5983-5987 and Section 303, Subsections 2 and 5 for each loan made pursuant to NRS 604A.501- NRS 604A.5034 and NRS 604A.5035- NRS 604A.5064, without limitation:</u></p>	<p>Sec. 25. Sec. 23. In addition to items (a) – (g) in Section 18-17-21, a licensee shall enter the following information in the database, in real time, <u>for prior to when a transaction takes place as prescribed in NRS 604A, Sections 5983-5987 and Section 303, Subsections 2 and 5 for each loan made pursuant to NRS 604A.5065- NRS 604A.5089, without limitation:</u></p>
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As such, the data fields required to be submitted in Sections 22 and 23 are arguably limited solely to transactions with a “covered service member or dependent of a covered service member” (herein after “Covered Borrowers”) under NRS Sections 5983 - 5987.⁶⁶ That is, the added language “when a transaction takes place as prescribed in NRS 604A, Sections 5983-5987” is conditional language. Therefore, if the transaction does not take place as prescribed in NRS 604A, Sections 5983-5987, then licensee is not required to enter the information in Sections 22 and 23. However, if the FID takes the position that this language⁶⁷ is not conditional and was only included to ensure licensees upload information about “covered borrowers” as well as all other customers, we nevertheless believe Sections 22 and 23 are overbroad, in that such provisions require the collection of data not authorized by NRS604A.303.

We recognize that NRS604A.303 does provide for certain data fields. Therefore, we have no objection to the following data field requirements which are referenced in Section 20⁶⁸:

1. **customer’s full name: first and last name, and middle initial;**⁶⁹
2. **valid government-issued photo ID number;**⁷⁰
3. **date of birth, mm/dd/yyyy;**⁷¹

⁶⁵ Matters in (1) **blue bold italics** is language in the original proposed regulation; (2) **green bold underlining** is language proposed to be added in this amendment and **green bold italics** was proposed in the prior amendments; (3) **red strikethrough** is deleted language in the original proposed regulation in prior amendments; and (4) **purple double strikethrough** is language proposed to be deleted in this amendment. Revisions made after July 8, 2020 workshop. **green bold underlining** is language proposed to be added in this amendment. **purple double strikethrough** is language proposed to be deleted in this amendment.

⁶⁶ **CONSUMER CREDIT TO COVERED SERVICE MEMBERS**

NRS 604A.5983 Prohibited annual percentage rates.

NRS 604A.5985 Required disclosures.

NRS 604A.5987 Prohibited terms of consumer credit to covered service member.

⁶⁷ “when a transaction takes place as prescribed in NRS 604A, Sections 5983-5987”

⁶⁸ Although there is no requirement to upload these data field, there is a requirement to query such fields. Therefore, Sections 22 and 23 should be revised to require the uploading of these data fields.

⁶⁹ NRS 604A.303 5(d) and Section 18 (a) which is a required data field pursuant to Section 22.

⁷⁰ NRS 604A.303 5(d) and Section 21 (c) which is a required data field pursuant to Section 22.

⁷¹ NRS 604A.303 5(d) and Section 21 (d) which is a required data field pursuant to Section 22.

We suggest that although **Database Fields 1 through 3** are not specifically listed in NRS 604A.303—a NRS 604A.303 Database Field, such are necessary to administer the database or carry out the provisions of the statute. That is, the customer’s name, ID, and date of birth are merely identifying information necessary to the other data fields. We also have no objection to the following data field requirements in **Sections 22 and 23**:

4. *the origination date of the loan*⁷²;
5. *the principal amount of the loan*;⁷³
6. *the total finance charge associated with the loan*;⁷⁴
7. *the fees charged for the loan*;⁷⁵
8. *the annual percentage rate of the loan*;⁷⁶ and
9. *type of loan product (deferred deposit, high interest, title)*;⁷⁷

We also have no objection to the following data field requirements in **Section 25**:

10. *date entered into default*;⁷⁸
11. *date customer enters into repayment plan*.⁷⁹

Please note that **Database Fields 4 through 12** are specifically listed in NRS 604A.303—a NRS 604A.303 Database Field. As such, it is reasonable to require licensees to upload such information into the database.

Section 22 requires that licensees upload in real time to the database for various information including the customer’s “gross income” and “total obligations.” The words “gross income” do NOT appear within the statute or current regulations. However, the words “gross monthly income” appear within the statute and the current regulations.⁸⁰ Both the statute and regulations place the obligation to verify the consumer’s gross monthly income upon the licensee,⁸¹ thereby eliminating any need for the licensee to upload within the database or query the database for the customer’s gross income. For example, each licensee at the time of making a deferred deposit or high interest loan must verify the customer’s gross monthly income—that is, the licensee cannot rely upon some other licensee’s verification of “gross income” uploaded into the database to fulfill the licensee’s statutory obligations. **Section 22 (m)** which requires licensees to upload

⁷² NRS 604A.303 2(a) and Section 22 (c) and Section 23 (e); however, this provision should be revised to read: the date on which the loan was made” to match the statute.

⁷³ NRS 604A.303 2(c) and Section 22 (e) and Section 23(f).

⁷⁴ NRS 604A.303 2(f) and Section 22 (f) and Section 23(g).

⁷⁵ NRS 604A.303 2(d) and Section 22 (g) and Section 23(h).

⁷⁶ NRS 604A.303 2(e) and Section 22 (i) and Section 23(h).

⁷⁷ NRS 604A.303 2(b) and Section 22 (l).

⁷⁸ NRS 604A.303 2(g) and Section 25 (2) limited solely to date of default.

⁷⁹ NRS 604A.303 2(h) and Section 25 (4) limited solely to the date of entering into repayment plan.

⁸⁰ NRS 604A.5017, NRS 604A.5045, and NAC 604A.180

⁸¹ See NRS 604A.5017, NRS 604A.5045, and NAC 604A.180

in real time to the database a customer’s gross income should be stricken because such requirement far exceeds the limited statute basis as expressly required for the database, and is not reasonably necessary to administer the database or carry out the provisions of the statute.

The words “total obligations” are not defined anywhere in the current regulations, statute,⁸² or Proposed Regulations. Without more guidance on what is meant by “total obligations” the licensees will upload inconsistent information into the database, and queries for “total obligations.” Licensees working with applicants should consider “obligations” in making a loan, and their effect upon the repayment of the loan. That is, each licensee will have its own underwriting criteria, which is unique to the licensee, which incorporates federal and state law limitations. For example, federal law prohibits underwriting criteria that discriminates against applicants on a prohibited basis. Likewise, state law in the case of deferred deposit loans and high interest loans places underwriting limitations that the loan—may not exceed 25% of the customers gross monthly income. The statute does not require that licensees consider “total obligations” and as such, the requirement to upload “total obligations” would create new loan qualification requirements not authorized by the statute. Section 22(n) which requires licensees to upload in real time to the database a customer’s total obligations should be stricken because such requirement far exceeds the statutory limits as expressly required for the database, and is not reasonably necessary to administer the database or carry out the provisions of the statute.

All of the data fields in Sections 22 and 23, except as set forth above, should be stricken because they far exceed the limited statutory basis as expressly required for the database; create new loan qualification requirements not authorized by the statute; issue directives that change the plain meaning of the Statute; impermissibly expand the FID’s statutory enforcement authority, contain vague, imprecise, and impracticable provisions, and require licensees to incur tremendous costs of time and funds to implement changes which lack any statutory basis or authority. Finally, the number of data fields required to be uploaded far exceed similar database statutes in other states.⁸³

Sections 24 and 25.

⁸² NRS 604A.5076 states: A licensee who makes title loans shall not: * * * 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. . .

⁸³ Alabama Code § 5-18A-13(o), Delaware Code 5 § 2235B, Florida Statutes §§ 560.4041 and 560.404, Illinois Compiled Statutes 815 ILCS 122/1-10 and 112/2-15, Indiana Code § 24-4.5-7-404, Kentucky Revised Statutes §§ 286.9-010, 286.9-100, 286.9-140, Michigan Compiled laws §§ 487.2122, 487.2140, 487.2142, 487.2152, 487.2153, 487.2154, 487.2155, 487.2156, New Mexico § 58-15-37, North Dakota Century Code § 13-08-12, 59 Oklahoma Statutes §§ 3103.1, 3108, 3109, 3116, South Carolina Code §§ 34-39-130, 34-39-175, 34-39-180, 34-39-270, 34-39-280, 34-39-290, Code of Virginia §§ 6.2-1810, 6.2-1817, Revised Code of Washington §§ 31.45.073, 31.45.093, Wisconsin Statutes § 138.14 (1), (8), (10), (14).

Sections 24 and 25 should be stricken because these sections require licensee to a number of database fields that far exceed the limited statutory basis as expressly required for the database; create new loan qualification requirements not authorized by the statute; issue directives that change the plain meaning of the Statute; impermissibly expand the FID’s statutory enforcement authority, contain vague, imprecise, and impracticable provisions, require licensees to enter information without designating the customer’s name or identification information, and require licensees to incur tremendous costs of time and funds to implement changes which lack any statutory basis or authority.

All of the data fields in Sections 24 and 25⁸⁴ should be stricken because they far exceed the limited statutory basis as expressly required for the database; create new loan qualification requirements not authorized by the statute; issue directives that change the plain meaning of the Statute; impermissibly expand the FID’s statutory enforcement authority, contain vague, imprecise, and impracticable provisions, and require licensees to incur tremendous costs of time and funds to implement changes which lack any statutory basis or authority.

In addition, Section 25 requires the “status of the loan be uploaded,” but does not identify when such status should be uploaded. Arguably, if the information regarding the loan under Sections 21, 22, 23, and 24 is already in the database, then why would the status of the loan be needed. Also, how does one upload the payment history, if arguably other sections have already required payments to be uploaded? That is, there should be no “payment history.” Also, when is a licensee required to enter the date of repossession? Repossession may occur on a Saturday night, and the licensee may not be open for business until Monday. Is a licensee required to enter the information about repossession immediately (Saturday night) or some later time? Finally, the number of data fields required to be uploaded in Sections 24 and 25 when combined with Sections, 21, 22, and 23, far exceed similar database statutes in other states.⁸⁵

Section 26.

Section 26 is impermissibly broad in that it assumes that the FID may use the information in the database for examinations, investigations, or internal reporting. As provided above, the statute is clear that the information is intended for administration of the database, not the entire statute. The only deviation from this clear statutory

⁸⁴ The allocation to interest, fees, and principal, new interest rate, duration of grace period, co-owner information, fair market value, repossession, first or third party collection status, etc.

⁸⁵ Alabama Code § 5-18A-13(o), Delaware Code 5 § 2235B, Florida Statutes §§ 560.4041 and 560.404, Illinois Compiled Statutes 815 ILCS 122/1-10 and 112/2-15, Indiana Code § 24-4.5-7-404, Kentucky Revised Statutes §§ 286.9-010, 286.9-100, 286.9-140, Michigan Compiled laws §§ 487.2122, 487.2140, 487.2142, 487.2152, 487.2153, 487.2154, 487.2155, 487.2156, New Mexico § 58-15-37, North Dakota Century Code § 13-08-12, 59 Oklahoma Statutes §§ 3103.1, 3108, 3109, 3116, South Carolina Code §§ 34-39-130, 34-39-175, 34-39-180, 34-39-270, 34-39-280, 34-39-290, Code of Virginia §§ 6.2-1810, 6.2-1817, Revised Code of Washington §§ 31.45.073, 31.45.093, Wisconsin Statutes § 138.14 (1), (8), (10), (14).

limitation is NRS 604A.303 in which the Legislature authorized provides that the Statutory Database Fields may be used by the Commissioner for statistical purposes if the identity of the persons is not discernible from the information disclosed. The database was not created so that the FID would have unlimited access to information about licensees and consumers for enforcement purposes.⁸⁶ Therefore, the Section 26 should be revised to only allow for the statistical reporting of de-identified information.

Conclusion.

As noted above, the statute’s sole purpose for the database is to allow licensees to verify a consumers outstanding loans (deferred, high interest, and title) with all licensees, and thereby comply with the new gross monthly income limitations. As such, the statute proposes 9 limited and specific items to be uploaded to the database. However, the Proposed Regulations vastly and unnecessarily expands the volume of consumer data to 50 plus data fields, thereby subjecting Nevada residents to the possibility of having unnecessary confidential information subject to risk of data breach by cyber criminals. Lacking any statutory authority, the FID has turned the database into a consumer reporting agency and a broad repository of consumer information which it can use as an “enforcement tool” when examining licensees.

The Proposed Regulations wrongly mandate underwriting criteria licensees **must consider** (although the statute clearly provides that licensees “**may consider**” such information), and incorrectly delegate to the database loan approval decision authority.

The Proposed Regulations add numerous provisions that create risks for consumer information, exceed statutory authority, are unduly burdensome on licensees, abrogate licensee’s statutory right to make underwriting decisions in the manner authorized by statute, and do not aid the FID in carrying out the functions assigned to it by law. Such provisions are unnecessary to the proper execution of the FID’s functions. In addition, they are overreaching, as they exceed the statutory authority the Legislature granted to the FID. The Proposed Regulations are the result of a procedurally defective rulemaking process.

For example, the rules are being passed during a pandemic, when neither licensees nor consumers can appear at a public hearing, or muster the full resources and data necessary to respond. Licensees have been denied due process which arguably requires an in person meeting, after notice for members of the public to appear and make comments. By contrast, the FID is holding meetings via “computer and the Internet” and are mandating those requirements upon the public to exercise their right to appear and make comments on these regulations. Such action takes away the fundamental rights of persons in Nevada to appear in person and question the FID on the Proposed Regulations, and favors only those persons that have the technology to

⁸⁶ See comments to Section 16.

access such hearing via, computer, software, Internet, etc. The Proposed Regulations are arbitrary and capricious. They are likely to result in conflicting issues in the enforcement context. The FID has failed to consider the true cost upon licensees of database implementation, and forecasted that implementation will impose no significant cost burdens on licensees. With even a cursory amount of research, the FID should have concluded that a number of the provisions are impracticable and unworkable, and that the costs of database implementation would be significant for licensees, and its data field requirements far exceeded the data fields in other states that have implemented similar-purpose databases. Even with a superficial review of the comments to date, the FID should have revised a number of the provisions that are simply mistaken—such as issuing a regulation defining “identifying customer information,” when such term is never used in the statute, existing regulations, or proposed regulations (except for the definition section.)

Going through this process of minimal changes by the FID, with total disregard for the comments from industry members shows a clear usurpation of licensees rights, and an extreme bias against licensees, as evidenced by the sheer cost that will be placed on licensees to spend on compliance with such sections. Many licensees will simply have to go out of business because they will be unable to sustain the costs associated with compliance, should these Regulations go unchanged.

We remind the FID of its mission statement, which is **to maintain a financial institutions system for the citizens of Nevada that is safe and sound, protects consumers and defends the overall public interest, and promotes economic development through the efficient, effective and equitable** licensing, examination and **supervision of** depository, fiduciary, and **non-depository financial institutions**.

For some unknown reason, the FID has made it abundantly clear that it is not interested in equitable supervision of non-depository financial institutions licensed by the FID to operate a check-cashing service, deferred deposit loan service, high-interest loan service or title loan service. Rather it has directly chosen to treat licenses unfairly, as opposed to equitably, and penalize licensees with unprecedented supervision through overbearing and overreaching regulations with no basis under Nevada law.

Therefore, we again renew our request that the FID delay the rulemaking process, until in person meetings may be held, request additional information from members of the industry and consumers, and significantly revise the Proposed Regulations to come up with a workable, practicable set of regulations in line with statutory mandates.

In an effort to save time and resources, we respectfully request your consideration of these matters at this time. We urge the FID to issue another small business survey, and look at the actual costs licensees will incur to comply with the Regulations, actually schedule informal meetings with members of the public, industry

members and entities interested in becoming the service provider, in order to discuss all of the practical concerns relating to such regulations, and to redraft the Proposed Regulations to benefit consumers, licensees, and FID.

FID's actions to date have only hurt consumers, the very persons licensees serve on a daily basis. More importantly, without significant revisions, the Proposed Regulations will disproportionately hurt borrowers who are most in need of credit, by limiting access to credit, and significantly increasing the cost of operation upon licensees, who will in turn, pass such costs on to the borrowers.

In conclusion, the Legislature intentionally drafted SB 201 in order to enforce the loan limits already contained in NRS Chapter 604A across all Nevada licensees, while specifically referencing information to be collected by the database. The Proposed Regulation requires massive data collection and expanded licensee underwriting and other obligations that are not contemplated in SB 201.

We again renew our invitation that Check City stands at the ready to engage in constructive dialog and collaboration with the FID in the spirit of advancing the identification and resolution of the multiple problematic provisions of the current Proposed Regulations we have identified herein.

We reserve the right to supplement this comment and provide additional comments after the scheduled workshop.

We request that the FID hold a public hearing, pursuant to NRS 233B.061.

Ms. Sandy O'Laughlin
September 15, 2020
Page 29 of 34

If you have any questions, please feel free to contact us directly.

Best regards.

Yours Very Truly,

James T. Marchesi
Check City Partnership, LLC

CC: Mary Young, Deputy Commissioner

Exhibit A

Please note Check City has set forth its objections to the Proposed Regulations. These questions and issues in Exhibit A are raised *assuming arguendo* that no changes are made to the Proposed Regulations. Check City does not waive any of its objections to the Proposed Regulations by setting forth the questions and issues in this Exhibit A.

1. Section 12 limits access to the database, but does not define "Licensee senior staff members". Would a licensee's senior staff member include IT personnel, compliance staff, internal auditing staff, etc.?
2. Section 13 requires a licensee to retain all query made in the database for 3 years. How can licensees retain a query—will the database allow the licensee to receive the query in an electronic form that can be saved?
3. Section 13 requires for title loans that a licensee retain the third-party vendor documentation showing the fair market value of the vehicle securing the title loan. What information qualifies as third-party vendor documentation? Is there a list of approved 3rd Party Vendors?
4. Section 17 addresses situations in which the database is unavailable due to technical issues attributable to the service provider. How are licensees able to know "if the database is unavailable due to technical issue on the service provider side"? For example, a licensee may query the database, and receive no response or a licensee may query the database, and receive a nonsensical response. The issue may be due to a software issue or hardware issue with the Service Provider, or a 3rd party vendor for the service provider. However, the issue may be due to licensee's software, hardware, Internet Service Provider, etc. which may be unknown to the licensee's employee. How are licensees to determine whether the issues with no service from the database are due to the service provider and or its 3rd party vendors or the licensee and or its 3rd party vendors?
5. Section 17 also requires the licensee within 24 hours of the database becoming operational. Our stores are open Monday through Thursday: 10 AM - 6 PM, Friday: 9 AM - 7 PM, Saturday: 10 AM - 6 PM, Sunday: closed. In addition, we are closed for holidays. Check City, like many licensees may not be open for business within 24 hours of the database becoming operational. For example, if the database is not operational at 5:00 PM on a Saturday and remains not operational until 7:00 PM, and Check City makes 200 loans between Saturday 5:00 PM and Saturday 6:00 PM, then according to Section 17, Check City must update such information into the Database by 7:00 PM on Sunday. However, Check City is not open on Sundays, and if Monday is a holiday (Labor Day), Check City employees will not return to work until Tuesday at 9:30 AM, which is

62.5 hours from 7:00 PM on Saturday. Because the Database provider was unable to maintain continuous service, does Section 17 creates a responsibility for Check City open its offices for business when they are normally closed?

6. Section 18 provides that the database **shall allow** a licensee to make a deferred deposit loan, title loan or high-interest loan only if making the loan is permissible under the provisions of this chapter and chapter 604A of NRS.
 - a. How will the database provider communicate the terms of the loan it has approved the licensee to make? Will it tell the licensee
 - i. the amount of the loan allowed;
 - ii. the type of loan allowed (deferred deposit, high interest, title);
 - iii. the term of the loan;
 - iv. the amount licensee may charge for making the loan;
 - v. the schedule of payments;
 - vi. the Annual percentage Rate; and
 - vii. the Total of Payments, etc.

Section 18 provides that the query should contain the first and last name, and middle initial. Some persons do not have a middle name, and therefore no middle initial. Some persons have two last names. Section 18 provides that licensee's query must include a valid government-issued photo ID number but does not reference which governmental entity.

6. Section 20 provides that the database shall inform a licensee whether the customer is eligible for a new loan, and if ineligible, the reason for such ineligibility. What are the criteria and/or reasons used by the database to determine whether a customer is "eligible" or "ineligible" for a loan?
7. Section 21 requires a licensee to enter into the database in "real time" a great deal of information, but gives no specific requirement directions for licensees. For example, a licensee's software may generate a letter to a customer regarding a repayment plan at 10:00 AM, but the licensee may not mail the repayment plan letter until 2:00 PM that same day, when the mail carrier comes to the licensee's store. When should the database be updated? In addition, what does "any transaction pertaining to the loan mean? Does it mean the summary of a collection call in which the customer agreed to make payments to bring the account current must be entered immediately after the customer call? Does it mean a customer's complaint that the time required to make a payment was too long must be entered immediately after the customer call? Does it mean a customer's compliment that the staff was friendly to the customer must be entered immediately after the customer call? For licensees that refer accounts to an attorney to file suit, does it mean the licensee must enter such decision immediately after the call with the lawyer. In addition, if the lawyer sends a

demand letter to collect the account, must licensee enter into the database that the letter was sent immediately at the time the letter was mailed. If the lawyer speaks with the customer by phone, must licensee enter into the database that a summary of the call immediately at the time the lawyer and customer finish speaking. If the judge in collection lawsuit renders a verdict in favor of the licensee, must time licensee immediately update the database? The list of questions goes on and on because the regulation is not precise and limited.

8. Section 22 a requires the licensee to enter into the database in real time the "origination date." What is the "origination date" is that the date the loan is consummated by the parties signing the loan agreement? Is the "total finance charge associated with the loan" the finance charge disclosed to the customer at consummation or the amount of the finance charge the customer pays after all deferrals, extensions, rollover, refinancings, etc.? Does the "fee charged for the loan" include "interest"?

Section 22 a requires the licensee to enter into the database in real time the payment details as described in Section 24. Section 24 requires If a scheduled payment was missed: (1) The new interest rate, if applicable; (2) Whether or not a repayment was offered; (3) Did a customer enter a repayment plan; and (4) The duration of the grace period, if applicable. How does a licensee enter in real time whether a customer enters into a repayment plan? NRS 604A.5027 requires a licensee to offer a repayment plan for a period of at least 30 days after default. Must licensee upload to the database at the end of day for the 30 days following default, the fact that the customer did not enter into a repayment plan on that day. If the licensee gives the customer a 5 day grace period, but the customer pays in full on day 3 of the grace period, must the licensee upload 5 days or 3 days for the "duration of the grace period"?

Section 22 requires a licensee to upload the "customer's gross income" and the "customer's total obligations" in real time. The terms "customer's gross income" and "customer's total obligations" are never mentioned in the statute. For consistency purposes how are licensee supposed to report this information in real time, if these matters are not further defined. Without strict definitions for licensees to follow, the data reported under these fields by licenses will be inconsistent.

9. Section 23 a requires the licensee to enter into the database in real time the "origination date." What is the "origination date" is that the date the loan is consummated by the parties signing the loan agreement? Is the "total finance charge associated with the loan" the finance charge disclosed to the customer at consummation or the amount of the finance charge the customer pays after all deferrals, extensions, rollover, refinancings, etc.? Does the "fee charged for the loan" include "interest"?

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Section 23 requires a licensee to upload the fair market value of the vehicle from a third-party vendor. Without strict definitions for licensees to follow, the data reported under these fields by licenses will be inconsistent. For example, some 3rd party vendors give value for "trade in", "private party sales", "wholesale value," "retail value," and "true market value." However, all 3rd party vendors without seeing and inspecting a vehicle make certain assumptions regarding the vehicle, and may limit their valuations to standard vehicle, with no accessories. For example, a vehicle may contain numerous "non-standard" accessories, expensive sound systems, rims, tires, paint, etc. Therefore, licensee may be unable to find a 3rd party vendor that will be able to give an accurate the fair market value for the vehicle. How do licensees deal with custom cars, when a licensee cannot find a fair market value from a 3rd party vendor for such custom vehicle?

Section 23 requires a licensee to enter the co-owner's consent. What does that mean? Is the consent a document signed by the Co-Owner that must be uploaded? Must the licensee upload the personal information of the co-owner, such as name, address, phone number, social security number, etc.?

10. Section 24 requires If a scheduled payment was missed: (1) The new interest rate, if applicable; (2) Whether or not a repayment was offered; (3) Did a customer enter a repayment plan; and (4) The duration of the grace period, if applicable. How does a licensee enter in real time whether a customer enters into a repayment plan? NRS 604A.5027 requires a licensee to offer a repayment plan for a period of at least 30 days after default. Must licensee upload to the database at the end of day for each of the 30 days following default, the fact that the customer did not enter into a repayment plan on that day. If the licensee gives the customer a 5 day grace period, but the customer pays in full on day 3 of the grace period, must the licensee upload 5 days or 3 days for the "duration of the grace period"?

11. Section 25 requires the status of the loan entered into the database, but does not specify when the status is to be entered. Section 25 states the collection status—whether first party or third party, the date entered into collection and payment history. When does a licensee have to enter whether account is being serviced by a first party or third party collector? Does the licensee have to enter the status in “real time”? If not, when must the status be entered? Section 25 requires “payment history” status be entered? If licensees are required under other section to enter payments in real time—how will there ever be any payment history to enter, and if such payment history exists, when is it required to be entered under Section 25?

Section 25 requires the date the loan was “closed as defined in this chapter.” The word “closed” is not defined, and typically means the date of consummation—that is the “loan closing” or “closing of the loan.” However, the proposed regulations appear to imply the term “close” means “charge off”. However, each licensee may treat the date of charge off different from other licensees. For example, charge off may have a particular meaning under the federal tax laws.

Section 25 requires the licensee to upload the date repossession is ordered and date repossession occurred. However, there is no time specified for reporting such information. What if the repossession occurs on a day licensee is closed, or after hours on a day licensee operates? When must licensee enter the information in the database?



Submitted to: fidmaster@fid.state.nv.us

September 15, 2020

Ms. Sandy O’Laughlin
Commissioner of Financial Institutions
3300 W. Sahara Ave., Suite 250
Las Vegas, Nevada 89102

RE: Comments on Proposed Regulations Pertaining to Senate Bill 201 (S.B. 201)

Dear Ms. O’Laughlin:

CURO Financial Technologies Corp., is the parent corporation of Advance Group, Inc., FMMR Investments, Inc., and Principal Investments, Inc. doing business in Nevada as Rapid Cash (“Rapid Cash”). Rapid Cash provides small dollar loans and other financial services through its 19 fronts and online at www.rapidcash.com. We appreciate the opportunity to comment on the Proposed Regulations Pertaining to Senate Bill 201 (the “proposed regulations”). We have serious concerns with the breadth of the proposed regulations and believe that the proposed regulations go beyond the scope and intent of Senate Bill 201. Below please find a summary of our concerns and more specifically, the requirements in the proposed regulations that must be removed in order for the proposed regulations to properly reflect the provisions of Senate Bill 201.

1. Amended NRS 604A.

With Senate Bill No. 201 (2019) (“S.B. 201”), the Legislature issued revised provisions governing loans provided under NRS 604A. S.B. 201 specifically required the Commissioner of Financial Institutions (the “Commissioner”) to “develop, implement and maintain a database by which the Commissioner and licensees may obtain information related to deferred deposit loans, title loans and high-interest loans made by licensees to customers in this State to ensure compliance with the provisions of this chapter.” NRS 604A.303(1).

a. Information licensees may utilize from the database.

In addition to establishing the database, the Legislature clarified that licensees who operate a deferred deposit loan service¹ or a high-interest loan service², would not be in violation of the already established gross income limitations, if the licensee utilized the database to ensure that either a deferred deposit loan or a high-interest loan, in combination with any other outstanding loans of the customer, does not exceed twenty-five percent (25%) of the customer's expected gross monthly income when the loan is made.

The information licensees may utilize from the database include:

- (a) Whether a customer has a deferred deposit loan, title loan or high-interest loan outstanding with more than one licensee;
- (b) Whether a customer has had such a loan outstanding with one or more licensees within the thirty (30) days immediately preceding the making of a loan;
- (c) Whether a customer has had a total of three or more such loans outstanding with one or more licensees within the six (6) months immediately preceding the making of the loan.³

After determining that either a deferred deposit loan or a high-interest loan, in combination with any other outstanding loans of the customer, does not exceed twenty-five percent (25%) of the customer's expected gross monthly income, licensees are then able to make a determination as to whether a customer meets their own individual underwriting criteria.

b. Information licensees are to enter into the database.

The Legislature explained that a licensee "who makes a deferred deposit loan, title loan or high-interest loan shall enter or update the following information in the database for each such loan made to a customer at the time a transaction takes place:

- (a) The date on which the loan was made;
- (b) The type of loan made;
- (c) The principal amount of the loan;
- (d) The fees charged for the loan;
- (e) The annual percentage rate of the loan;

¹ "A licensee who operates a deferred deposit loan service is not in violation of the provisions of this section if . . . The licensee has utilized the database established pursuant to section 8 [NRS 604A.303] of this act to ensure that the deferred deposit loan, in combination with any other outstanding loan of the customer, does not exceed 25 percent of the customer's expected gross monthly income when the deferred deposit loan is made." NRS 604A.5017(2)(b).

² "A licensee who operates a high-interest loan service is not in violation of the provisions of this section if . . . The licensee has utilized the database established pursuant to section 8 of this act to ensure that the terms of the high-interest loan, in combination with any other outstanding loan of the customer, do not require any monthly payment that exceeds 25 percent of the customer's expected gross monthly income when the loan is made." NRS 604A.5045(2)(b).

³ NRS 604A.303(1).

(f) The total finance charge associated with the loan;⁴

Licensees are also directed to update the following information during the life of the loan:

(g) If the customer defaults on the loan, the date of default;

(h) If the customer enters into a repayment plan pursuant to NRS 604A.5027, 604A.5055 or 604A.5083, as applicable, the date on which the customer enters into the repayment plan; and

(i) The date on which the customer pays the loan in full.⁵

2. The Proposed Regulations.

On August 31, 2020, the Commissioner issued revised proposed regulations pertaining to S.B. 201. While the Legislature specified that the Commissioner “[m]ay adopt regulations and make orders for the administration and enforcement of this chapter, in addition hereto and not inconsistent herewith,” the Commissioner’s proposed regulations are overly broad and change the plain meaning of S.B. 201.

a. Information licensees are to enter into the database.

In the proposed regulations, “[a] licensee shall enter the following information in the database, in real time, when a transaction takes place as prescribed in NRS 604A, Sections 5983-5987 and Section 303, Subsection 2 and 5 for each loan made pursuant to [deferred deposit loan services] and [high-interest loan services], without limitation:

(a) If the customer is a covered service member;

(b) If the customer is a dependent of a covered service member;

(c) The origination date of the loan;

(d) The term of the loan;

(e) The principal amount of the loan;

(f) The total finance charge associated with the loan;

(g) The fee charged for the loan;

(h) Due date of the loan;

(i) The annual percentage rate of the loan;

(j) The scheduled payment amount;

(k) The payment details as described in section 24;

(l) Type of loan product;

(m) The customer’s gross income; and,

(n) The customer’s total obligations.⁶

Under S.B. 201, a licensee who makes a deferred deposit loan or high-interest loan shall enter into the database for each such loan made, nine (9) specifically enumerated data

⁴ NRS 604A.303(2).

⁵ *Id.*

⁶ Section 22, Proposed Regulations.

points.⁷ Section 22 of the proposed regulations is inconsistent with S.B. 201 as the Legislature did not authorize or direct licensees to enter a customer's "gross income" and "total obligations." Because of this, subparts (m) and (n) should be removed from the proposed regulations.

Similar to Section 22 of the proposed regulations, Section 23 requires a licensee offering title loan services to "enter the following information in the database, in real time, when a transaction takes places as described in NRS 604A, Sections 5983-5987 and Section 303, Subsections 2 and 5 for each loan made pursuant to [title loan services], without limitation:

- (a) Verification that the customer is the legal owner of the vehicle securing the loan;
- (b) If the customer is a covered service member;
- (c) If the customer is a dependent of a covered service member;
- (d) The origination date of the loan;
- (e) The term of the loan;
- (f) The principal amount of the loan;
- (g) The total finance charge associated with the loan;
- (h) The fee charged for the loan;
- (i) Due date of the loan;
- (j) The annual percentage rate of the loan;
- (k) The scheduled payment amount;
- (l) The payment details as described in section 24;
- (m) The year, make, model, and Vehicle Identification Number (VIN) of the vehicle;
- (n) The fair market value of the vehicle from a third-party vendor; and
- (o) The legal co-owner's name and consent from co-owner, if applicable⁸."

Again, this section of the proposed regulations is inconsistent with the provisions of S.B. 201⁹. Only the information directed to be entered into the database under S.B. 201 should be required. Because of this, subparts (a) and (m)-(o) under Section 23 should be removed from the proposed regulations in their entirety.

Under Section 24 of the proposed regulations concerning payment details, licensees are required to "enter the following information in the database, in real time, for each payment made on the loan, without limitation:

- (a) The scheduled payment amount;
- (b) The scheduled date of the payment;
- (c) The actual payment amount;
- (d) The date the payment was made;

⁷ NRS 604A.303(2).

⁸ Section 23, Proposed Regulations.

⁹ NRS 604A.303(2).

- (e) The allocation of the total payment, dollar amount applied to principal and dollar amount applied to interest and fees;
- (f) Amount and date of payment received from a customer when the loan is paid in full;
- (g) If a scheduled payment was missed:
 - (1) The date the payment was missed;
 - (2) If the missed payment changed the interest rate;
 - (3) The new interest rate, if applicable;
 - (4) Whether or not a repayment was offered;
 - (5) Did a customer enter a repayment plan; and
 - (6) The duration of the grace period, if applicable.

If a customer enters into a loan agreement requiring installment payments, the licensee shall enter the information required pursuant to this section for each installment payment¹⁰.”

None of the information required under Section 24 was authorized by the Legislature under S.B. 201. Additionally, this information is unnecessary for a licensee utilizing the database to ensure compliance with NRS 604A. Therefore, Section 24 should be removed from the proposed regulations in its entirety.

Under Section 25 of the proposed regulations, all licensees are required to enter the status of the loan into the database, “without limitations:

- (1) If in collection, whether first party or third party, the date entered into collection and payment history;
- (2) If the loan is in default, the date entered into default and payment history. If an interest rate changed, the rate and date it changed;
- (3) If the loan is in grace period, the date entered into a grace period and payment history;
- (4) If in a repayment plan, the date entered into a repayment plan and payment history;
- (5) The date the loan was closed as defined in this chapter;
- (6) The reason the loan was closed as defined in this chapter;
- (7) The date repossession of the vehicle was ordered, if applicable; and
- (8) The date repossession occurred, if applicable”¹¹.

S.B. 201 only contemplated a licensee entering information regarding default on the loan, whether a customer enters into a payment plan, and date on which the customer pays the loan in full.¹² Only this information should be required under the proposed regulations

¹⁰ Section 24, Proposed Regulations.

¹¹ Section 25, Proposed Regulations.

¹² NRS 604A.303(2)(g)-(h).

to ensure compliance with NRS 604A, and subsections (1), (3), (6), and (7)-(8) of Section 25 should be removed in their entirety.

Finally, subsections (2) and (4) under Section 25 should be changed as follows: (2) If the loan is in default, the date entered into default ~~and payment history. If an interest rate changed, the rate and date it changed~~ . . . (4) If in a repayment plan, the date entered into a repayment plan ~~and payment history~~. By making these changes, the proposed regulations would follow the Legislature's requirements under S.B. 201¹³.

b. Information licensees may utilize from the database.

The Legislature specifically enumerated limited information that licensees may utilize to ensure compliance with NRS 604A¹⁴. As mentioned above, the proposed regulations include information unnecessary, pointless, unworkable and impractical for a licensee utilizing the database to ensure compliance with NRS 604A, and those provisions should be removed in their entirety.

In addition to requiring licensees which offer deferred deposit loan services and high-interest loan services, the proposed regulations also require licensees offering title loan services to query the database before making such a loan¹⁵. The Legislature did not amend the provisions relating to title loans, and therefore "title loan" must be removed from this section (Section 18) to ensure adherence to the Legislature's intent.

3. Conclusion.

The proposed regulations, as enumerated above, which dramatically digress from the authority granted under S.B. 201, improperly expand on the Legislature's intent in adopting S.B. 201, are unnecessary in part, and impractical in operation, and unworkable in other respects. The changes delineated above would revise the proposed regulations to be consistent with the provisions of S.B. 201 and aid the Financial Institution Division in carrying out its functions and authority as authorized under S.B. 201.

Thank you again for the opportunity to provide feedback on the proposed regulations, and please do not hesitate to contact me directly at AaronMansfield@curo.com if you have any questions.

Sincerely,

Aaron Mansfield
Corporate Counsel

¹³ NRS 604A.303(2)(g),(h).

¹⁴ NRS 604A.303(1).

¹⁵ Section 18, Proposed Regulations.

CC: Mary Young, Deputy Commissioner (delivered to mmyoung@fid.state.nv.us)

September 15, 2020

Via Electronic Mail (fidmaster@fid.state.nv.us) and U.S. Mail

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

Re: Notice of Second Workshop to Solicit Comments on Proposed Regulations Pertaining to Senate Bill 201 (S.B. 201) – Revises Provision Governing Loans – NRS 604A Database

Dear Deputy Commissioner Young:

Please accept the attached comments on behalf of our client, Dollar Loan Center, LLC (“DLC”), a licensed lender pursuant to NRS Chapter 604A. Please also note that DLC incorporates by this reference its prior comments submitted by Patrick J. Reilly dated April 27, 2020 and July 8, 2020.

Thank you in advance for your careful consideration of these comments and, of course, please do not hesitate to contact me if you have any questions.

Sincerely,

/s/ Neal Tomlinson

Neal Tomlinson

Attachment as stated

COMMENTS FROM DOLLAR LOAN CENTER, LLC (“DLC”)

RE: NOTICE OF SECOND WORKSHOP TO SOLICIT COMMENTS ON PROPOSED REGULATIONS PERTAINING TO SENATE BILL 201 (S.B. 201) – REVISES PROVISION GOVERNING LOANS – NRS 604A DATABASE

To date, it remains unclear whether the Division has selected a database service provider, what type of technical specifications might be required by such provider, and whether such provider would be making lending decisions, which would go far beyond the text and intent of S.B. 201. Because of these unknowns, it is difficult for lenders like DLC to determine the full extent of the adverse costs associated with compliance with these proposed regulations. Without a doubt, there will be significant adverse costs, as many of the data points proposed in these regulations simply are not currently entered or stored in DLC’s existing software system. DLC initially estimated its implementation costs between \$30,000 and \$40,000 based on the text of S.B. 201, but if numerous additional data points are added in regulation, those costs will certainly increase significantly. The proposed regulations, as currently written, will also impose significant ongoing maintenance costs to include extensive data entry and supervision to ensure proper compliance.

Based on the above and additional written comments below, and the fact that small businesses continue to be decimated by the global COVID-19 pandemic, DLC respectfully requests the Division conduct another Small Business Survey to obtain actual data from licensees to determine the true financial impact on industry licensees. DLC further urges the Division to conduct at least one additional workshop after it receives and considers comments from both the Second Workshop and data from the Small Business Survey, and, following the adoption hearing, create an appropriate implementation period to allow licensees to fully integrate with the database. DLC believes this measured approach would assist the Division in getting these regulations right the first time.

New Sec. 20

This proposed section still seems to place loan approval authority in the hands of the database service provider. DLC respectfully requests the Division fully explain at the workshop how it envisions the database approval process will function.

New Sec. 21

Due to the large number of payments received on a daily basis by DLC, it would be nearly impossible to enter payments into the database in “real time”, especially without knowing if or how the database might integrate with DLC’s current operating system.

New Sec. 22

Entering the information contained in this section (in addition to the others) each time a transaction takes place is overly burdensome as it will be extremely time consuming and labor intensive. Some of this information is redundant, such as origination date (Sec. 22(c)) which is the same date as the query. With respect to the total finance charge (Sec. 22(f)), this amount is not known for DLC’s product because it depends on the length of the loan.

New Sec. 24

Like Section 22, entering the information contained in this section is overly burdensome as it will be extremely time consuming and labor intensive. DLC takes in thousands of payments each week making “real time” virtually impossible. With respect to entering missed payment information, it is not unusual for customers to pay a day or two late, so entering the information called for in Sec. 24(g) would create a data entry quagmire.

New Sec. 25

The term “[If in] collection” in Sec. 25(1) is not defined and therefore extremely vague and ambiguous as to determining first and third party activities. Additionally, payment history is required by several sections and due to the nature of DLC’s product there could be extensive payment history involving extremely time consuming and labor intensive data entry.

The basic intent of S.B. 201 was to create a database so that lenders can see an applicant’s recent and current Chapter 604A loan history when a licensee is determining whether to approve a new loan application. S.B. 201 is now codified as NRS 604A.303. NRS 604A.303(1) identifies four categories of information that licensees and the Division may obtain from the database. However, the proposed regulations, as written and particularly the above sections, exceed the clear statutory intent of S.B. 201 because they go far beyond those four categories and instead create an impossible data entry quagmire making the entire loan process unduly time consuming and burdensome for both consumers and licensees.



STRATEGIES360.COM

Financial Institutions Division
3300 W. Sahara Ave., Ste. 250
Las Vegas, NV 89102

Re: SB201 Workshop Testimony

We appreciate the opportunity to provide comment on the latest changes to the proposed database regulations.

Enova is a publicly traded (NYSE:ENVA) financial services company and a direct lender to many consumers and small businesses in the U.S. We are concerned that **the Proposed Regulations continue to significantly exceed the authority granted to FID under SB 201, specifically the development of a new, untested, unauthorized, and experimental underwriting Ability-to-Repay (ATR) methodology that measures customer “expenses” or “obligations”.**

To be clear, SB 201 only directs 604A licensees to enter borrower “obligations” with respect to outstanding debt **with other 604A-licensed lenders** for the purpose of preventing a licensee from making a loan that, in combination **with any other outstanding 604A loans**, would exceed 25% of the customer’s expected GMI. **This is a limitation on income, not a requirement to verify expenses generally.** SB 201 did not create authority for an entirely new underwriting methodology above and beyond this 25% GMI limit.

The most recent Proposed Regulations still require licensees to input the customer’s “obligations” into a database and to use that information when determining customer eligibility for a loan. (See Sec. 18 and 21(f)). The term **“Obligations” is not defined.** In short, the Proposed Regulations appear to retain the non-authorized “net income” requirement of the prior proposed regulations, under the guise of a different name.

We understand very well the problems inherent with trying to incorporate borrower “obligations” or “basic living expenses” in the context of ATR. Must rent be disclosed? What about roommates? Student loans? Garnishments? Netflix subscriptions? What reliable third-party verification sources are available and cost-effective in the context of a micro-loan? The CFPB initially tried to incorporate an ATR approach that required third-party expense validation, and ultimately rescinded that part of their proposed rule as unworkable. **And no other state, even those with similar gross income limits on small loans, requires licensees (or the selected database provider) to calculate and verify “basic living expenses and other major obligations” as part of a required ability-to-repay analysis.**

Such metrics discriminate against people who aren’t the primary payer of housing or utilities or who lack documentation of other major expenses, or who might have multiple sources of income that include items not captured in monthly payroll documents (cash employees, gig workers, Uber drivers (etc.)). **But “obligations” and “basic living expenses” are inherently subjective**



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and are extremely hard to reliably document. This lack of measurability is one principal reason the other states and the CFPB have avoided or abandoned a residual income approach to ATR.

My client, Enova International, uses sophisticated analytics and performs an ability to repay analysis for **every loan it makes** and is not opposed in theory to a **thoughtful and clear ATR requirement** that would apply equally to all FID-regulated licensees. We stand ready to help develop such a framework. But any agency adopting such a policy without the direction, authority, or oversight of the Legislature creates a very real risk of unfair and unintended restrictions on access to credit.

We urge FID to remove all references, direct or implied, to borrower “obligations” and to defer any consideration of such factors to the full consideration of the Legislature.

Thank you for your consideration.

William C. Horne, Esq.
Strategies 360
Vice President – Nevada
(702) 596-7716

Good Afternoon, thank you for the opportunity to provide public comment today.

My name is Trent Matson. I am the Director of Government Affairs, for Moneytree, Inc. Our Company has provided legal, licensed, short-term credit to responsible borrowers for 37 years in 5 Western states, including Nevada.

Moneytree has significant experience with statewide databases used to oversee, and regulate, the short-term credit industry. Statewide database Legislation passed in our home state, Washington, in 2010. We have operated with this database for nearly a decade and understand database complexities from set up, to day-to-day operation. We believe our experience and input could be a tremendous asset to the FID in Nevada, as it embarks on setting up a database. We encourage the FID to accept the industry's many offers to collaborate and work cooperatively on rules that are legal, fair and functional.

Despite some comments at the last Workshop, the creation and implementation of a database is not in question. What is in question is whether the Proposed Regulations require additional refinement to accomplish what is our common goal with FID – to create rules that manifest the intent of the Legislature and maintain access to safe and legal credit.

To that end, we respectfully request the necessary changes we have outlined in written testimony are amended into the next iteration of the FID's proposed Rule. Most important, correcting the proposed Rule so it is within the scope of SB 201, and not a foul of the Law.

Speaking specifically to Section 19 of the new draft Rule, we reiterate that the new Ability To Repay requirements in that Section were not authorized by the Legislature and are beyond the rulemaking authority of FID.

Had the Legislature intended to create new ATR requirements, it certainly understood how to do that, and elected not to. It did not open up, and add to, the ATR provisions it adopted as part of the statutory scheme in 2017. It also did not create new ATR requirements in SB 201. In fact, it phrased all of the information FID now seeks to impose as mandatory ATR criteria, as information that "may be" obtained from the database – not as information that "must be obtained from the database and used by Licensees as mandatory ATR considerations prior to

originating a loan.” Further, it did not use the phrase “ability to repay” in connection with the criteria that FID seeks to make part of a mandatory ATR analysis. And finally, the Legislative Counsel’s Digest is devoid of any reference to ability to repay.

Simply, the FID does not have the authority to create new ATR laws of its own accord; and although the new version of the Proposed Regulation seeks to legitimize the creation of new laws by referencing the ATR provisions, those references do not support FID’s end goals. In fact, they undermine them by pointing out that there are specific provisions already in Chapter 604A that were left entirely untouched by SB 201.

We urge the FID to remove the language imposing new ATR requirements on Licensees and consumers alike.

We look forward to the opportunity to working together to bring a final rule in harmony with SB 201, insuring it survives scrutiny, and creating and implementing the best database we can provide our Licensees and customers

September 15, 2020

Ms. Sandy O’Laughlin, Commissioner
State of Nevada, Department of Business and Industry
Financial Institutions Division
3300 W. Sahara Ave., Suite 250
Las Vegas, NV 89102
fidmaster@fid.state.nv.us

Sent via U.S. Mail with Copy via Electronic Mail

Re: REVISED DRAFT PROPOSED REGULATION OF THE COMMISSIONER OF THE FINANCIAL INSTITUTIONS DIVISION PERTAINING TO S.B. 201 – 604A; LCB File No. R037-20; Dated August 31, 2020.

Dear Commissioner O’Laughlin,

Moneytree appreciates the opportunity to comment on the revised proposed regulation pertaining to the implementation of SB 201 (Proposed Regulation).

A. Introduction

Moneytree outlined its history as a regional financial services company in prior comments. To recap, Moneytree has been in business approximately 37 years and is a privately held, family-owned business headquartered in Renton, Washington.

Moneytree has a long track record of working cooperatively and collaboratively with federal and state legislatures and administrative agencies to craft and pass laws and regulations that are consumer protective, preserve access to regulated credit and function efficiently. We are proud of the partnerships we have forged with our regulators to mutually improve our processes and to improve our customers’ experiences. While Moneytree appreciates the opportunity to provide comments, our experience in this rulemaking process has been unusual inasmuch as the Industry’s offers to collaborate and to engage in a two way dialogue with its regulator have fallen on deaf ears. Unfortunately, Industry questions have gone unanswered and the Proposed Regulations have not been altered to reflect real operational and other Licensee concerns.

As we have stated in prior comments, implementing a database is a complex endeavor that is highly technical. It requires a solid understanding of how transactions are actually processed and how Licensee systems operate in the background. The current rulemaking process involves FID’s first foray into the difficult task of “standing up” a consumer lending database that carries with it a great deal of responsibility as it will affect hundreds of thousands of Nevada residents, hundreds of business locations and employees; and a significant segment of the Nevada economy. The Proposed Regulations require more information and more complexity in terms of the information that must be submitted to the database (many of which are unrealistic and simply will not be possible) and timing of data submission than any

other similar-purpose database in the country. Given the massive undertaking of designing such a database, one would expect that experience and input from Licensees with database experience would be welcomed. Many of the Licensees participating in the current rulemaking, including Moneytree, have extensive experience in drafting database regulations, working with database providers, designing and programming processes necessary for a database to operate, and in *actual* day-to-day Licensee/database operation and reporting. We would like to renew our invitation to FID to collaborate to share the Industry's expertise in identifying and fixing problematic provisions of the Proposed Regulations.

In addition to our experience working in database states, our Industry has extensive transactional and "cause and effect" experience borne of hundreds of combined years of operating in the financial services industry. It is our experience that the most effective consumer protections come from laws and regulations that consider the best interests of the consumer and the economic and operational supply-side realities. Laws and regulations that fail to balance supply-side interests invariably fail the consumer and lender alike. They are fraught with administrative headache, confusion and unintended fallout when put into actual practice. They also tend to come as a surprise to affected consumers who are unexpectedly faced with a less convenient and more costly marketplace. And, ultimately, these laws have a history of providing less protection to consumers as they drive regulated lenders out of business leaving consumers without good options and vulnerable to illegal sources that stand ready to fill any void. We again renew our invitation to FID to collaborate to avoid the real trap of overzealous regulation that puts the stakeholders (consumers and Licensees) in this process in jeopardy.

Finally, as a point of clarification, in the prior public hearing, testimony was introduced by supporters of the prior draft of Proposed Regulations that seemed to call into question whether a database would be implemented. Moneytree and other Licensees understand that the Nevada Legislature has authorized a database and we stand ready to work with the FID to draft implementing regulations that comport with the language and intent of SB 201. Moneytree supports some of the work the FID has done in the Proposed Regulation. However, some provisions of the Proposed Regulations still go far beyond the plain language and intent of SB 201; and Moneytree believes that continued refinement of the Proposed Regulation is necessary to comport with FID's legal rulemaking authority and the directives and intent of the Legislature.

B. Reassertion of Prior Comments

On July 7, 2020, Moneytree submitted its comments on a prior version of the Proposed Regulations. Moneytree reasserts its July 7, 2020 comments to the extent that the content or the impact of those provisions remains unchanged. While the FID has made changes to the Proposed Regulation, the new draft contains examples of problematic requirements that should be significantly revised or eliminated but that have instead simply been moved from one section in the Proposed Regulations to another. Sometimes, specific language describing *ultra-vires* requirements have been eliminated only to be incorporated by reference (see e.g. Section 19). Some of the Proposed Regulations also appear to try to legitimize an *ultra vires* expansion of ability to repay (ATR) requirements by simply citing to the ATR provisions that have been adopted into law by the Legislature and that are found at Sections 5011, 5038, 5065 of Chapter 604A (ATR Provisions). Simply citing to provisions that were approved by the Legislature but that have no bearing on the legislative directives in SB 201 does not confer legislative powers on the

FID. There is no doubt that the Legislature approved the ATR Provisions; just as there is no doubt that the Legislature did not approve expansion of those provisions in SB 201 or by the FID in its current rulemaking process.

C. Notification from FID and Timing of Database Implementation

The Proposed Regulation should be amended to include notification requirements from the FID to Licensees about the status of database implementation and a reasonable compliance date at least six to nine months after a database provider contract is in place and the Industry has had technical and other necessary onboarding meetings and information to program and integrate with the database. Moneytree renews its recommendation that FID organize a “task force” of industry participants, representatives of the FID and the database service provider to consider and make recommendations on the database implementation schedule. This will help to insure maximum Licensee onboarding and ongoing database efficiencies are met. In addition, this will minimize errors and challenges for the FID.

D. Proposed Regulation

The purpose of the Proposed Regulation is: “To adopt regulations under the Nevada Administrative Code, as provided by Senate Bill No. 201 (2019) requiring the [FID] to develop, implement and maintain a database storing certain information relating to deferred deposit loans, title loans and high-interest loans made to customers in [the State of Nevada]; and other matters properly relating thereto.” See Revised Draft Proposed Regulation of the Commissioner of the Financial Institutions Division LCB File No. R037-20. To the extent that the Proposed Regulations attempt to create or impose new laws or rules that go beyond the purpose of SB 201 and/or the stated purpose of Proposed Regulation, they should be amended or eliminated.

1. Section 10(d)

Moneytree agrees with the latest amendment to the Proposed Regulation requiring the database service provider (as opposed to the Licensee) to immediately notify the FID if the database is unavailable for any reason. This amendment places the responsibility to notify on the party most likely to know the database is unavailable and with the most ability to correct the situation. It also eliminates uncertainties in the prior draft Proposed Regulation over whether Licensees had to notify of a database unavailability once or with each transaction in which the database is unavailable and prevents multiple notifications to the FID from each affected Licensee when there is an outage.

2. Section 17 of the Proposed Regulation

Section 17 of the Proposed Regulation states that during periods of unavailability of the database the Licensee can rely on the consumer’s written representation which “includes, without limitation, a customer does not have any outstanding loans at the time the loan was made.” Section 17 should be rewritten so as not to assume that the consumer must represent that he or she does not have an outstanding loan when that may not be the case. Consumers can have more than one loan outstanding subject to the maximum loan limitations in NRS § 604A.5017 or NRS § 604A.5045.

Also, the representation given by the consumer should include a statement that the deferred deposit loan or high-interest loan does not exceed the maximum loan amounts in NRS §§ 604.5017, or 604.5045 (as the case may be) irrespective of whether the consumer has a current loan outstanding or not. In other

words, the representation of the consumer should serve as a safe harbor irrespective of whether the customer has an outstanding loan or does not.

3. Section 19 of the Proposed Regulation

- a. FID may not Usurp Legislature Authority by Creating New Laws that have not been Authorized by the Nevada Legislature.

In its prior comments, Moneytree objected to new ATR requirements that were not authorized by the Legislature in its 2017 adoption of the ATR Provisions (NRS §§ 604A.5011, 5038 and 5065)¹. In fact, the requirements for Licensees to consider a consumer's total obligations and to engage in some sort of a net disposable income analysis² (see Sections 22 and 23 below) were explicitly rejected in the Legislature's consideration and adoption of the ATR Provisions. Thus, FID's prior attempts to introduce a "net disposable income" analysis and its current efforts to require Licensees to obtain and enter a consumer's total obligations in to the database are *ultra vires*.

So too is the FID's attempt to create new ATR requirements to consider current or prior borrowing activity that were not authorized by the Legislature in SB 201. To put it simply, SB 201 was not an ATR bill and it did not authorize the FID to create new ATR criteria.

Section 19 of the current version of the Proposed Regulations contains the same objectionable over-reach as the former Section 18. Like the former Section 18, Section 19 represents an impermissible attempt by FID to usurp legislative authority and to create new law of its own making. Moneytree renews all of its prior comments related to former Section 18 and supplements those comments as follows:

The FID's rulemaking scope has been clearly delineated by the Legislature at NRS § 604.303(5). That Section provides the Commissioner with the authority to prescribe specifications for the information entered into the database, to establish standards for retention, access, reporting, archiving and deleting information, to establish a database fee and other rules "necessary for the administration of the database." Importantly, the Legislature did not give the FID the authority to create new ATR considerations that a Licensee "must" consider when originating a loan.

The FID's rulemaking authority to prescribe specifications for what information must be entered into the database is limited by NRS §604A-303(1), which provides:

The Commissioner shall, by contract with a vendor or service provider or otherwise, develop, implement and maintain a database by which the Commissioner and licensees may obtain

¹ Those sections were very recently adopted by the Nevada Legislature, showing that when the Legislature intends to create "ability to repay" criteria, it is very capable of doing so. No such intent was evident in the adoption of SB 201.¹

² The concept of "net disposable income" was included in the original versions of the Proposed Regulations at former Sections 5 & 6. Current section 18 (formerly 18, 17 & 21) required Licensees to query the database before originating a loan in order to determine the consumer's gross monthly income, the consumer's "total obligations" and the consumer's "net disposable income" to determine whether the consumer is "eligible" for a loan.

information related to deferred deposit loans, title loans and high-interest loans made by licensees to customers in this State to ensure compliance with the provisions of this chapter. The information the Commissioner and licensees may obtain includes, without limitation:

- (a) Whether a customer has a deferred deposit loan, title loan or high-interest loan outstanding with more than one licensee;
- (b) Whether a customer has had such a loan outstanding with one or more licensees within the 30 days immediately preceding the making of a loan;
- (c) Whether a customer has had a total of three or more such loans outstanding with one or more licensees within the 6 months immediately preceding the making of the loan; and
- (d) Any other information necessary to determine whether a licensee has complied with the provisions of this chapter.

NRS §604A-303(1).

Former Section 18 and the current Section 19 of the Proposed Regulation each attempt to impermissibly turn the above emphasized (and permissively stated) language (i.e. "may obtain") into an absolute legal mandate that licensees "must" consider when determining a borrower's ATR. Had the Legislature intended to create new ATR requirements, it clearly knew how to unambiguously do that. The requirements for Licensees to consider ATR were added to the statutory scheme of Chapter 604A in 2017. In 2019, the Legislature was certainly aware of specific provisions addressing ATR. Had it intended to create new ATR requirements, it could have easily amended the ATR Provisions. In its consideration of SB 201 in 2019, the Legislature did not address itself to the question of ATR and it did not amend the ATR Provision evidencing its intent that SB 201 was intended as a database bill and not an ATR bill.

The Legislative Counsel's Digest (LCD) summarizing SB 201 refutes that it was the Legislative intent to create new laws regarding ATR. Instead, it describes Section 8 of SB 201 as "Section 8 of this bill requires the Commissioner of Financial Institutions to develop, implement and maintain, by contract with a vendor or service provider or otherwise, a database of all deferred deposit loans, title loans and high-interest loans in this State, for the purposes of ensuring compliance with existing law governing these types of loans." If SB 201 was intended to create new requirements for ATR, the LCD would have (1) described those new criteria and (2) not described the bill's intent as compliance with "existing law." There is no evidence that the Legislature intended to address ATR, let alone impose new required ATR considerations when it approved SB 201.

To prevail in its attempt to create new and mandatory ATR considerations, FID must convince a court that that plain language of Section 8 of SB 201 which states:

The information that the Commissioner and licensees may obtain includes . . .

Should instead be read as:

The information that the Commissioner and licensees must obtain and utilize in making a determination of whether or not the customer has the ability to repay any loan in advance of originating a loan includes . . .

This interpretation stretches the imagination and credulity and it would not be upheld by a reviewing court. If challenged, FID's position would not be entitled to agency deference. Instead the inquiry of the court would be confined to whether "may obtain" contained in SB 201 actually means "must obtain and use in a mandatory ability to repay determination". The construction of a statute is a question of law and independent appellate review of an administrative ruling, rather than a more deferential standard of review, is appropriate. *Maxwell v. State Indus. Ins. Sys.*, 109 Nev. 327, 329-30, 849 P.2d 267, 269-70 (1993) (citations omitted). "Where the language of the statute is plain and unambiguous, such that the legislative intent is clear, a court should not "add to or alter [the language] to accomplish a purpose not on the face of the statute or apparent from permissible extrinsic aids such as legislative history or committee reports." *Id.* (citations omitted).

Section 19 substantively expands the legal requirements for licensee underwriting in the complete absence of any statutory authority to do so. Section 19 represents an over-reach beyond the rulemaking authority of the FID and should be stricken from the Proposed Regulation.

b. FID Has Shown a Pattern of Attempts to Improperly Create New ATR Requirements in the Absence of Any Supporting Statutory Authority or Legislative Intent.

The current attempt by the FID to improperly create *new* ATR requirements that have not been approved by the Legislature, is unfortunately not its first. In a prior version of the Proposed Regulation, the FID attempted to impose a requirement on Licensees to obtain and enter into the database documentation used to determine a borrower's ATR "including the method used by a licensee to calculate a customer's net disposable income." As introduced, the ATR Provisions contained a "seven-pronged factor" ability to repay test that included two prongs that were later excluded from the final law. Those excluded prongs were "monthly residual income of the customer" and "monthly payments on other obligations owed by the customer." While the FID has since backed away from its obvious attempt to require net disposable income is an ATR consideration, the attempt alone is disturbing given that the Legislature so clearly rejected its equivalent ("monthly residual income") as a required ATR considerations.

As more fully set forth below, the language of Section 22 and 23 of the Proposed Regulation are still disturbingly aimed at including the consumer's "other obligation" as a data point that must be entered into the database. The Legislature rejected the consumer's "other obligations" as an ATR consideration. Given that, there is no reason to include a consumer's "other obligations" as a required data entry. Requiring a consumer's "other obligations" to be included in database information together with the consumer's "gross income" is a not so subtle attempt to back into a "net disposable income" ATR consideration that will be enforced in the examination process without a legitimate mandate by the Legislature. As set forth more fully below, the FID cannot "overturn" what the Legislature has considered and rejected.

4. Section 20 of the Proposed Regulation

Section 20 provides that "[u]pon a licensee's query, the database shall inform a licensee whether a customer is *eligible* for a new loan and, if the customer is *ineligible*, the reason for such ineligibility." Moneytree renews all of its previous comments regarding this language formerly found at Section 19 of the previous draft of the Proposed Regulations. The database should return information in response to a query and an "ineligibility" result should only be returned when the applied for loan would be in excess of the 25% maximum loan caps in NRS § 604A.5017 or § 604.5045; or the consumer is a Covered Borrower.

5. Section 21 of the Proposed Regulation

Section 8(2) of SB 201 (codified at NRS § 604A.303 (2) clearly outlines the information that a licensee must enter into the database and provides: “a licensee who makes a deferred deposit loan, title loan or high-interest loan shall enter or update the following information in the database for each such loan made to a customer at the time a transaction takes place:

- (a) The date on which the loan was made;
- (b) The type of loan made;
- (c) The principal amount of the loan;
- (d) The fees charged for the loan;
- (e) The annual percentage rate of the loan;
- (f) The total finance charge associated with the loan;
- (g) If the customer defaults on the loan, the date of default;
- (h) If the customer enters into a repayment plan pursuant to NRS 604A.5027, 604A.5055 or 604A.5083, as applicable, the date on which the customer enters into the repayment plan; and
- (i) The date on which the customer pays the loan in full.

Section 604A.303 (2) does not include language (e.g. “including but not limited to”) that additional information can be added. But Section 21 attempts to improperly expand this list to improperly include these additional categories of information not authorized by SB 201:

- (j) All renewals
- (k) All extensions
- (l) All rollovers
- (m) All refinances, when permissible
- (m) When a repayment plan offer is sent
- (n) Declined loans
- (o) Any transaction pertaining to the loan

Had the Legislature intended to include the information set forth in (j) through (o) above, it would have included it in the enumerated data points in SB 201. SB 201 did not confer on the FID the ability to add to the data the Legislature has specified. NRS § 604A.303 (5) directs the FID to “prescribe specifications for the information entered into the database.” It does not confer authority to create new categories of data. It is a matter of longstanding rule of statutory construction that when a statute enumerates certain criteria to the exclusion of others (as is the case with respect to the information outlined in NRS § 604A.303 (2)) the statute will be interpreted as an intentional Legislative omission of additional criteria. *Sheriff, Pershing Cty. v. Andrews*, 128 Nev. 544, 548, 286 P.3d 262, 264 (2012)

Furthermore, the following terms lack definitional clarity:

- The term “rollover,” were it to be used, must be clearly defined.
- “Grace period” should be defined by reference to Section 604A.070.
- “Repayment plan” should be defined by reference to Sections 604A.5027, 5055, and 5083.
- The term “real time” should be defined.

Furthermore, the requirement to enter “[a]ny transaction pertaining to the loan” is particularly overbroad, unclear and potentially representative of onerous administrative burdens on licensees and should be eliminated.

Furthermore, many of these data points are incapable of being entered into the database “in real time” (e.g. defaults, date of the default, and repayment plan information). Section 20 should be revised to reflect transaction and service timing realities.

Finally, the onerous language of Section 21 seems to require the transmission of account details every time a consumer loan is serviced or “touched”. The amount of data and constant interaction between Licensees and the database is unprecedented in any existing database legislation. It either serves no public interest or such interest is outweighed by the overwhelming burden it places on Licensees.

6. Section 22 & 23 of the Proposed Regulation (Section 22 and Section 23)

Section 22 attempts to legitimize the FID’s overreaching attempt to require Licensees to input data into the database *that the Legislature did not prescribe* by referencing what the Legislature *did authorize in NRS § 604A.303*. This Sections’ simple citation to Section 303(2) & (5) in Chapter 604A does not magically turn the FID’s attempt to obtain more information than the Legislature specified into a legal rule.

Section 303(2) is clear and specific about what information a Licensee must input into the database. It provides:

“After the development and implementation of the database created pursuant to subsection 1, a licensee who makes a deferred deposit loan, title loan or high-interest loan shall enter or update the following information in the database for each such loan made to a customer at the time a transaction takes place:

- (a) The date on which the loan was made;
- (b) The type of loan made;
- (c) The principal amount of the loan;
- (d) The fees charged for the loan;
- (e) The annual percentage rate of the loan;
- (f) The total finance charge associated with the loan;
- (g) If the customer defaults on the loan, the date of default;
- (h) If the customer enters into a repayment plan pursuant to NRS 604A.5027, 604A.5055 or 604A.5083, as applicable, the date on which the customer enters into the repayment plan; and
- (i) The date on which the customer pays the loan in full.

While Moneytree agrees that it is preferable for the Licensee to enter the results of its own Covered Borrower search into the database and thus the inclusion of the requirement for the Licensee to enter Covered Borrower information besides the information specifically set out in Section 303(2) is correct and in keeping with the general statutory mandate of SB 201; there is no statutory or other authority for FID to require entry of the following information:

- The schedule of payments
- The payment details described in Section 24 of the Proposed Regulations
- The customer’s gross monthly income

- The customer’s other obligations

Similarly, reference in Sections 22 and 23 to Section NRS § 604A.303 (5) cannot legitimize this unauthorized overreach. NRS § 604A.303 (5) provides the FID with the authority to adopt regulations necessary for the implementation and administration of the database and nothing more. That Section does not authorize the FID to require information to be put into the database that was not approved by the Legislature.

The requirement to obtain and enter the consumer’s total obligations is completely outside the scope of SB 201 and the FID’s rulemaking authority. SB 201 did not impose underwriting obligations on licensees beyond the 25% cap loan amount and loan payment maximums. NRS §§604A.5011, 5038 and 5064 clearly address what information the licensee must consider when determining ability to repay. None of these provisions were amended or authorized by the Legislature in SB 201 to include a requirement to consider the consumer’s total obligations. Collecting this information is beyond the scope of the law as it existed before the passage of SB 201, beyond the scope of SB 201 and beyond the FID’s rulemaking authority.

In addition, the requirement to submit the “customer’s total obligations” and the “customer’s gross monthly income” into the database is an attempt to back into an impermissible “net disposable income” ATR requirement (see comments to Section 19 above). In adopting the ATR Provisions, the Legislature considered whether a consumer’s total obligations should be part of the information that that Licensees must consider in originating a loan and rejected both concepts. The FID does not have the power to “overturn” the Legislature’s decision or enact regulations contrary to clear Legislative intent. The Legislature has rejected the concept that Licensees must consider a consumer’s total obligations and decided in the negative. Thus, the FID has no legitimate purpose in requiring Licensees to obtain or track this information.

7. Section 24 of the Proposed Regulation

Section 24 provides that “[a] licensee shall enter the following information in the database, in real time, for each payment made on the loan, without limitation:

- (a) The scheduled payment amount
- (b) The scheduled date of the payment
- (c) The actual payment amount
- (d) The date the payment was made
- (e) The allocation of the total payment, dollar amount applied to principal and dollar amount applied to interest and fees
- (f) The amount and date of payment received from a customer when the loan is paid in full
- (g) If a schedule payment was missed
 1. The new interest rate, if applicable
 2. Whether or not a repayment was offered
 3. Did a customer enter a repayment plan and
 4. The duration of the grace period, if applicable”

All of this information must be entered for each payment if the loan is a high interest loan. When a loan is written, the scheduled payment amount and scheduled payment date are written to the database. To again transmit this information in “real time” is not only redundant but adds an onerous programming burden and it provides no benefit to the consumer. Subsequently, the loan payoff must be recorded in

order to close that loan in the database and *free-up* that amount of credit for the consumer. The other required fields serve no purpose, provide no benefit to the consumer and are merely an attempt gather huge amounts of continuous data.

8. Section 25 of the Proposed Regulation

Section 25 provides that the status of the loan must be entered into the database, without limitation:

1. If in collection, whether first party or third party, the date entered into collection and payment history
2. If the loan is in default, the date entered into default and the payment history. If an interest rate changed, the rate and date it changed
3. If the loan is in [sic] grace period, the date entered into a grace period and payment history
4. If in a repayment plan, the date enter into a repayment plan and payment history
5. The date the loan was closed as defined in this chapter
6. The reason the loan was closed as defined in this chapter
7. The date repossession of the vehicle was ordered, if applicable
8. The date repossession occurred, if applicable

Once again, these data points are not authorized by the Legislature in SB 201 and provide no benefit to the consumer. The only imaginable reason to record this information is solely to facilitate continuous and onerous data reporting to the FID from licensees. The “loan status” should be limited to “open,” “closed,” “default/returned” in order to accurately assess that the current loan amount is not over 25% of GMI which is one of only two data points SB 201 requires licensees to obtain from the database.

10. Conclusion

In conclusion, SB 201 was intentionally drafted and passed into law to enforce the loan limits already contained in Chapter 604A across all Licensees. While Moneytree appreciates the time and effort that the FID has devoted to the Proposed Regulation as amended, some provisions represent over-reach beyond the FID’s statutory authority. Some provisions of the Proposed Regulation also ignore transactional and process realities and will result in unworkable mandates on Licensees. The FID should work cooperatively with all stakeholders, including the members of the Industry to craft regulations that comport with its statutory authority and that will result in reasonable regulations that reflect Legislative intent. Moneytree stands ready to work with the FID as a responsible partner in these endeavors.



Nevadans for the
Common Good

c/o Holy Spirit Lutheran Church, 6670 W. Cheyenne, Las Vegas, NV 89108

My name is Barbara Paulsen and I am here today representing Nevadans for the Common Good. In 2019 Nevadans for the Common Good worked hard to see SB201 pass into law for two important reasons. One, it holds the payday industry accountable to following existing laws. Secondly, it protects consumers up front from taking on more debt than the law allows leading them into a debt burden that becomes a cycle from which they can't recover. A friend of mine was trapped in such debt for over 20 years, only escaping by taking her retirement as a lump sum to pay off that debt.

The protections this law provides are needed even more today than they were when the law was passed. Thousands of Nevadans are suffering from the economic impact of the Covid-19 pandemic, living daily with anxiety and insecurity about their ability to pay current bills and those looming in the future. The regulations being discussed today are vital to protecting our most economically vulnerable now and as we move forward from the current crisis. They are particularly important because federal regulations are being wakened. Protecting consumers from the debt trap of payday loans will help stabilize and strengthen Nevada families and communities.

Nevadans for the Common Good encourages you to approve these regulations and implement this program without delay.

Barbara Paulsen
Leader, Nevadans for the Common Good
Paulsenbnv@gmail.com
702-561-5601



September 16, 2020

Mary Young, Deputy Commissioner
State of Nevada Department of Business and Industry
Financial Institutions Division
3300 W. Sahara Ave., Ste 250
Las Vegas, NV 89102

Re: Proposed Regulations Pertaining to Senate Bill 201

Dear Ms. Young,

Purpose Financial, Inc., which operates eleven Advance America locations in Nevada, submits the following comments in response to the Financial Institutions Division's Proposed Rule on deferred presentment, title, and high-interest loans, as revised and posted on August 31, 2020 pertaining to Senate Bill 201.

We appreciate that the Division's most recent revisions to the Proposed Rule address several concerns previously expressed by Purpose Financial and other licensees. However, an overarching concern remains: the Proposed Rule would impose on licensees and borrowers a burdensome information collection and reporting regime that is not designed to monitor compliance and exceeds the scope of the underlying statute as revised by SB 201. We set out our specific objections and recommendations below.

As a national company operating in twenty-eight states, we have a sophisticated loan management system and many successful integrations with state lending databases. However, the database provisions of the Proposed Rule would pose an unprecedented operational and technological challenge for our organization. This is a result of both the sheer volume of information we would be required to collect and the frequency of reports to the database. The Proposed Rule requires extensive data not only at origination but also each time a payment is made (or missed) as well as detailed information about grace periods, repayment plans, and collection activities.

Compliance with the reporting requirements of the Proposed Rule would be inordinately difficult under any circumstances. A typical new database implementation takes about four to six months from the time the database's technical specifications are determined to the go-live date. The Proposed Rule would implement a regime much more complex than any we have encountered. This would significantly extend the implementation and testing phase, which we would have to complete separately for each of our four distinct loan products.



Moreover, the data collection and reporting requirements of the Proposed Rule are not tailored to the purpose of ensuring compliance and therefore exceed the authority the legislature conferred on the Division in Senate Bill 201. This is particularly evident with respect to the new requirement to calculate and report a customer's total obligations.

In this letter, we address information collection and reporting requirements, which raise questions regarding the function of the database as a credit reporting agency, as well as privacy risks to consumers and the scope and utility of information collection the Division has proposed. Next, we examine the "customer's total obligations" calculation and reporting requirement.

1. Information Collection and Reporting

The Proposed Rule would require the database provider to report certain information to the licensee, upon which the licensee must base underwriting decisions. This carries significant legal implications for the database provider as well as the licensee. Additionally, the Proposed Rule would require licensees not only to provide information to the database prior to origination, but also report the details of every customer payment (or missed payment) as well as information on grace periods, repayment plans, and collection activities. We offer four licensed loan products in Nevada, and three of the four products provide for multiple payments. The degree of detail required with each report and the frequency of the reporting represents an overwhelming burden for licensees and consumers. Further, consumers will experience privacy risks as a result of these requirements, many of which do not serve to monitor compliance and exceed the Division's authority under Chapter 604A as amended by SB 201.

a. Information to be Reported by the Database

Section 19 of the Proposed Rule would require the database provider to report information about an applicant's borrowing history to a licensee. The section further states that licensees must consider those borrowing history factors when determining a customer's eligibility. This is in addition to the typical "eligible" or "ineligible" result that state databases provide. Since the proposed rule requires the database to return information on which a licensee must base underwriting decisions, the database provider would likely be considered a "credit reporting agency" under the federal Fair Credit Reporting Act (FCRA). This would have significant legal implications for the database provider as well as for licensees using the information provided by the database for underwriting.

b. Consumer Privacy Risks

The extreme complexity of the transactional data reporting and the timing of such reporting poses data privacy concerns, leaving consumers vulnerable to the increased risk of data loss and more time and effort to obtain a loan. The Proposed Rule would require customer-specific data to be input at the time of a database query, presumably this information would be retained in the database regardless of whether a loan is originated at that time. Additional data would be entered in the database at the time



of origination and, after loan origination, licensees would be required to enter data regarding loan payments and status, such as defaults, repayment plans and grace periods.

Many of these customer-specific data points the proposed rule would require are not needed for the database provider to determine eligibility with the GMI provisions for deferred deposit and high interest loans under Chapter 604A as amended by SB 201. Providing unnecessary personal information to the database, to be maintained with similar information from many thousands of other consumers, increases the applicant's risk of identity theft, financial fraud and data loss while providing her with no countervailing benefit. And, as noted above, consumers could experience this risk even if a loan is not originated.

c. Low Utility for Compliance

These costs and risks to licensees and consumers are not justified by the utility of the information the Proposed Rule would require, much of which is either irrelevant to compliance monitoring or redundant with information already collected by licensees. For example, as discussed above, the applicant's total obligations are not required to comply with Chapter 604A. In fact, the Proposed Rule requires more than 20 datapoints to be entered in the database, while only 9 are required by Chapter 604A as amended by SB 201, and few of these datapoints are relevant for determining eligibility or monitoring compliance with the 25% GMI standards set in statute. Finally, the requirement to provide the co-owner's name and consent before making a title loan is not linked to any statutory requirement. In fact, Chapter 604A specifically prohibits licensees from considering ability to repay with respect to anyone except the borrower of a title loan.

We urge the Division to consider its legislative mandate to establish a database for the purpose of ensuring compliance and tailor the database requirements to that purpose. Requiring information that does not advance this purpose not only exceeds the Division's statutory authority but also imposes undue costs on licensees and consumers.

2. Customer's Total Obligations

For deferred deposit (605A.5011) and high interest (604A.5038) loans, the Proposed Rule would require licensees to calculate and enter into the database a "customer's total obligations," a term which is not defined. The concept of total obligations did not appear in Chapter 604A before the adoption of Senate Bill 201, and Senate Bill 201 did not add it.

Though "customer's total obligations" is not defined in the Proposed Rule, we believe it is a similar concept to "net disposable income," which the Division first introduced in a non-binding guidance issued last year. This concept was included as a binding provision in a previous version of the Proposed Rule. In responding to concerns of licensees about the additional burden, the Division stated that these requirements were included in the existing "ability to repay" underwriting requirements for deferred deposit (604A.5011), high interest (604A.5038), and title loans (604.5065). These three similar statutory

provisions require licensees to consider the following as part of a general ability to repay analysis before making a loan:

- The applicant’s current or reasonably expected income;
- The applicant’s current employment status based on documentary evidence, such as a pay stub or bank deposit;
- The applicant’s credit history;
- The amount due under the original term of the covered loan, any monthly payment required on the covered loan, or the potential repayment plan; and
- “Other evidence”, including bank statements and written representations by the applicant.

a. Requirement exceeds Division’s authority under Chapter 604A

Neither a customer’s total obligations nor net disposable income are required underwriting factors under Chapter 604A. The requirement of such exceeds the Division’s authority with respect to establishment of the database. Senate Bill 201 authorizes the Division to implement a database from which licensees and the Division can obtain information “to ensure compliance with [Chapter 604A].” The Proposed Rule similarly states that the Division will use the database as “an enforcement tool to ensure licensees’ compliance.” This purpose is predicated on the existence of a customer’s total obligations values that would cause a loan to violate Chapter 604A. However, the Division has not (and cannot) explain what those values are because neither pre-amendment Chapter 604A nor Senate Bill 201 require licensees to calculate or report a customer’s total obligations.

The only numeric underwriting requirements in Chapter 604A pertain to the applicant’s gross monthly income, a value that lenders routinely consider in underwriting. Compliance with the gross-monthly-income cap does not require calculation of a customer’s total obligations, which presumably – though undefined in the Proposed Rule - would be a difficult and costly process of determining an applicant’s expenses.

b. Requirement is overwhelmingly burdensome on licensees and consumers

A licensee cannot calculate a customer’s total obligations using the information it is required to collect. While we are uncertain as to the exact calculation of a customer’s total obligations, since the term is undefined in the Proposed Rule, presumably the lender must know not only the applicant’s income and repayment obligations on the covered loan but information on all income deductions, “verifiable” expenses, and debt service obligations of the applicant. This goes beyond the scope of underwriting short-term lenders perform today and would demand significant additional time and expense. As the CFPB acknowledged before retracting the ability to repay underwriting requirement of its 2017 short-term credit rule: “Developing procedures to make a reasonable determination that a borrower has the ability to repay a loan without reborrowing while paying for major financial obligations and basic living expenses will likely be costly and challenging for many lenders.”



This large investment of time and expense makes sense for lenders and borrowers of large loans, such as mortgages, and is typical for such loans. However, the same investment is not justifiable with respect to small-dollar loans which provide fast and convenient access for consumers. Further, compliance with

the “customer’s total obligations” requirement increases lender costs which would have to be passed along to consumers.

We urge the Division to remove the customer’s total obligations requirement from the Proposed Rule, as this requirement is overwhelmingly burdensome to licensees and consumers, serves no utility for compliance and exceeds the Division’s authority under Chapter 604A as amended by SB 201.

We respectfully request the Division to reconsider the Proposed Rule to implement Chapter 604A as amended by SB 201. As we have outlined, this Proposed Rule exceeds the authority granted to the Division in SB 201, poses unnecessary privacy risks to consumers and imposes undue costs on licensees, while many of the provisions serve very low utility in monitoring compliance with Chapter 604A.

We look forward to continued dialog with the Division on the Proposed Rule and participating in the September 16 workshop. During the Division’s July 8 FID workshop to solicit comments on this Proposed Rule, Purpose Financial made verbal comments on the record. For your convenience, we have attached a written version of those comments.

Sincerely,

Julie Townsend
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Enclosures

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September 16, 2020

COMMENTS ON PROPOSED REGULATIONS PERTAINING TO SENATE BILL 201

Dear Deputy Commissioner Young:

Our firm represents TitleMax of Nevada, Inc. (“TitleMax”), which hereby submits its comments on the revised proposed regulations pertaining to Senate Bill 201 (“S.B. 201”), circulated on August 31, 2020. TitleMax appreciates the opportunity to comment on the proposed regulations and attend the workshop scheduled for September 16, 2020. Below is a summary of concerns and suggestions related to the revised regulations proposed by the State of Nevada, Financial Institutions Division (“FID”) pertaining to S.B. 201.

1. Exceeding Statutory Scope: The FID states that the “proposed regulations are required as a result of the passage of Senate Bill 201 (S.B.201)” and cites S.B. 201 as the authority for the proposed regulations. (Notice of Workshop at 2, 6.) However, the proposed regulations go well beyond the scope of S.B. 201.

S.B. 201 enacted NRS 604A.303, which provides:

NRS 604A.303 Commissioner required to implement and maintain database of certain information related to deferred deposit loans, title loans and high-interest loans; fee; confidentiality; regulations. [Effective July 1, 2020.]

1. The Commissioner shall, by contract with a vendor or service provider or otherwise, develop, implement and maintain a database by which the Commissioner and licensees may obtain information related to deferred deposit loans, title loans and high-interest loans made by licensees to customers in this State to ensure compliance with the provisions of this chapter. The information the Commissioner and licensees **may obtain** includes, without limitation:

- (a) Whether a customer has a deferred deposit loan, title loan or high-interest loan outstanding with more than one licensee;
- (b) Whether a customer has had such a loan outstanding with one or more licensees within the 30 days immediately preceding the making of a loan;
- (c) Whether a customer has had a total of three or more such loans outstanding with one or more licensees within the 6 months immediately preceding the making of the loan; and
- (d) Any other information necessary to determine whether a licensee has complied with the provisions of this chapter.

2. After the development and implementation of the database created pursuant to subsection 1, a licensee who makes a deferred deposit loan, title loan or high-interest loan **shall enter** or update the

following information in the database for each such loan made to a customer at the time a transaction takes place:

- (a) The date on which the loan was made;
- (b) The type of loan made;
- (c) The principal amount of the loan;
- (d) The fees charged for the loan;
- (e) The annual percentage rate of the loan;
- (f) The total finance charge associated with the loan;
- (g) If the customer defaults on the loan, the date of default;
- (h) If the customer enters into a repayment plan pursuant to NRS 604A.5027, 604A.5055 or 604A.5083, as applicable, the date on which the customer enters into the repayment plan; and
- (i) The date on which the customer pays the loan in full.

3. The Commissioner shall establish, and cause the vendor or service provider administering the database created pursuant to subsection 1 to charge and collect, a fee for each loan entered into the database by the licensee. The money collected pursuant to this subsection must be used to pay for the operation and administration of the database.

4. Except as otherwise provided in this subsection, any information in the database created pursuant to subsection 1 is confidential and shall not be considered a public book or record pursuant to NRS 239.010. The information may be used by the Commissioner for statistical purposes if the identity of the persons is not discernible from the information disclosed.

5. The Commissioner shall adopt regulations that:

- (a) Prescribe the specifications for the information entered into the database created pursuant to subsection 1;
 - (b) Establish standards for the retention, access, reporting, archiving and deletion of information entered into or stored by the database;
 - (c) Establish the amount of the fee required pursuant to subsection 3; and
 - (d) Are necessary for the administration of the database.
- (Added to NRS by 2019, 942, effective July 1, 2020)

NRS 604A.303 (emphases added). Subsection 5 authorizes the FID to adopt regulations to prescribe *specifications* for information entered into the database, to establish retention/archive standards for information entered into the database, to establish regulations necessary to the *administration* of the database, and to establish the amount of the fee required pursuant to subsection 3. However, the FID was **not given** authority to determine what information must be entered into the database. The Legislature already enumerated what information must be entered into the database in subsection 2.

Notwithstanding this, several sections of the proposed regulations prescribe numerous items to be entered into the database far exceeding the careful balance struck by the Legislature. (*See, e.g.*, Sec. 21; Sec. 22; Sec. 23; Sec. 24; Sec. 25.) It is confusing to have so many sections governing what must be entered into the database. More importantly, requiring entry into the database of items beyond what the Legislature has already prescribed exceeds the statutory scope of the FID's rule-making authority. *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988) (“It is axiomatic that an administrative agency’s power to promulgate legislative regulations is limited to the authority delegated by [the Legislature].”). If the FID seeks to provide specifications around the statutorily enumerated items, TitleMax proposes that they be contained in one section.

Some sections of the proposed regulations also purportedly require licensees to query the database for specific information and consider this information in determining loan eligibility. (*See, e.g.*, Sec. 19; Sec. 20.) However, this goes beyond the scope of S.B. 201. NRS 604A.303, as enacted, contains certain requirements. For example, the “Commissioner *shall* . . . develop, implement and maintain a database” and licensees “*shall* enter or update” the information

prescribed in subsection 2. NRS 604A.303(1)-(2). But nothing in S.B. 201 *requires* licensees to access any particular information in the database. Rather, “the Commissioner and licensees *may obtain* information related to deferred deposit loans, title loans and high-interest loans.” NRS 604A.303(1). While “shall” “imposes a duty to act,” the word “may” “confers a right, privilege or power.” NRS 0.025. Thus, while licensees can access certain information if they so choose, nothing in S.B. 201 *requires* licensees to make any particular query or access any particular information. In imposing such obligations, the proposed regulations exceed, and are contrary to, the statutory requirements of S.B. 201.

Moreover, the database was touted to the Legislature as an important first step to collect information – nothing more. The Legislature did *not* forbid loans if there is an outstanding loan with another licensee or if the customer has had three or more NRS 604A loans outstanding within the past 6 months. This is merely information that *may* be obtained from the database. NRS 604A.303(1). Yet the proposed regulations purport to *require* licensees to consider such information (Sec. 19) and even state that “the database shall inform a licensee whether a customer is eligible for a new loan.” (Sec. 20.) The Legislature did not give the database or the database service provider power to determine eligibility for a new loan. While some states have systems and statutes in place authorizing the database itself to determine loan eligibility, the Nevada Legislature has enacted no such law. The FID itself assured the Nevada Legislature that S.B. 201 “does not provide us with any abilities that we do not currently have, nor would it provide us any additional powers The database would be a place to start and provide us another resource as we perform examinations and investigations.” Nevada Assembly Committee Minutes, 5/10/2019 (testimony of Rickisha Hightower, the former Interim Commissioner of the FID).

In some sections of the proposed regulations, the FID purports to impose requirements that have nothing to do with the database. (*See, e.g.*, Sec. 5 (defining “extent available”).) The FID states that the purpose of the proposed regulations is to develop and implement the database referred to in S.B. 201. But at times, the FID imposes requirements that are not related to the database at all and that change the statutory requirements of NRS 604A. The FID is not authorized to add to the statutory requirements of NRS 604A or impose regulations that are inconsistent with the statutory terms. “We reaffirm the core administrative-law principle that an agency may not rewrite clear statutory terms to suit its own sense of how the statute should operate.” *Util. Air Regulatory Grp. v. E.P.A.*, 573 U.S. 302, 328 (2014); *see also Food & Drug Admin. v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 125 (2000) (an administrative agency “may not exercise its authority in a manner that is inconsistent with the administrative structure that Congress enacted into law.”) (quotations omitted).

TitleMax will now address specific sections of the proposed regulations.

2. **Section 3:** Section 3 of the proposed regulations defines “due date” as “*the date, based upon the payment schedule, subject to all statutory requirements, that the customer is scheduled to make a payment, either to pay the full amount of the loan (principal, finance charge and fees) and extinguish the debt, or if applicable, makes an installment payment.*” TitleMax suggests that a clearer definition would be “the date on which the customer is contractually scheduled to make a payment.” It is already a given that contractual terms must comply with all statutory requirements.

TitleMax also objects to the FID defining the “full amount of the loan” as “principal, finance charge and fees” within the definition of “due date.” A previous version of the proposed

regulations contained a definition for “full amount of the loan,” but this section was deleted. The FID apparently retains the deleted definition, just inserting it parenthetically into the definition of “due date.” This is problematic because the meaning of the term “loan” or “full amount of the loan” might vary depending on statutory context. Moreover, the FID does not use the term “full amount of the loan” elsewhere in the proposed regulations.

Most concerning to TitleMax is that the FID defines “full amount of the loan” as “principal, finance charge and fees” via a parenthetical in a proposed regulation when TitleMax and the FID have been litigating over what “title loan” means for purposes of NRS 604A.5076(1) (providing that a title lender shall not “[m]ake a title loan that exceeds the fair market value of the vehicle securing the title loan”). A Nevada district court ruled in TitleMax’s favor, declaring that NRS 604A.5076(1) means only that principal cannot exceed fair market value and that “title loan” does not include the finance charge and fees. *TitleMax of Nevada, Inc. v State, Dept. of Business and Industry Financial Institutions Div*, No. A-18-786784-C, 2019 WL 3754784, at *10 (Nev. Dist. Ct. June 20, 2019). The FID cannot manufacture a regulation that contradicts statutory terms as interpreted by a court of law. *Fed. Election Comm’n v. Democratic Senatorial Campaign Comm.*, 454 U.S. 27, 32 (1981) (“courts are the final authorities on issues of statutory construction”); *see also Ctr. for Biological Diversity v. U.S. Army Corps of Engineers*, 941 F.3d 1288, 1299 (11th Cir. 2019) (“regulations cannot contradict their animating statutes or manufacture additional agency power”).

TitleMax proposes that “due date” be defined simply as “the date on which the customer is contractually scheduled to make a payment.”

3. Section 4: Section 4 provides, “***‘Immediately’ means the action must occur within one business day.***” The regulations do not define “business day” or what “within” means. For example, TitleMax is open for business on Saturdays, but not Sundays. If an event happens in the morning, it is unclear whether “immediately” means the action must occur by the close of business that day or the next day. TitleMax proposes a clearer definition would be “‘Immediately’ means the action must occur by close of business on the following business day. ‘Business day’ means any day on which the licensee’s stores are open to the public for business.”
4. Section 5: Section 5 provides, “***‘Extent Available’ is defined as if a document exists, it is presumed to be readily available or easily obtainable in a reasonable amount of time from a customer prior to making the loan.***” “Extent available” is not used anywhere else in the proposed regulations. There is no reason to have a defined term that is not used. More importantly, the definition of “extent available” has nothing to do with the database authorized by S.B. 201. Thus, the definition is beyond the scope of S.B. 201’s regulatory authorization.

Section 5 purports to amend NRS 604A.5065, which provides that “a customer has the ability to repay a title loan if the customer has a reasonable ability to repay the title loan, as determined by the licensee after considering, to the extent available, the following underwriting factors” NRS 604A.5065(2). “To the extent available” was specifically added at the request of a title lender: “If there is an amendment to be considered . . . , LoanMax would like the words ‘to the extent available’ be added after the word ‘consider’ This would clarify for LoanMax the ability to look at any or all of the evidence necessary but not a mandated list.” Senate Committee on Commerce, Labor and Energy, 5/10/2017.

By defining “extent available” to *presume* that any document that exists is readily available and easily obtainable, the proposed regulations essentially erase “to the extent available” from the statute. The regulations presume that if a document exists, it is available and the licensee must consider it. But documents sometimes exist, but are not readily available. Sometimes customers cannot or do not know how to obtain certain documents and provide them to TitleMax in a timely fashion. Presuming that documents are readily available may actually harm customers, who know their own finances most intimately and are often looking for quick, short-term relief they may not be able to find elsewhere. TitleMax objects to the proposed regulation as contrary to the statutory language in NRS 604A.5065 and beyond the scope of S.B. 201.

5. Section 9: Section 9 provides, “***‘Closed Loan’ indicates a final status of a loan that is no longer active. When a loan is closed it may include, but is not limited to, a paid-in-full loan agreement, a repossessed vehicle, or charged-off loan.***” However, the term “Closed Loan” is not used in the proposed regulations. There is no reason to have a defined term that is not used. S.B. 201 also does not use the term “Closed Loan.” The definition is beyond the scope of S.B. 201. There are references in the proposed regulations to when a “customer transaction is closed” or when a “loan is closed.” (Sec. 11; Sec. 25.) If these sections are meant to refer to the definition of “Closed Loan,” they should use the defined term or the term itself should be changed. In addition, there is no definition of “active” or “charged-off loan.” What it means to “charge off” a loan may be different for each licensee. If a licensee is still trying to collect on a loan, does this mean it is “active” even if no payments have been made for quite some time? TitleMax suggests the definition be removed as confusing, unnecessary, and beyond the scope of S.B. 201. At a minimum, the definition should be clarified, particularly with regard to what “charged-off” means, and the defined term should be used in the proposed regulations.
6. Section 10: Section 10 provides, “***The service provider shall charge and collect a fee from a licensee for each loan the licensee enters and approves in the database. The fee is based upon a competitive procurement process but shall not exceed \$3.00 per approved loan. A licensee shall not collect from a customer an amount in excess of the actual cost charged to the licensee by the service provider. A licensee shall not collect any fee, charge or cost from a customer if a loan is not approved. The service provider shall not collect any fee, charge or cost from a licensee if a loan is not approved. The charge only occurs at origination and cannot be charged to extend, rollover, renew, refinance or consolidate or any action that would extend the due date or any of the like. The service provider fee must be itemized on the loan agreement, regardless of whether the fee is required to be included in the finance charge under the Truth in Lending Act and Regulation Z.***”

First, TitleMax proposes that the regulations define “service provider” as “the entity responsible for administering the database provided for by NRS 604A.303.” Licensees should also be informed who the service provider will be once that is known.

Second, it is unclear what the proposed regulation means when it states that the “service provider fee must be itemized on the loan agreement.” TitleMax suggests it would be clearer to state that “the service provider fee must be disclosed in the loan agreement and listed separately from any other charge.”

Third, TitleMax objects to the language that the service provider charge “cannot be charged to . . . refinance or consolidate . . .” When TitleMax refinances a title loan or refinances two previous loans into one (consolidates the two), a completely new loan is made, with a new loan agreement, new Truth-in-Lending-Act Disclosures, and a new payment schedule. When a new loan is entered into the database, the service provider will not know whether it is a refinance or an initial loan, and the service provider will presumably charge TitleMax the service provider fee. As contemplated by statute and the regulations as currently drafted, TitleMax must be able to pass on any database charge it incurs to its customers. Moreover, “origination” is not defined. TitleMax also objects to the extraneous language “or any of the like” as ambiguous and unworkable.

To the extent the FID attempts to provide by regulation that a refinance extends the due date of the original loan, this is improper. TitleMax and the FID are currently litigating over title loan refinancing. A Nevada district court has affirmed that TitleMax’s refinances create a new loan, rather than extend an original loan. *TitleMax of Nevada, Inc. v State, Dept. of Business and Industry Financial Institutions Div*, No. A-18-786784-C, 2019 WL 3754784, at *7 (Nev. Dist. Ct. June 20, 2019). The FID cannot pass a regulation contrary to the court’s statutory interpretation.

7. Section 11: Section 11 provides in part that the service provider shall “***[a]rchive data in the database concerning a customer transaction within two years after a customer transaction is closed unless notified by the Commissioner that such data is needed.***” “Customer transaction” is not defined. To the extent this refers to making a loan or modifying the terms of a loan, TitleMax suggests a definition along those lines. In addition, “closed” is not defined, though “Closed Loan” is defined earlier in Section 9. (*See supra* ¶ 5.) The terms in the proposed regulations should match the defined terms.

8. Section 12: Section 12 provides, “***1. Access to the database is limited to:***
(a) Licensee staff members that underwrite and process the loans;
(b) Licensee staff members that collect and post payments made on the loans;
(c) Licensee senior staff members;
(d) Office of the Commissioner staff members; and
(e) Service provider staff members.
Each user will be required to:
(a) Create a password that meets the service provider’s password criteria; and
(b) Safeguard the password by not sharing the password with any person or writing the password down.
2. A customer has the right to request a copy of their loan history, file, record, or any documentation relating to their loan or the repayment of a loan, from a licensee, without a charge, fee or cost.”

TitleMax proposes that (a), (b), and (c) referring to licensee staff members be combined into one subsection allowing access by “Licensee staff members and those associated with a Licensee who need to access the database to provide services.” As currently drafted, it is unclear who would qualify as “senior staff members.” There does not appear to be a reasoned basis to allow access by all Commissioner staff members and all service provider staff members, but only certain licensee staff members. In addition, there may be corporate affiliate staff members who need to access the database to provide services. For example, TitleMax of Nevada, Inc. relies on employees of its corporate affiliates to provide Information Technology (IT) and other services.

An employee of TitleMax's affiliate might need to access the database to ensure that information is properly interfacing with TitleMax's loan platform or check the database upon a question from a FID examiner. TitleMax's proposed language would ensure that the appropriate persons associated with TitleMax could access the database. TitleMax has no objection to requiring anyone who accesses the database to agree to keep confidential all information learned from the database and maintain proper security measures.

Part 2 of Section 13 exceeds the scope of S.B. 201 and is not related to the operation of the database. TitleMax already has procedures in place whereby customers can request a copy of their loan agreement and any documents they have signed. However, the proposed regulation is overbroad, as it encompasses *any* documentation relating to the loan. This could potentially include confidential and proprietary information as well as collection notes and attorney-client privileged information. Nothing in S.B. 201 addresses customers having a right to request information from licensees, and part 2 of Section 13 exceeds the statutory authorization for the FID to implement regulations "necessary for the administration of the database." NRS 604A.303(5)(d). Thus, part 2 of Section 13 should be removed as beyond the scope of S.B. 201 and potentially in conflict with Nevada's privilege statutes (*see* NRS Chapter 49).

9. ***Section 13:*** Section 13 provides, "***A licensee shall retain all data and documentation collected and reviewed for any loan, loan transaction, or any query made in the database for at least 3 years. Documentation includes, but is not limited to, all copies of the documents considered in determining the ability to repay, customer's income, customer's identity and credit history. In addition to the above mentioned, for title loans, the third-party vendor documentation showing the fair market value of the vehicle securing the title loan and a copy of the vehicle title.***"

First, this regulation purports to require retention of any and all data and documentation reviewed for any loan or loan transaction (even though "loan transaction" is not defined and is unclear). The proposed regulation exceeds the scope of S.B. 201, as it purports to impose a broad document retention standard unrelated to information in the database. Moreover, such a document retention regulation is unnecessary, as NAC 604A.200 already provides, "Except as otherwise provided in NRS 604A.700, a licensee shall maintain for at least 3 years the original or a copy of each account, book, paper, written or electronic record or other document that concerns each loan or other transaction involving a customer in this State." Proposed Section 13 is duplicative and unnecessary (and to the extent it is not duplicative, it would be inconsistent with NAC 604A.200). The FID deleted former proposed Sections 26 and 27, which both dealt with document retention as well. The FID should delete proposed Section 13, as NAC 604A.200 is already a comprehensive regulation governing document retention.

Second, it is unclear how licensees are supposed to retain "any query made in the database for at least 3 years." As TitleMax understands it, a query is a search that the licensee makes of the database (such as searching for a customer name). TitleMax does not know how to "retain" the query. It is unclear if licensees are expected to make internal notes every time they search the database, writing down what search terms they used and when the search was conducted. If the database operates as most databases do, the service provider is the one who should retain electronic evidence of queries. For example, Westlaw is a database, and it retains a history of searches – it reports what user made the search (according to the electronic user ID), what search terms were used, and the date and time of the search. While it would be extremely burdensome

for the user to record this information for each search, the database retains it automatically. The service provider should retain evidence of all queries made by licensees.

Third, TitleMax objects to any purported requirement to retain “all copies of the documents considered in determining the ability to repay, customer’s income, customer’s identity and credit history.” That has nothing to do with the database and is again beyond the scope of S.B. 201. To the extent the FID is attempting to amend NRS 604A.5065 via regulation, that is improper. While NRS 604A.5065(2) lists the “current or reasonably expected income of the customer” and the “credit history of the customer” as potential underwriting factors to be considered “to the extent available,” documents reporting the customer’s income and credit history are not always available or provided to TitleMax. (See ¶ 4 (describing how “to the extent available” was added to NRS 604A.5065 to clarify the statute does not mandate consideration of each listed factor).) TitleMax cannot retain documents it does not have. Moreover, “credit history” is not defined. “Credit history” could refer to TitleMax’s own assessment of a customer’s credit history with TitleMax, or it could refer to a third-party report. But nothing in NRS Chapter 604A requires TitleMax to order and pay for a credit history report from a third-party company such as Equifax, Experian, or TransUnion. To the extent proposed Section 13 purports to require lenders to always retain documentation of a customer’s income and credit history, that is inconsistent with NRS 604A.5065(2) and should be amended. See *Portland Audubon Soc. v. Endangered Species Comm.*, 984 F.2d 1534, 1543 n.21 (9th Cir. 1993) (“Regulations that are inconsistent with the provisions of the act they implement cannot stand.”); *Duke v. United States*, 255 F.2d 721, 724 (9th Cir. 1958) (“If there is any conflict between the statute and the regulation, the former prevails.”); *United States v. Bastide-Hernandez*, 360 F. Supp. 3d 1127, 1135 (E.D. Wash. 2018) (“An agency cannot, through the passage of a regulation, change a statute.”).

Section 13 exceeds the scope of S.B. 201, is inconsistent with 604A.5065(2), and is unnecessary in light of NAC 604A.200.

10. Section 14: Section 14 provides, “***A licensee shall not delete any customer information entered into the database. If a loan or loan transaction is void or rescinded, a licensee must notate on the loan file and in the database that the loan or loan transaction is void and the reason the loan or loan transaction is void but shall not delete the loan or the loan transaction from the database. The service provider fee cannot be charged pursuant to this chapter and chapter 604A of the NRS for a voided or rescinded loan.***”

TitleMax’s understanding is that when a loan is made, the service provider fee will be charged then. Instead of providing that the service provider fee cannot be charged for a voided or rescinded loan, the regulations should provide that the service provider must refund to licensees – and licensees must refund to the customer – the service provider fee charged for a voided or rescinded loan.

11. Section 17: Section 17 provides in part, “***During any period that the database is unavailable due to technical issues on the service provider side, a licensee may rely on a customer’s written representation and assess the customer’s ability to repay by obtaining the documentation required by this chapter to verify that making the loan applied for is permissible under the provisions of this chapter. A customer’s written representation includes, without limitation, a customer does not have any outstanding loans at the time the loan was made. . . . If a customer***

has an outstanding title loan, the customer affirms that they have the ability to repay the outstanding loan and the additional title loan that they are about to enter into, and that the title is not perfected with another lender or licensee.”

First, to the extent that the regulation suggests that “a licensee may rely on a customer’s written representation” only when the database is not operational, that is contrary to the statutory authorization to rely on customers’ written representations in assessing their ability to repay. NRS 604A.5065(2)(e). TitleMax reiterates that licensees are not required to search the database for any particular information (*see supra* ¶ 1) and that licensees can rely on customers’ written representations regardless of whether the database is operational. To the extent the regulation provides that licensees must always obtain documentation “to verify” a customer’s ability to repay – beyond and apart from “a customer’s written representation” – that is contrary to NRS 604A.5065 and cannot stand. *See Portland Audubon Soc. v. Endangered Species Comm.*, 984 F.2d 1534, 1543 n.21 (9th Cir. 1993) (“Regulations that are inconsistent with the provisions of the act they implement cannot stand.”); *United States v. Bastide-Hernandez*, 360 F. Supp. 3d 1127, 1135 (E.D. Wash. 2018) (“An agency cannot, through the passage of a regulation, change a statute.”).

Second, there is no prohibition on making a title loan to a customer who has other outstanding loans. If the licensee wishes to accept the risk of having its interest subordinate to another lender, that is its choice and the statute does not prohibit such activity. Section 17 imposes requirements that have nothing to do with the database and that exceed the requirements of NRS Chapter 604A when it purports to mandate what customers must affirm in writing.

Section 17 goes on to provide, “***If a licensee makes a loan to a customer during a time the database is unavailable, whether scheduled or for technical issues, a licensee must: (a) Enter the loan into the database within 24 hours of the system being operational[.]***” If the database is unavailable on a Saturday, TitleMax is closed on Sunday and may not be able to enter the loan into the database within 24 hours of the database being operational. TitleMax suggests that “within 24 hours” be changed to “Immediately” if the amendments discussed in paragraph 3 are adopted (defining “Immediately” in reference to business days).

12. Section 18: Section 18 provides, “***Before making a deferred deposit loan, title loan or high-interest loan, a licensee shall query the database. The query shall be retained by the service provider for the Office of the Commissioner’s review. The database shall allow a licensee to make a deferred deposit loan, title loan or high-interest loan only if making the loan is permissible under the provisions of this chapter and chapter 604A of NRS. At a minimum, the query should include the below to verify the identity of a customer:***
- (a) The customer’s full name: first and last name, and middle initial;***
 - (b) The customer’s social security number or alien registration number;***
 - (c) The customer’s valid government-issued photo ID number;***
 - (d) The customer’s date of birth, mm/dd/yyyy;***

First, under S.B. 201, licensees are not required to query the database for anything. Rather, they “may obtain” certain information if they so choose. (*See supra* ¶ 1.)

Second, the Legislature provided for the database only to collect information. The database does not determine compliance with NRS 604A/NAC 604A. The proposed language that the

“database shall *allow* a licensee to make a” loan only if permissible under governing law is far beyond what the Legislature provided for. Licensees are responsible for determining loan eligibility and compliance with NRS 604A/NAC 604A, not the database. (*See supra* ¶ 1.)

Third, not all customers have a middle initial, and some have more than one last name. To the extent subsection (a) remains at all, it should simply state that a search of the customer’s full name is required.

Section 18 exceeds the permissible scope of regulations to implement S.B. 201.

13. **Section 19:** Section 19 provides, “*The database will provide the licensee information prescribed in NRS 604A, section 303, subsection 1(a)-(d), which a licensee must consider in determining a customer’s ability to repay a loan under chapter 604A of NRS and in conjunction with all other available information, if these factors will make a customer ineligible for a loan and only approve the loan if permissible under the provisions of this chapter and chapter 604A of NRS.*”

Section 19 exceeds the scope of S.B. 201 and purports to change its requirements. NRS 604A.303(1) provides that “the Commissioner and licensees may obtain” the information listed in subsections (1)(a)-(d) – not that they are required to. NRS 604A.303(1). The proposed regulation exceeds the scope of S.B. 201 when it provides that “a licensee *must consider*” the information prescribed in subsections (1)(a)-(d). S.B. 201 did not amend the ability-to-repay statute (NRS 604A.5065 for title loans) or add the information prescribed in NRS 604A.303(1)(a)-(d) as items to be considered in determining ability to repay. S.B. 201 did not provide that a loan cannot be made if a customer has another NRS 604A loan outstanding or has had three or more such loans outstanding within the past 6 months. (*See supra* ¶ 1.) Requiring licensees to consider such information and suggesting that these factors may make a customer ineligible for a loan is contrary to S.B. 201. *See Portland Audubon Soc. v. Endangered Species Comm.*, 984 F.2d 1534, 1543 n.21 (9th Cir. 1993) (“Regulations that are inconsistent with the provisions of the act they implement cannot stand.”); *United States v. Bastide-Hernandez*, 360 F. Supp. 3d 1127, 1135 (E.D. Wash. 2018) (“An agency cannot, through the passage of a regulation, change a statute.”).

14. **Section 20:** Section 20 provides, “*Upon a licensee’s query, the database shall inform a licensee whether a customer is eligible for a new loan and, if the customer is ineligible, the reason for such ineligibility. If the database informs a licensee that a customer is ineligible for a loan, then a licensee shall provide written notice to a customer with the reason for ineligibility, the database provider’s¹ contact information, and a statement advising the customer to submit an inquiry to the database provider should they have questions regarding the specific reason for such ineligibility. The ineligibility notice does not preclude or replace any disclosure required by federal law.*”

S.B. 201 does not require licensees to query anything. To the extent Section 20 purports to require licensees to query the database for a customer’s loan eligibility, this is contrary to, and exceeds the scope of, S.B. 201.

¹ Assuming “database provider” is the same as “service provider,” it should be referred to consistently throughout the regulations.

As described above, S.B. 201 does not provide for the database to determine loan eligibility. This may be a future step Nevada takes, but it has not done so yet. S.B. 201 simply provides for the creation of a database that will store information. (*See supra* ¶ 1.) Thus, TitleMax objects to the regulation providing that “the database shall inform a licensee whether a customer is eligible for a new loan.” It is unclear how the database would determine compliance with *all* requirements of NRS 604A and NAC 604A even if the database was supposed to determine loan eligibility. Licensees determine loan eligibility, not the database.

Moreover, S.B. 201 imposes no requirements on licensees to “provide written notice to a customer with the reason for ineligibility.” The regulation adds a new requirement that is inconsistent with NRS Chapter 604A. In addition, it seems deceptive to tell customers they may submit an inquiry to the database provider should they have questions regarding the reason for their loan ineligibility. The database provider can presumably only access data. It cannot alter information (even if such information is inaccurate), nor can it discuss with customers potential avenues to assist customers in obtaining the loans they need, such as taking out a loan for a lower amount. Section 21 alters the requirements, and exceeds the scope, of S.B. 201.

15. Section 21: Section 21 provides, “*A licensee shall enter into the database, in real time, all loans originated under the provisions of chapter 604A of NRS; when permissible, all renewals, extensions, rollovers, and refinances; grace periods; payments; when a repayment plan offer is sent; when a repayment plan is entered into; ~~payment receipts; collection notes; declined loans; and any transaction pertaining to the loan, as applicable, and in compliance with this chapter and chapter 604A of NRS.~~*”

First, as explained above in Paragraph 1, this section exceeds the scope of permissible regulations under S.B. 201. NRS 604A.303(2) already specifies exactly what information the licensee must enter into the database. For example, NRS 604A.303(2) requires licensees to enter the date of default and the date on which the customer enters into a repayment plan. NRS 604A.303(2)(g)-(h). Section 21 is duplicative when it requires entry of “when a repayment plan is entered into,” and it is inconsistent when it purports to add additional requirements of what information must be entered into the database. The Legislature already specified exactly what information had to be entered into the database and did not leave this to regulation.

Second, “real time” is not defined. In responding to comments, the FID previously stated that the “database operates in real time. It interfaces with the licensee’s current system; there, the information will be entered into the database as the licensee enters it into their software.” (June 22, 2020 Notice of Workshop at pg. 24 of the PDF.) TitleMax would like to understand exactly how information will interface with TitleMax’s proprietary loan management software. TitleMax uses IT personnel that are constantly updating and maintaining TitleMax’s proprietary loan management software. TitleMax has concerns about the amount of access to its proprietary loan management software, which it has invested significant time and money in developing and that contains trade secret and confidential information. In addition, it is unclear if “real time” means that as long as the information in TitleMax’s proprietary loan management software interfaces with the database, this is sufficient – or if the regulation is requiring that licensees enter information into their own systems “in real time” (as opposed to “immediately,” i.e. by the next business day). This merits clarification.

Third, requiring entry of “any transaction pertaining to the loan” is overbroad. “Transaction” is not defined. Would this, for example, include the now-deleted text of “payment receipts” and “collection notes”? Licensees must be able to understand precisely what information they are required to enter into the database – each piece of information must be carefully enumerated (as the Legislature already did), not captured with an ambiguous catch-all phrase such as “any transaction.”

Fourth, the proposed regulation purports to require entry of “declined loans” into the database. NRS 604A.303(3) provides, “The Commissioner shall establish, and cause the vendor or service provider administering the database created pursuant to subsection 1 to charge and collect, a fee for each loan entered into the database by the licensee.” Thus, if a declined loan has to be entered into the database, there must be a fee for this. However, the proposed regulations also provide, “A licensee shall not collect any fee, charge or cost from a customer if a loan is not approved. The service provider shall not collect any fee, charge or cost from a licensee if a loan is not approved.” (Sec. 10.) If there is no fee for a declined loan, then a declined loan should not have to be entered into the database. NRS 604A.303 requires both that a fee should be charged for each loan “entered into the database” and that licensees must enter information only for loans “made to a customer.” NRS 604A.303(2)-(3). If a loan is declined, no loan is made to any customer and the licensee should not be required to enter anything into the database.

Fifth, the proposed regulation requires entry into the database of “all loans originated under the provisions of chapter 604A of NRS” and “when permissible, all renewals, extensions, rollovers, and refinances.” The proposed regulation, as it currently reads, suggests that renewals, extensions, rollovers, and refinances need not be entered into the database if they are not permissible. Moreover, the language is inconsistent and confusing. TitleMax’s refinances are new “loans originated under the provisions of chapter 604A,” so they would be entered into the database as new loans. To the extent the FID is attempting to provide via regulation that refinances are not new loans – or that title loan refinancing is not permissible – a Nevada district court has ruled against the FID on these precise issues. *See TitleMax of Nevada, Inc. v State, Dept. of Business and Industry Financial Institutions Div*, No. A-18-786784-C, 2019 WL 3754784, at *5-10 (Nev. Dist. Ct. June 20, 2019). The FID cannot circumvent the court’s statutory interpretation by passing a contrary regulation. *Fed. Election Comm’n v. Democratic Senatorial Campaign Comm.*, 454 U.S. 27, 32 (1981) (“courts are the final authorities on issues of statutory construction”).

16. Section 22: TitleMax believes Section 22 exceeds the scope of S.B. 201 by requiring entry into the database of information not required by S.B. 201. However, TitleMax will not address Section 22 in detail, as it pertains to deferred deposit and high-interest loans, not title loans.
17. Section 23: Section 23 provides, “***A licensee shall enter the following information in the database, in real time, when a transaction takes place as prescribed in NRS 604A, Sections 5983-5987 and Section 303, Subsections 2 and 5 for each loan made pursuant to NRS 604A.5065- NRS 604A.5089, without limitation:***
 - (a) ***Verification that the customer is the legal owner of the vehicle securing the loan;***
 - (b) ***If the customer is a covered service member;***
 - (c) ***If the customer is a dependent of a covered service member;***
 - (d) ***The origination date of the loan;***

- (e) The term of the loan;*
- (f) The principal amount of the loan;*
- (g) The total finance charge associated with the loan;*
- (h) The fee charged for the loan;*
- (i) Due date of the loan;*
- (j) The annual percentage rate of the loan;*
- (k) The scheduled payment amount;*
- (l) The payment details as described in section 24;*
- (m) The year, make, model, and Vehicle Identification Number (VIN) of the vehicle; and*
- (n) The fair market value of the vehicle from a third-party vendor.*
- (o) The legal co-owner's name and consent from co-owner, if applicable;"*

As an initial matter, it is unclear to TitleMax why so many different sections of the proposed regulations address what licensees allegedly must enter into the database (Sections 21, 23, and 24). The regulations would be much more coherent if there were one section governing everything that must be entered into the database (even if there are different subsections for high-interest, deferred deposit, and title loans). It is unclear to TitleMax why Section 24 is a separate section incorporated by reference in Section 23(l) rather than being part of the same section.

More fundamentally, Section 23 surpasses the statutory scope of S.B. 201, which already specifies exactly what information licensees must enter into the database. NRS 604A.303(2); (*see also supra* ¶ 1.) Section 23 duplicates certain requirements of S.B. 201, such as by requiring entry of the date of the loan, the principal, the total finance charge, the fees charged for the loan, and the annual percentage rate of the loan. (*Compare* Section 25(d), (f), (g), (h), (j), *with* NRS 604A.303(2)(a), (c)-(f).)² There is no need to require entry of this information by regulation when it is already statutorily required. Section 23 is inconsistent with S.B. 201 by purportedly requiring entry of several additional details that S.B. 201 does not authorize.

18. Section 24: Section 24 provides, “*A licensee shall enter the following information in the database, in real time, for each payment made on the loan, without limitation:*
- (a) The scheduled payment amount;*
 - (b) The scheduled date of the payment;*
 - (c) The actual payment amount;*
 - (d) The date the payment was made;*
 - (e) The allocation of the total payment, dollar amount applied to principal and dollar amount applied to interest and fees;*
 - (f) Amount and date of payment received from a customer when the loan is paid in full;*
 - (g) If a scheduled payment was missed:*
 - (1) The new interest rate, if applicable;*
 - (2) Whether or not a repayment was offered;*
 - (3) Did a customer enter a repayment plan; and*
 - (4) The duration of the grace period, if applicable.*

² While NRS 604A.303 requires licensee to enter the “fees charged for the loan,” NRS 604A.303(2)(d), Section 23(h) of the proposed regulations refers to the “fee charged for the loan” in the singular. It is ambiguous what fee this is referring to. The statutory language and the regulatory language should be consistent – which is why it is problematic and unnecessary for the regulations to repeat certain items already present in the statute (and then add additional, unauthorized items).

If a customer enters into a loan agreement requiring installment payments, the licensee shall enter the information required pursuant to this section for each installment payment.”

Section 24 purports to require licensees to enter into the database detailed information as to each and every payment. This is inconsistent with S.B. 201, which already prescribes what information a licensee must enter into the database. NRS 604A.303(2); (*see also supra* ¶ 1.) S.B. 201 requires:

- (a) The date on which the loan was made;
- (b) The type of loan made;
- (c) The principal amount of the loan;
- (d) The fees charged for the loan;
- (e) The annual percentage rate of the loan;
- (f) The total finance charge associated with the loan;
- (g) If the customer defaults on the loan, the date of default;
- (h) If the customer enters into a repayment plan pursuant to NRS 604A.5027, NRS 604A.5055 or NRS 604A.5083, as applicable, the date on which the customer enters into the repayment plan; and
- (i) The date on which the customer pays the loan in full.

NRS 604A.303(2). That is all S.B. 201 requires. Section 24 goes far beyond S.B. 201 and requires details the Legislature rejected. For example, Section 24 requires entry of the amount and date of each payment. Sometime customers make several small payments, and the Legislature wisely did not include such minutiae in S.B. 201. Only the main terms of the loan agreement, the date of default, the date of any repayment plan, and the date on which the customer pays the loan in full are required. NRS 604A.303(2).

Moreover, there are now many sections governing what must purportedly be entered into the databased. Entry of whether a customer entered a repayment plan is now required by NRS 604A.303(2)(h), Section 21, Section 24, and Section 25. There is no need for such redundancy – it only makes it more cumbersome to ensure compliance with all statutory and regulatory provisions.

18. Section 25: Section 25 provides, “***Status of the loan must be entered into the database, without limitations:***

- (1) If in collection, whether first party or third party, the date entered into collection and payment history;***
- (2) If the loan is in default, the date entered into default and payment history. If an interest rate changed, the rate and date it changed;***
- (3) If the loan is in grace period, the date entered into a grace period and payment history;***
- (4) If in a repayment plan, the date entered into a repayment plan and payment history.***
- (5) The date the loan was closed as defined in this chapter;***
- (6) The reason the loan was closed as defined in this chapter;***
- (7) The date repossession of the vehicle was ordered, if applicable; and***
- (8) The date repossession occurred, if applicable.”***

It is again unclear to TitleMax why so many different sections purportedly govern what must be entered into the database. Parts of Section 25 are duplicative of Section 24 (such as requiring payment history) and NRS 604A.303(2) (such as specifying the date a repayment plan was entered into). However, Section 25 is inconsistent with S.B. 201 in that it requires more information to be entered into the database than what NRS 604A.303(2) requires. (*See supra* ¶ 1.)

Moreover, it is unclear when the “status of the loan must be entered into the database.” Presumably, every loan is in a certain status every moment of every day. The regulation is unclear as to when a certain status must be entered or updated. NRS 604A.303(2) provides the only information a licensee must “enter or update,” and the updates are manageable as they require only entering or updating the primary terms of the loan, the date of default, the date a repayment plan is entered, and the date on which the customer pays the loan in full. NRS 604A.303(2). Section 25, in contrast, is extremely burdensome and exceeds the scope of S.B. 201. For example, a loan is theoretically always “in collection” status until it is paid in full, yet the proposed regulation purports to require entry of “the date entered into collection.” This does not make sense to TitleMax as the loan is always in first-party collection until it is paid in full or referred to a third-party collector. Licensees are left to guess as to when they must enter the “status of the loan” into the database (daily? hourly?), and the regulation is inconsistent with its animating statute.

Moreover, if the database truly interfaces with licensees’ loan systems (as the FID previously suggested), it is unclear why the status of the loan would have to be entered into the database at all – presumably, the status of any loan would be ascertainable because the database would interface with the lender’s loan platform. TitleMax suggests that Section 25 be deleted in its entirety.

Thank you for the opportunity to provide comments and suggestions regarding the proposed regulations. We look forward to participating in the Workshop. Please feel free to contact me should you have any questions or require any clarifications.

Sincerely,

/s/ Dale Kotchka-Alanes

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September 16, 2020

COMMENTS ON PROPOSED REGULATIONS PERTAINING TO SENATE BILL 311

Dear Deputy Commissioner Young:

Our firm represents TitleMax of Nevada, Inc. (“TitleMax”), which hereby submits its comments on the proposed regulations pertaining to Senate Bill 311 (“S.B. 311”), circulated on August 31, 2020 by the State of Nevada, Financial Institutions Division (“FID”). TitleMax appreciates the opportunity to comment on the proposed regulations and attend the workshop scheduled for September 16, 2020.

TitleMax suggest that Section 3(1) of the proposed regulations be amended to provide that the provision of NRS 598B.135 do not apply if “The creditor cannot comply with NRS 598B.135 without violating federal *or state* law.” TitleMax suggests adding “or state” because there are state laws that will be violated if creditors comply with NRS 598B.135. Some of these may be state law provisions analogous to the Fair Credit Reporting Act or other federal laws, yet some may be independent state law provisions.

As one example of Nevada law that appears to conflict with NRS 598B.135, NRS 604A.5065 provides that one factor title lenders may consider in determining ability to repay is the “credit history of the customer.” NRS 604A.5065(2)(c). NRS 598B.135 would appear to mandate that the spouse’s credit history be considered if requested by the applicant, yet NRS 604A.5065(3) states that title lenders “shall not consider the ability of any person other than the customer to repay the title loan.” Thus, complying with NRS 598B.135 could potentially cause a title lender like TitleMax to violate 604A.5065(3) or other state laws. For this reason, TitleMax requests and suggests that Section 3(1) of the proposed regulations be amended to make it clear that compliance with NRS 598B.135 is not necessary where it would result in violating federal *or state* law.

Thank you for the opportunity to provide comments and suggestions regarding the proposed regulations. We look forward to participating in the Workshop. Please feel free to contact me should you have any questions or require any clarifications.

Sincerely,

/s/ Dale Kotchka-Alanes

Dale Kotchka-Alanes
Lewis Roca Rothgerber Christie LLP



1752 Combe Rd. #1 Ogden, UT 84403 801-476-4242

September 11, 2020

**Ms. Sandy O’Laughlin
Commissioner of Financial Institutions
3300 W. Sahara Ave., Suite 250
Las Vegas, NV 89102**

Written Comment for the Record of September 16, 2020 Workshop

Re: REVISED DRAFT PROPOSED REGULATIONS PERTAINING TO S.B. 201 – 604A

We are happy to work with the FID to establish the database criteria in order to ensure that the database can accomplish the intentions of SB-201; to prevent consumers from exceeding 25% of their gross income, even if they were to borrow from multiple lenders.

In reviewing the revised draft of the proposed regulations, we did not find any substantial changes that addressed the concerns in our July 8, 2020 letter. None of these issues seem to have been addressed, they were just moved around to different portions of the regulation. They are still a concern to us. Rather than re-state the same concerns, we would like to take the time to suggest solutions.

Our proposal to implementing the database would not only put it in compliance with SB-201, but would also serve to ensure that consumers will not exceed 25% of their gross income, even if they were to borrow from multiple lenders.

Please see our proposed solution to follow: (Blue indicates items not listed in SB-201 that need to be added to make the database operate properly.)

Our Proposed Solution

- As per SB-201 Sec 8: (a)-(d) the database should only display to the lenders the following information:

Customer Name: Bob L Smith		
Last 4 of SSN : 1234		
Address: 123 Test St, Test, UT 84404		
Deferred Deposit Loan	Total Amount Due	\$500
High Interest Loan	Payment Amount	\$30
Has customer had a loan within last 30 days?		Yes
Has customer had 3 or more loans within last 6 mo.?		Yes

- With this information, in addition to the lender's underwriting policies, the lender (not the database) will determine if the customer qualifies for a loan.
 - **SB-201 Sec. 12. (b)** The licensee has utilized the database to ensure that the deferred deposit loan, in combination with any other outstanding loan of the customer, does not exceed 25 percent of the customer's expected gross monthly income when the deferred deposit loan is made.
 - **SB-201 Sec. 13. (b)** The licensee has utilized the database established pursuant to section 8 of this act to ensure that the terms of the high-interest loan, in combination with any other outstanding loan of the customer, do not require any monthly payment that exceeds 25 percent of the customer's expected gross monthly income when the loan is made.
- If the lender chooses not to loan, the customer is given an adverse action notice in compliance with federal regulations ECOA and FCRA Regulation B.
- When the lender makes the decision to issue a loan, they then enter into the database the following datapoints authorized by SB-201:
 - **SB-201 Sec. 8:2** After the development and implementation of the database created pursuant to subsection 1, a licensee who makes a deferred deposit loan, title loan or high-interest loan shall enter or update the following information in the database for each such loan made to a customer at the time a transaction takes place:
 - a. The date on which the loan was made;
 - b. The type of loan made;
 - c. The principal amount of the loan;
 - d. The fees charged for the loan;
 - e. The annual percentage rate of the loan;
 - f. The total finance charge associated with the loan;
 - g. **The payment amount of high interest loans;**
- When the status or disposition of the loan changes, the lender will enter the following datapoints from SB-201:
 - **SB-201 Sec. 8:2 (continued)**



- h. If the customer defaults on the loan, the date of default;
- i. If the customer enters into a repayment plan pursuant to NRS 604A.5027, 604A.5055 or 604A.5083, as applicable, the date on which the customer enters into the repayment plan; and
- j. The date on which the customer pays the loan in full.
- k. [If the balance due of the deferred deposit loan changes, the new balance due.](#)

In summary the information as listed in SB-201 Sec. 8:2 (*with the additions of the items in blue above*) is enough information on its own for the database to accurately display the required information, to enable the lenders and the commissioner to determine that the customer's loan obligations do not exceed 25 percent of the expected gross monthly income. Any information beyond this is unnecessary and overreaching.

It is our desire to work together to get this accomplished in a matter that will be beneficial to our customers. Your consideration is appreciated. We look forward to working with you.

Sincerely,

Janet Phillips

Janet Phillips
Operations Director

CC: Mary Young, Deputy Commissioner