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FILED.NV.SOS
2020 DEC 29 AM 9:39

Form for Filing
Administrative Regulations

Agency: The Department
of Business and Industry,
Financial Institutions
Division

FOR EMERGENCY
REGULATIONS ONLY

Effective date

Governor's Signature

Classification: PROPOSED

ADOPTED BY AGENCY

EMERGENCY

Brief Description of Action: The adopted regulation, NAC 598B, LCB FILE NO. R097-20 dated August 21, 2020 (Senate Bill 311- Equal Opportunity for Credit). This regulation intends to clarify and align SB 311 with current federal law pertaining to discrimination based on marital status of a person who seeks to obtain credit.

Authority citation other than 233B: Senate Bill No. 311, Chapter 280, Statutes of Nevada 2019, at page 1593-1594

Notice date: October 2, 2020

Date of Adoption by Agency: November 4, 2020

Hearing date: November 4, 2020



Mary Young, Deputy Commissioner

APPROVED REGULATION OF
THE COMMISSIONER OF FINANCIAL INSTITUTIONS

LCB File No. R097-20

Filed December 29, 2020

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted-material~~ is material to be omitted.

AUTHORITY: §§1-4, NRS 233B.040, 598B.090 and 598B.135.

A REGULATION relating to equal opportunity for credit; interpreting the phrase “no credit history” for the purposes of certain statutory provisions; clarifying the applicability of certain statutory provisions; clarifying the rights and responsibilities provided in certain statutory provisions; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law prohibits discrimination on the basis of marital status with respect to any aspect of a credit transaction. (NRS 598B.100) Existing law also provides that, for certain applicants for credit who have no credit history, it is discrimination on the basis of marital status for a creditor to fail to comply with a request of an applicant to have the applicant’s credit history deemed to be the same as the credit history of the applicant’s spouse or former spouse as established during the marriage. (NRS 598B.135) These provisions regarding applicants with no credit history, codified as NRS 598B.135, were enacted during the 2019 Legislative Session as section 3 of Senate Bill No. 311 and are similar to a requirement in federal regulations. (12 C.F.R. § 1002.6(b)(6)(iii))

Section 2 of this regulation interprets the phrase “no credit history” for the purposes of NRS 598B.135. **Section 3** of this regulation clarifies the circumstances under which NRS 598B.135 does not apply to a creditor. **Section 4** of this regulation clarifies the scope of the rights of applicants and responsibilities of creditors as provided in NRS 598B.135.

Section 1. Chapter 598B of NAC is hereby amended by adding thereto the provisions set forth as sections **2**, **3** and **4** of this regulation.

Sec. 2. *As used in NRS 598B.135, the Commissioner of Financial Institutions will interpret the phrase “no credit history” to mean that the credit report of the applicant does not contain any information concerning any credit transaction.*

Sec. 3. *The provisions of NRS 598B.135 do not apply to a creditor with regard to an application for credit if:*

- 1. The creditor cannot comply with NRS 598B.135 without violating federal law.*
- 2. The creditor cannot legally obtain the credit history of the spouse or former spouse of the applicant as needed to comply with NRS 598B.135.*
- 3. The credit history of the spouse or former spouse of the applicant which is needed to comply with NRS 598B.135 is not available to the creditor for any reason beyond the control of the creditor, including, without limitation, when the necessary credit history is no longer retained by a credit reporting agency.*

Sec. 4. *Except as otherwise provided in section 3 of this regulation, the Commissioner will interpret NRS 598B.135 so that the rights of applicants and the responsibilities of creditors for the purposes of NRS 598B.135 shall be deemed to be coextensive with the respective rights and responsibilities under 12 C.F.R. § 1002.6(b)(6)(iii).*

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED
BY ADMINISTRATIVE PROCEDURES ACT NRS 233B.066
Informational Statement
LCB FILE NO. R097-20
(Equal Opportunity for Credit)**

The following statement is submitted for adoption of regulations pertaining to Nevada Administrative Code (“NAC”) Chapter 598B, Equal Opportunity for Credit.

1. A clear and concise explanation of the need for the adopted regulation.

This regulation is required as a result of the passage of Senate Bill 311 (“SB 311”) during the 80th Session of the Nevada Legislature. This regulation intends to clarify and align SB 311 with current federal law pertaining to discrimination based on marital status of a person who seeks to obtain credit.

This regulation is needed to ensure all Nevada borrowers are afforded an equal opportunity to obtain credit from a creditor in compliance with both state and federal laws.

2. A description of how public comment was solicited, a summary of public response, an and explanation of how other interested persons may obtain a copy of the summary.

Copies of the proposed regulation, notice of workshop, small business impact statement, and notice of intent to act upon the regulation were emailed to the industry associations, division licensees, division’s chartered depository institutions, division’s rulemaking contact list, persons who were known to have an interest in the regulation as well as any persons who had specifically requested such notice. These documents were also made available at the Financial Institutions Division’s website at <http://fid.nv.gov/> and the Nevada Public Notice website at <https://notice.nv.gov/>; posted at the Division’s Las Vegas and Reno office; and provided to the Nevada State Library for posting and to all county libraries. The proposed regulation and notice of intent to act upon the regulation were additionally provided to the Nevada State Library and all county libraries in Nevada for posting. The workshop notice and notice of intent to act upon the regulation was further submitted for posting on the Nevada Legislature’s website.

On June 12, 2020, via email, the Division notified 200 persons, this include its industry associations, division licensees, division’s chartered depository institutions and persons on the division’s rulemaking contact list, concerning the proposed regulation, provided a copy of the proposed regulation, and solicited written comments concerning whether it would impose a direct and significant economic burden upon a small business that is subject to NRS 598B, and any regulations adopted pursuant thereto; or directly restrict the formation operation, or expansion of a small business that is subject to NRS 598B, and any regulation adopted pursuant thereto.

In response to the June 12, 2020 solicitation, the Division's record reflects receipt of twenty-six small business impact surveys. Some of the twenty-six comments were more directed towards the language in S.B. 311 and not the proposed regulation and seven were entities with over 150 employees that submitted a blank survey to the Division. Attached summary of comments received from the small business impact survey are attached hereto as "Exhibit A."

On August 31, 2020, the Division issued and posted a notice of the workshop, and sent, via email, to 207 persons, this include its industry associations, division licensees, division's-chartered depository institutions and persons on the division's rulemaking contact list. The workshop was held on September 16, 2020 in Las Vegas, Nevada via Webex conference. Minutes of the workshop are attached hereto as "Exhibit B." The minutes reflect receipt of additional comments from three parties (two verbal and one verbal/written).

The Legislative Counsel Bureau (LCB) posted its revised draft of proposed regulation R097-20 on August 21, 2020. On October 2, 2020, the Division issued and posted a notice of intent to act upon regulation based upon the LCB draft of proposed regulation R097-20, along with a notice of public meeting and solicited further written comments on the proposed regulation. On the same day, via email, the Division notified 212 persons, via email, this include its industry associations, division licensees, division's-chartered depository institutions and persons on the division's rulemaking contact list. The public hearing for adoption was held via Webex conference on November 4, 2020. Minutes of the public hearing are attached hereto as "Exhibit C." The minutes reflect receipt of one additional comment.

3. The number of persons who:

Attended September 16, 2020 workshop: 55

Testified at the workshop: 3

Attended November 4, 2020 hearing: 40

Testified at the hearing: 1

Submitted written comments: 1

4. A list of names and contact information, including telephone number, business address, business telephone number, electronic mail address, and name of entity or organization represented, for each person identified in #3, above, as provided to the agency.

Out of the 55 individuals that attended the workshop on September 16, 2020, only 4 signed-in:

Name	Company or Organization	Email Address
Renee	Reno Capital	rawagner@investmentserv.com
Marty G. Baker	Thrivos, Inc.	martybaker@thrivos.com
Jennifer McMenomy	Allison MacKenzie	jmcmenomy@allisonmackenzie.com
Cathy Sheehy	MLD	csheehy@mld.nv.gov

Out of the 40 individuals that attended the hearing on November 4, 2020, only 12 signed-in:

Name	Company or Organization	Email Address
Lacy Stuehler	Dubble Check	dubblecheckloans@gmail.com
Leanne Robertson	EZ Check Payday Loans	ezcheck1919@gmail.com
Connor Cain	Nevada Bankers Association	connor@carraranv.com
Sheryl Smith	Omni Financial of Nevada, Inc.	ssmith@yesomni.com
Marty G. Baker	Thrivos, Inc.	martybaker@thrivos.com
Kristena Arnold	Omni Financial of Nevada, Inc.	karnold@yesomni.com
Leanne Robertson	EZ Check Payday Loans	ezcheck1919@gmail.com
Malani Kotchka-Alanes	TitleMax of Nevada, Inc.	mkotchkaalanes@lrrc.com
Melissa Hynson	Speedee Cash Management	mhynson@speedeenet.com
Leanne Robertson	EZ Check Payday Loans	ezcheck1919@gmail.com
Eric Estes	Eric Estes	eestes@boulderdamcu.org
Lourdes Gonzalez	Leo's Title Loan, LLC	leostitleloan@gmail.com

5. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.

Comments were solicited from affected businesses in the same manner as they were solicited from the public (see item 2 above). A summary of responses can be found in the minutes to the workshops and the hearing (Exhibits B and C) and small business impact statement (Exhibit A). Copies of these materials can be obtained by contacting Mary Young, Financial Institutions Division at fidmaster@fid.state.nv.us or mmyoung@fid.state.nv.us or 702-486-4120 or by visit the Division's website: www.fid.nv.gov.

6. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

At the conclusion of the noticed public hearing on November 4, 2020, the permanent regulation was adopted in the form proposed and reflected in the LCB Draft of Proposed Regulation R097-20 dated August 21, 2020 because there was no significant objection to the proposed language.

7. **The estimated economic effect of the adopted regulation on the businesses which it is to regulate and on the public. These must be stated separately, and each case must include: (a) Both adverse and beneficial effects; and (b) Both immediate and long-term effects.**

(a) Both adverse and beneficial effects.

Adverse effects. The proposed regulation is not expected to result in any adverse economic impact on business or to Nevada consumers because this regulation does not establish additional requirements for businesses with respect to issuance of a license or assessment of fees.

Beneficial effects. This regulation intends to clarify and align SB 311 with current federal law pertaining to discrimination based on marital status of a person who seeks to obtain credit. This regulation would provide that all Nevada borrowers have an opportunity to obtain credit from a creditor in compliance with both state and federal laws.

(b) Both immediate and long-term effects.

The immediate effect or long-term economic effect on regulated entities and to the public is this regulation intends to clarify and align SB 311 with current federal law pertaining to discrimination based on marital status of a person who seeks to obtain credit. This regulation would provide that all Nevada borrowers have an opportunity to obtain credit from a creditor in compliance with both state and federal laws.

8. **The estimated cost to the agency for the enforcement of the adopted regulation.**

Since this regulation intends to clarify and align SB 311 with current federal law pertaining to discrimination based on marital status of a person who seeks to obtain credit, the Division anticipates the cost of enforcement of the proposed regulation to be absorbed into the workloads of existing staff.

9. **A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.**

To the best of the Division's knowledge, there are no other state or government agency regulations known by the Division that the proposed regulation overlaps or duplicates. This regulation will align with current federal law pertaining to equal opportunity for credit to ensure compliance with both state and federal laws.

10. **If the regulation includes provisions which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.**

The adopted regulation does not include provisions which are known to be more stringent than a federal regulation which regulates the same activity.

11. If the regulation provides a new fee or increase an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

There are no fees associated with this regulation.

Enclosed:

Exhibit A – Small Business Impact Statement

Exhibit B – Minutes of September 16, 2020 Workshop on R097-20

Exhibit C – Minutes of November 4, 2020 Adoption Hearing on R097-20