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Brief Description of Action: The adopted regulation, NAC 604C, LCB FILE NO. R036-20 dated November 20, 2020 (Senate Bill 432- Consumer Litigation Funding) is needed to establish provisions relating to the licensing, examination and enforcement relating to consumer litigation funding companies, and providing other matters properly relating thereto.

Authority citation other than 233B: Senate Bill No. 432, Chapter 378, Statutes of Nevada 2019, Section 17 at page 2401

Notice date: November 9, 2020

Date of Adoption by Agency: December 9, 2020

Hearing date: December 9, 2020



Mary Young, Deputy Commissioner

**APPROVED REGULATION OF THE
COMMISSIONER OF FINANCIAL INSTITUTIONS**

LCB File No. R036-20

Filed December 29, 2020

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

AUTHORITY: §§1-10, 12-15 and 20-24, NRS 604C.200; §§11 and 16, NRS 604C.200 and 604C.540; §17, NRS 604C.200, 604C.610, 604C.630 and 658.101; §18, NRS 604C.200 and 604C.620; §19, NRS 604C.200 and 658.098.

A REGULATION relating to financial services; interpreting the term “promptly,” as used in existing law; authorizing a consumer to have more than one consumer litigation funding contract per legal claim; providing that only one document preparation fee be paid per legal claim, regardless of the number of consumer litigation funding contracts taken on the legal claim; requiring the consumer litigation funding company to forward certain notices received from the consumer to the attorney or law firm representing the consumer; prohibiting a consumer litigation funding company from collecting proceeds from a consumer in certain situations; prohibiting consumer litigation funding companies from participating in false, misleading or deceptive advertising; setting forth the process for how a consumer litigation funding contract is approved by the Commissioner of Financial Institutions; authorizing a consumer litigation funding company to communicate through electronic mail with a consumer; requiring certain documents written in a language other than English to be translated into English; requiring a consumer litigation funding company with offices or other places of business within this State to make its books and records available to the Commissioner or a representative of the Commissioner; establishing certain fees; requiring a licensee to prominently display his or her license at each location where he or she conducts business; requiring the licensee to give notice to the Commissioner upon certain changes in management; requiring certain persons involved with a business entity that applies for a license to engage in the business of a consumer litigation funding company to satisfy certain requirements; prohibiting a person from engaging in the business of a consumer litigation funding company without a license; establishing the renewal, suspension, reinstatement and revocation process for a license; establishing the hourly fee paid by a licensee to the Commissioner for supervision, examinations and audits; establishing the assessment for costs related to audits and examinations; providing for the assessment to cover the costs of legal services provided by the

Attorney General to the Commissioner and the Division of Financial Institutions of the Department of Business and Industry; requiring certain reports to satisfy certain requirements; providing that certain information is confidential; requiring a licensee to answer certain complaints within a certain period of time; requiring a licensee to notify certain persons that they have a right to file a written complaint with the Commissioner; authorizing the Commissioner to require a licensee to deliver an audited financial statement prepared by a certified public accountant in certain situations; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law: (1) governs transactions in which a person provides not more than \$500,000 to a consumer with a pending legal claim in this State in exchange for the right to receive a portion of the proceeds of a settlement, judgment, award or verdict obtained as a result of the legal claim of the consumer; and (2) designates this type of transaction a "consumer litigation funding transaction." (Chapter 604C of NRS, NRS 604C.100) Existing law authorizes the Commissioner of Financial Institutions to adopt regulations for the administration and enforcement of existing law. (NRS 604C.200)

Sections 2-9 of this regulation relate to business practices involving consumer litigation funding contracts. Existing law requires a consumer litigation funding contract to contain certain disclosures, which are material terms of the contract, including a disclosure within the body of the contract which says "a copy of the executed contract must be promptly delivered to the attorney for the consumer." (NRS 604C.360) If a consumer cancels a consumer litigation funding contract, existing law requires the consumer litigation funding company to promptly forward notice of the cancellation to the attorney or law firm retained by the consumer in the legal claim of the consumer. (NRS 604C.380) **Section 2** of this regulation interprets "promptly" to mean that the action must occur within 1 business day.

Existing law defines "consumer litigation funding transaction" to mean a nonrecourse transaction in which a consumer litigation funding company provides up to \$500,000 of consumer litigation funding to a consumer. (NRS 604C.100) **Section 3** of this regulation authorizes a consumer to seek more than one consumer litigation funding contract per legal claim with the total amount of consumer litigation funding provided to a consumer not exceeding \$500,000. Existing law defines "document preparation fee" to mean a one-time fee per legal claim, not to exceed \$500, assessed for services related to the preparation of a consumer litigation funding contract. (NRS 604C.110) **Section 3** provides that a consumer may pay only one document preparation fee per legal claim, regardless of the number of consumer litigation funding contracts taken on the legal claim.

Existing law requires a consumer to notify the consumer litigation funding company if the consumer decides to cancel the consumer litigation funding contract within a certain period of time. (NRS 604C.350, 604C.360) Existing law additionally requires a consumer and the

attorney of the consumer to notify the consumer litigation funding company of the outcome of the legal claim. (NRS 604C.360) **Section 4** of this regulation requires the consumer litigation funding company to notify the attorney or law firm who represents the consumer that the notices were received.

Existing law requires a consumer litigation funding contract to provide a disclosure that the funded amount and agreed upon charges shall be paid only from the proceeds of the legal claim and shall be paid only to the extent that there are available proceeds from the legal claim. Existing law provides that a consumer will not owe anything to the consumer litigation funding company if there are no proceeds. (NRS 604C.360) Accordingly, **section 5** of this regulation prohibits a consumer litigation funding company from collecting: (1) anything if there are no proceeds from the legal claim; and (2) any amount above the available proceeds from the legal claim.

Existing law prohibits a consumer litigation funding company from intentionally advertising materially false or misleading information regarding the products or services it offers. (NRS 604C.300) **Section 6** of this regulation clarifies that materially false or misleading information includes false or deceptive statements, results or testimonials. **Section 6** additionally prohibits advertising that: (1) may tend to confuse the identity of the company with another consumer litigation funding company; or (2) states or implies that the amount owed on an existing consumer litigation funding contract will be paid off or reduced if transferred. **Section 6** further provides that the Commissioner may require all consumer litigation funding companies to submit proposed advertising for approval before dissemination.

Existing law prohibits a consumer litigation funding company from using any form of consumer litigation funding contract in this State unless the contract has been filed with the Commissioner as prescribed by the Commissioner. (NRS 604C.300) **Section 7** of this regulation sets forth: (1) when a consumer litigation funding company is required to submit a consumer litigation funding contract to the Commissioner for his or her approval; (2) the requirements with which the contract must comply; and (3) when the contract is deemed approved by the Commissioner.

Existing law requires a consumer litigation funding contract to contain a provision advising the consumer of his or her right to cancel the contract. To cancel a contract, the consumer may mail a notice of cancellation to the consumer litigation funding company. (NRS 604C.350, 604C.360) **Section 8** of this regulation provides that, except for when the consumer is mailing such a notice of cancellation, the consumer litigation funding company may communicate through electronic mail with the consumer once the consumer litigation funding contract is entered into if the consumer consents in writing to such communication.

Section 9 of this regulation requires a licensee who uses a form or consumer litigation funding contract written in a language other than English to have the document translated into

English and to maintain a copy of the document and its English translation. **Section 9** sets forth the qualifications that must be met when translating the document.

Sections 10-24 of this regulation relate to the licensing of consumer litigation funding companies.

Existing law requires each consumer litigation funding company that operates an office or other place of business outside of this State which is licensed pursuant to existing law to make available the books, accounts, papers, records and files of the office or other place of business to the Commissioner or a representative of the Commissioner. (NRS 604C.600) **Section 10** of this regulation establishes a similar requirement for consumer litigation funding companies that operate offices or other places of businesses within this State.

Existing law requires the Commissioner to consider an application for a license to engage in the business of a consumer litigation funding company to be withdrawn if the Commissioner does not receive all the required information and fees within the required period of time. (NRS 604C.500) Existing law requires an application to be accompanied by: (1) a nonrefundable fee of not more than \$1,000 for the application and the survey; (2) any additional expenses incurred in the process of investigation as the Commissioner deems necessary; and (3) a fee of not less than \$200 and not more than \$1,000. Existing law requires the Commissioner to adopt regulations establishing the amounts of the fees. (NRS 604C.540) **Section 11** of this regulation establishes the fees in the following amounts: (1) a nonrefundable fee of \$1,000 for the application and survey; (2) a nonrefundable investigation fee of \$50 per individual owner, partner, officer, director and manager or member who acts in a managerial capacity of the entity applying to become a consumer litigation funding company; and (3) an initial licensing fee of \$1,000. **Section 11** additionally provides that if the application is withdrawn or denied, the Commissioner will refund the initial licensing fee of \$1,000 to the applicant.

Existing law requires an applicant for a license to engage in the business of a consumer litigation funding company to include in the application the address of each location at which the applicant proposes to do business under the license. (NRS 604C.500) If the Commissioner approves an application for a license, existing law requires the Commissioner to issue and deliver a license to the applicant. (NRS 604C.560) **Section 12** of this regulation provides that upon granting an application for a license, the Commissioner will issue and deliver a license to the licensee for each location the licensee proposes to do business in his or her application. **Section 12** also requires the licensee to prominently display the license at each location.

Existing law requires a licensee who wishes to change the address of an office or other place of business for which he or she has a license to give written notice of the proposed change to the Commissioner at least 10 days before changing the address. Existing law requires the Commissioner, upon receipt of the proposed change of address, to provide written approval of the change and the date of the approval. (NRS 604C.570) **Section 13** of this regulation requires a licensee who wishes to change the name of the licensee or change an officer, director or manager

or member who acts in a managerial capacity for the licensee to, at least 10 days before making such a change, give written notice of the proposed change to the Commissioner who, upon receipt of the proposed change, will provide written approval of the change and the date of the approval.

Existing law requires the application of a business for a license to engage in the business of a consumer litigation funding company to include the name and address of each partner, officer, director, manager or member who acts in a managerial capacity and registered agent of the business entity. (NRS 604C.500) Existing law also requires each applicant to satisfy certain additional requirements. (NRS 604C.510) **Section 14** of this regulation requires each partner, officer, director, manager or member who acts in a managerial capacity and registered agent of a business entity that is applying for a license to satisfy these additional requirements and provides that the Commissioner will not issue a license if the additional requirements are not satisfied.

Existing law provides how a person can apply for and receive a license to engage in the business of a consumer litigation funding company. (NRS 604C.500-604C.580) **Section 15** of this regulation provides that a person shall not engage in the business of a consumer litigation funding company unless: (1) the person has the applicable license; and (2) the location of the business complies with any applicable planning and zoning ordinances.

Existing law authorizes the Commissioner to suspend or revoke a license if the licensee has failed to pay the annual license fee. (NRS 604C.830) **Section 16** of this regulation provides that a license expires January 31 and that a licensee may renew his or her license on or before January 31 by: (1) submitting a renewal application; and (2) paying a renewal fee of \$1,000. **Section 16** provides that if the licensee fails to renew his or her license on or before January 31, the Commissioner will deem the license to be suspended. **Section 16** further provides that a licensee may reinstate his or her license within 10 business days after the license is suspended by: (1) notifying the Commissioner of his or her intent to reinstate the license; (2) submitting a renewal application; and (3) submitting the \$1,000 renewal fee. If a licensee fails to reinstate his or her license, the Commissioner will deem the license to be revoked.

Existing law requires the Commissioner to make an examination of the place of business of each licensee and of the transactions, books, papers and records that pertain to the business of the consumer litigation funding company. Existing law also requires the Commissioner to establish by regulation fees for the examination and to assess and collect from each licensee the reasonable costs of auditing the books and records. (NRS 604C.610, 604C.630, 658.101) **Section 17** of this regulation establishes an hourly fee of \$75 for the supervision, examination, audit or investigation of a licensee or for a related hearing. **Section 17** also establishes that the fee must be paid within 30 days after the date on which the bill is received, provides for a penalty payment if the fee is not paid by the licensee within the 30 days and further provides that failure of a licensee to pay the fee constitutes grounds for revocation of his or her license.

Existing law requires each licensee to pay the assessment levied by the Commissioner as a result of employing a certified public account to review and conduct independent audits and examinations of the licensee. (NRS 604C.620, 658.055) **Section 18** of this regulation requires each licensee to pay to the Division of Financial Institutions of the Department of Business and Industry an annual assessment of \$300 to cover costs related to the employment of a certified public account and the performance of such audits and examinations.

Existing law requires the Commissioner, on a quarterly or other regular basis, to collect an assessment from consumer litigation funding companies to recover the costs of legal services provided by the Attorney General to the Commissioner and to the Division. (NRS 658.098) **Section 19** of this regulation requires each licensee to pay the assessment within 30 days after the date on which the licensee receives the bill. **Section 19** imposes a charge of 10 percent of the assessment on any licensee who fails to pay the assessment within the 30 days and further provides that failure of a licensee to pay the fee constitutes grounds for revocation of the license of the licensee.

Existing law requires a licensee to submit a report to the Commissioner containing certain information regarding the business of the licensee. Existing law further requires the Commissioner to make the information contained in the report available to the public upon request in a way which maintains the confidentiality of each company and consumer. (NRS 604C.640) **Section 20** of this regulation requires the report to be filed with the Commissioner with the renewal application required by **section 16** and additionally requires the report to contain certain information relating to each consumer with whom the licensee did business. **Section 21** of this regulation provides that an application for a license, any financial records of an applicant, any financial records or other documents submitted pursuant to an audit, examination or investigation and any report of examination are confidential and may only be disclosed to certain entities.

Existing law authorizes a consumer, an attorney for a consumer or any other person who believes that any provision governing consumer litigation funding has been violated to file a complaint with the Commissioner. Existing law authorizes the Commissioner to investigate and conduct hearings concerning the complaint. (NRS 604C.820) **Section 22** of this regulation requires the Commissioner to send a copy of the complaint and, if the Commissioner intends to hold a hearing, a notice of the date set for the hearing, to the licensee named in the complaint. **Section 22** authorizes the Commissioner to require the licensee to submit a verified answer within 10 business days of such notification and provides that a licensee's failure to respond shall be deemed to be an admittance to the allegations contained in the complaint. **Section 23** of this regulation requires the licensee to post on its Internet website, at the physical location where it conducts business and in the consumer litigation funding contract a notice that alerts persons that they have a right to file a written complaint to the Commissioner.

Existing law requires each licensee to keep and use in his or her business such books and accounting records as are used with sound and accepted accounting practices. (NRS 604C.600)

Existing law sets forth examination and audit practices to ensure that such records are in compliance with existing law. (NRS 604C.610-604C.640) **Section 24** of this regulation authorizes the Commissioner to require a licensee to deliver an audited financial statement prepared by a certified public accountant within a certain period of time if the Commissioner finds that the records of the licensee are not maintained according to existing law.

Section 1. Chapter 604C of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 24, inclusive, of this regulation.

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

Sec. 3. 1. *A consumer may seek more than one consumer litigation funding contract per legal claim. The total amount of consumer litigation funding provided by a consumer litigation company to a consumer must not exceed \$500,000 per legal claim, regardless of the number of consumer litigation funding contracts taken on the legal claim.*

2. *If the consumer seeks more than one consumer litigation funding contract:*

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

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

3. Pursuant to NRS 604C.110:

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

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

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

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

Sec. 5. As set forth in a consumer litigation funding contract pursuant to subsection 4 of NRS 604C.360, a consumer litigation funding company shall not collect:

- 1. Anything if there are no proceeds from the legal claim; and*
- 2. Any amount above the available proceeds from the legal claim if the funded amount and agreed upon charges exceed the proceeds from the legal claim.*

Sec. 6. 1. Intentionally advertising materially false or misleading information pursuant to paragraph (c) of subsection 1 of NRS 604C.300 includes, without limitation, advertising by use of false or deceptive statements, results or testimonials.

2. A consumer litigation funding company shall not advertise in any manner that:

(a) May tend to confuse the identity of the company with any other consumer litigation funding company; or

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

3. No unethical advertising by consumer litigation funding companies will be permitted and the Commissioner reserves the right to require all consumer litigation funding companies to submit proposed advertising for approval before its dissemination through the press, or by radio, television or the Internet.

Sec. 7. 1. To file a consumer litigation funding contract with the Commissioner pursuant to subsection 5 of NRS 604C.300, a consumer litigation funding company must submit the contract to the Commissioner for approval:

(a) When the applicant submits his or her application to obtain a license to engage in the business of a consumer litigation funding company;

(b) When a consumer litigation funding company makes any changes to the consumer litigation funding contract;

(c) If requested by the Commissioner or his or her authorized representative when making an examination pursuant to NRS 604C.610;

(d) If requested by the Commissioner when the licensee submits a report required by NRS 604C.640; and

(e) At the request of the Commissioner or his or her authorized representative.

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

3. A consumer litigation funding contract filed:

(a) Pursuant to paragraph (a) of subsection 1 is deemed approved by the Commissioner when the Commissioner issues and delivers a license to the applicant pursuant to NRS 604C.560;

(b) Pursuant to paragraph (b) of subsection 1 is deemed approved by the Commissioner 30 days after the consumer litigation funding company files the changes to the consumer litigation funding contract with the Commissioner unless the Commissioner notifies the consumer litigation funding company in writing that the changes are not approved or need to be amended; and

(c) Pursuant to paragraph (c), (d) or (e) of subsection 1 is deemed approved by the Commissioner upon the filing of the consumer litigation funding contract with the Commissioner. Such approval may be revoked by the Commissioner not later than 30 days after:

(1) Such filing if the consumer litigation funding contract fails to conform to the requirements of subsection 2; or

(2) An investigation or examination made at the office or place of business of the consumer litigation funding company if the consumer litigation funding company fails to comply with the provisions of this chapter and chapter 604C of NRS.

Sec. 8. Except as otherwise provided in paragraph (c) of subsection 1 of NRS 604C.350 and subsection 2 of NRS 604C.360, once a consumer litigation funding contract is entered into between a consumer and a consumer litigation funding company, the consumer litigation funding company may communicate with the consumer through electronic mail if the consumer consents in writing in the consumer litigation funding contract to such communication through electronic mail.

Sec. 9. 1. A licensee that uses a form or a consumer litigation funding contract written in a language other than English shall have the document translated into English and shall maintain a copy of the document with its English translation.

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

(a) Translated by an interpreter who is:

(1) Certified by the Court Administrator in accordance with the provisions of NRS 1.510 and regulations adopted pursuant thereto; or

(2) Approved in writing by the Division of Financial Institutions of the Department of Business and Industry.

(b) Accompanied by a certificate issued by the interpreter. The certificate must:

(1) Declare that the translated document is a true and complete translation of the document written in a language other than English;

(2) Identify the document written in a language other than English and its English translation;

(3) Include the date of the translation; and

(4) Include the name, address, telephone number and electronic mail address, if any, of the interpreter.

3. The Commissioner may require a licensee to provide a translation of any nonstandard document that is written in a language other than English.

4. The Commissioner may assess a licensee for all costs incurred by the Commissioner to verify the licensee's compliance with this section.

Sec. 10. Each licensee who operates an office or other place of business within this State that is licensed pursuant to chapter 604C of NRS shall make available at the office or place of business within this State the books, accounts, papers, records and files of the office or place of business to the Commissioner or a representative of the Commissioner.

Sec. 11. 1. An application submitted to the Commissioner pursuant to NRS 604C.500 must be accompanied by:

(a) A nonrefundable fee of \$1,000 for the application and survey;

(b) A nonrefundable investigation fee of \$50 for investigating each individual owner, partner, officer, director and manager or member who acts in a managerial capacity of the business entity applying to be a licensee; and

(c) An initial licensing fee of \$1,000.

2. If the Commissioner considers an application withdrawn pursuant to subsection 3 of NRS 604C.500 and the initial licensing fee set forth in paragraph (c) of subsection 1 has been submitted to the Commissioner or if the Commissioner does not grant an application pursuant to NRS 604C.560, the Commissioner shall refund the fee paid pursuant to paragraph (c) of subsection 1 to the applicant not later than 30 days after the withdrawal or denial.

Sec. 12. Upon entering an order granting an application pursuant to NRS 604C.560, the Commissioner will issue and deliver a license to the licensee for each location where the licensee proposes to do business pursuant to paragraph (d) of subsection 1 of NRS 604C.500. The licensee shall prominently display the license at each location where the licensee proposes to do business pursuant to paragraph (d) of subsection 1 of NRS 604C.500.

Sec. 13. 1. A licensee who wishes to change the name of the licensee or change an officer, director or manager or member who acts in a managerial capacity of the licensee must, not later than 10 days before making the change, give written notice of the proposed change to the Commissioner.

2. Upon receipt of the proposed change pursuant to subsection 1, the Commissioner will provide written approval of the change and the date of the approval.

Sec. 14. 1. A partner, officer, director, manager or member who acts in a managerial capacity and registered agent of the business entity, if applicable, must satisfy the

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

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

Sec. 15. *A person shall not engage in the business of a consumer litigation funding company unless:*

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

Sec. 16. *1. A license issued pursuant to NRS 604C.560 expires January 31 of the year following the date of issuance and expires on January 31 of each year thereafter.*

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

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

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

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

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

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

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

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

Sec. 17. 1. *The Commissioner will charge and collect a fee of \$75 per hour from each licensee for any supervision, examination, audit, investigation or hearing conducted pursuant to chapter 604C of NRS.*

2. *The Commissioner will bill each licensee upon completion of the activity for the fee established in subsection 1. The fee must be paid within 30 days after the date on which the*

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

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

Sec. 18. *1. Except as otherwise provided in NAC 658.030, each licensee shall pay to the Division of Financial Institutions of the Department of Business and Industry an annual assessment of \$300 to cover costs related to the employment of a certified public accountant and the performance of audits and examinations conducted by the Division.*

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

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

Sec. 19. *1. Each licensee shall pay to the Division of Financial Institutions of the Department of Business and Industry the assessment to cover the costs of legal services provided by the Attorney General to the Commissioner and the Division which is imposed pursuant to NRS 658.098.*

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

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

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

Sec. 20. *The report due on or before January 31 pursuant to NRS 604C.640 must:*

1. *Be filed:*

(a) *With the Commissioner with the application for renewal required pursuant to section 16 of this regulation; and*

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

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

(a) *The name of the consumer;*

(b) *The funded amount for each consumer; and*

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

Sec. 21. *Except as otherwise provided in subsection 3 of NRS 604C.640, an application for a license and financial records, if any, submitted by an applicant pursuant to the provisions of this chapter and chapter 604C of NRS, financial records or other documents*

submitted by a licensee pursuant to an audit, examination or investigation conducted by the Commissioner and any report of examination made by the Commissioner are confidential and may be disclosed only to an authorized employee of the Division of Financial Institutions of the Department of Business and Industry or an agency of this State, any other state or Federal Government that is investigating the activities of an applicant or a licensee or a court upon a court order.

Sec. 22. 1. Upon the receipt of a complaint filed pursuant to NRS 604C.820, the Commissioner shall send a copy of the complaint to the licensee named in the complaint.

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

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

4. Subject to the discretion of the Commissioner and except as otherwise provided in section 21 of this regulation, a complaint filed with the Commissioner, any documents filed with the complaint and any report or information resulting from an investigation of a complaint are confidential.

Sec. 23. 1. For the purpose of NRS 604C.820, a licensee shall post the notice set forth in subsection 2. The following conditions apply to the notice:

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

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

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

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

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

You may file a written complaint with the Commissioner of Financial Institutions by submitting a signed complaint to the Office of the Commissioner. The form required to file a complaint can be found on the following Internet website for Financial Institutions: www.fid.nv.gov. You can also request the form by calling the following toll-free telephone number: 1 (866) 858-8951.

Sec. 24. 1. If the Commissioner finds that records of a licensee are not maintained pursuant to NRS 604C.600 to 604C.640, inclusive, the Commissioner may require the licensee to submit an audited financial statement prepared from his or her records by a certified public accountant who holds a certificate to engage in the practice of public accounting in this State.

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

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED
BY ADMINISTRATIVE PROCEDURES ACT, NRS 233B.066
Informational Statement
LCB FILE NO. R036-20
(NRS 604C Consumer Litigation Funding Companies)**

The following statement is submitted for adoption of regulations pertaining to Nevada Administrative Code (“NAC”) Chapter 604C, Consumer Litigation Funding Companies.

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

The regulation is required as a result of the passage of Senate Bill (“SB”) 432 during the 80th Session of the Nevada Legislature. Existing law governs transactions in which a person provides not more than \$500,000 to a consumer with a pending legal claim in this state in exchange for the right to receive a portion of the proceeds of a settlement, judgment, award or verdict obtained as a result of the legal claim of the consumer. Existing law authorizes the Commissioner of the Financial Institutions Division to adopt regulations for the administration and enforcement of existing law. (NRS 604C)

This regulation is needed to establish fees related to licensure and regulation, defining certain terms, establish requirements for applicants and licensees, and other matters properly relating thereto.

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 division licensees under NRS Chapter 675, 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 on 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 October 18, 2019, via email, the Division notified 16 persons, this include its NRS Chapter 675 licensees that conduct litigation funding activity 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 604C, and any regulations adopted pursuant thereto; or directly restrict the formation

operation, or expansion of a small business that is subject to NRS 604C, and any regulation adopted pursuant thereto.

In response to the October 18, 2019 solicitation, the Division's record reflects receipt of eleven (11) small business impact surveys. Attached summary of comments received from the small business impact survey are attached hereto as "Exhibit A."

On February 4, 2020, the Division issued and posted a notice of the workshop, and sent via email, to 28 persons, this include its licensees under NRS Chapter 675 that conduct litigation funding activity and persons on the rulemaking contact list. The workshop was held on February 21, 2020 in Las Vegas at the Grant Sawyer Building with videoconference to the Legislative Counsel Bureau Hearing Room 2135. Minutes of the workshop are attached hereto as "Exhibit B." The minutes reflect receipt of both verbal and written comments.

On October 2, 2020, the Division issued and posted a notice of a second workshop, and sent via email to 37 persons, this include its licensees under NRS Chapter 675 that conduct litigation funding activity and persons on the rulemaking contact list. The second workshop was held on October 21, 2020 via Webex conference. The Division held a second workshop since substantive changes were made from the first workshop on February 21, 2020 and due to the duration between the two workshops. Minutes of the workshop are attached hereto as "Exhibit C". The minutes reflect receipt of both verbal and written comments.

The Legislative Counsel Bureau (LCB) posted its revised draft of proposed regulation R036-20 on September 14, 2020. On November 9, 2020, the Division issued and posted a notice of intent to act upon regulation based upon LCB draft proposed regulation R036-20, along with a notice of public meeting and solicited further written comments on the proposed regulation. On the same day, the Division sent via email to 37 persons, this include its licensees under NRS Chapter 675 that conduct litigation funding activity and persons on the rulemaking contact list. On November 6, 2020, the Division requested two changes prior to the adoption hearing, one item was a great concern to the industry, therefore, the Division removed section 5 in its entirety and the second items was an incorrect statutory reference regarding assessing attorney general fees. It read NRS 659.098, but it should have read NRS 658.098. LCB made those changes and provided draft proposed regulations dated November 20, 2020. This draft was adopted during the adoption hearing held on December 9, 2020. Minutes of the hearing are attached hereto as "Exhibit D". The minutes reflect receipt of both verbal and written comments.

3. The number of persons who:

Attended February 4, 2020 workshop: 9

Testified at the workshop: 4

Attended October 21, 2020 second workshop: 14

Testified at the workshop: 5

Attended December 9, 2020 hearing: 15

Testified at the hearing: 3

Submitted written comments: 12

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.

Attended the February 4, 2020 workshop:

Name	Company or Organization	Email Address
Eric Schuller	ARC	eschuller@arclegalfunding.org
Adam Smith	Money First Lending	adam@moneyfirstlending.com
Jennifer Ferrer	HiTex	jennifer@moneyinminutesnv.info
Susan Hammon	HiTex	
Mario Sanchez	Legal Loans	
Ben Harbor	Legal Loans	
Paula Steinmetz	Preferred Capital Funding	paula@pcfcash.com
Jennifer Atlas	Griffin Co	jennifer@q3nv.com
Casey Stiteler	Lewis Roca Rothegerber Christie LLP	cstiteler@lrrc.com

Out of the 14 individuals that attended the second workshop on October 21, 2020, only 7 signed-in:

Name	Company or Organization	Email Address
Eric Schuller	ARC	eschuller@arclegalfunding.org
Valerie Balen	JK Belz & Associates	vb@jkbelz.com
Simon Edwards	Unofficial Governor of the State of Nevada	SimonJosephEdwards@gmail.com
Heather O'Neill	Preferred Capital Funding	heather@pcfcash.com
Kim Halvorsen	Oasis Financial	khalvorsen@oasisfinancial.com
Casey Stiteler	Lewis Roca Rothegerber Christie LLP	cstiteler@lrrc.com
Adam Smith	Money First Lending	adam@moneyfirstlending.com

Out of the 15 individuals that attending the adoption hearing on December 9, 2020, only 6 signed-in:

Name	Company or Organization	Email Address
Sheryl Smith	Omni Financial	ssmith@yesomni.com
Eric Schuller	ARC	eschuller@arclegalfunding.org
Kristena Arnold	Omni Financial of Nevada, Inc.	karnold@yesomni.com
Heidi Conover	Moose Mountain Money LLC	heidiconover@msn.com
Casey Stiteler	Lewis Roca Rothgerber Christie LLP	cstiteler@lrrc.com
Adam Smith	Money First Lending	adam@moneyfirstlending.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, C and D) 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.

The initial agency draft regulation was submitted to LCB on March 12, 2020 for their review to determine that the regulation conformed to legislative authority and intent. Revisions in consideration of industry comments were discussed with LCB on August 24, 2020. LCB completed their review and provided revised proposed regulation dated September 14, 2020. The Division requested a few additional revisions that were submitted to LCB on November 6, 2020. One item was a great concern to the industry, therefore, the Division removed section 5 in its entirety and the second items was an incorrect statutory reference regarding assessing attorney general fees. It read NRS 659.098, but it should have read NRS 658.098. The Division received the revised proposed regulations dated November 20, 2020, which was adopted at the adoption hearing.

The Division made any changes it could in consideration of public comments throughout the rulemaking process, as long as it did not impact the consumer protect responsibility of the Division or the spirit and intent of the law. The Division believes it addressed any other concerns with satisfaction to the industry by clarifying certain matters during the adoption hearing. Therefore, no other changes were made.

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 consumer litigation funding community did not provide adverse comments regarding the fees and costs, imposed by the Division, associated with doing business as a licensed consumer litigation funding company.

The Division does not foresee any adverse effects of the proposed regulation. Through internal analysis, the Division has determined the minimum fee amounts to cover the basic costs for the Division to implement and carry out the legislation. The Division set the fees at a reasonable amount in line with other entities the Division regulates.

Beneficial effects. The consumer litigation funding community did not provide beneficial comments regarding the fees and costs, imposed by the Division, associated with doing business as a licensed consumer litigation funding company.

This regulation creates a level playing field for all consumer litigation funding companies to protect consumers. This regulation is beneficial to both the industry and the public.

(b) Both immediate and long-term effects.

The Division understands consumer litigation funding small businesses may have financial burdens such as surety bond premiums, payroll, rent, and other costs to do business, as well as fees imposed by the Division. The legislation provided the maximum fee amounts and gives the Division discretion to set the fee amounts. Through internal analysis, the Division has determined the minimum fee amounts to cover the basic costs for the Division to implement and carry out the legislation. The Division set the fees at a reasonable amount in line with other entities the Division regulates.

The Division has determined the most prominent positive effect from the passage of S.B. 432 will be the ability to ensure ongoing consistency in the consumer litigation funding community as well as reduce any potential harm to the public. Allowing for funds to be given and received under the laws and regulations all companies must follow. These regulations will allow companies to continue to provide funding to consumers in need of funds from their legal claims.

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

The Division anticipates the estimated cost of enforcement of the proposed regulation to be covered by the proposed fees to be collected by the Division. The Division does not anticipate the need for additional funding or budget increase.

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.

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

To the best of the Division's knowledge, 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.**

The proposed regulation provides new fees established by the passage of the legislation and the total amount the Division expects to collect based on the number of companies that communicated with the Division (approximately 15 entities):

1) The 1st Year → \$30,000 (Based on the application fee of \$1,000 and initial licensing fee of \$1,000 for 15 entities).

2) The 2nd Year → \$37,500 (Based on Yearly Renewal Fee of \$1,000 and Hourly examination Fee of \$75 with the average exam projected to take approximately 20 hours to complete). It is also expected that the following yearly exams will not take 20 hours to complete thus lowering this cost in future years.

In addition, the proposed regulation requires for the Division to assess licensees for the Certified Public Accountant ("CPA") costs that is employed by the Division and for costs relating to legal services provided by the Nevada Attorney General's ("AG") office. Both the CPA and AG are assessed evenly among all the Division's licensees and is only assessed an amount to cover the costs. This amount changes from year-to-year. The CPA assessment will not exceed \$300.

Enclosed:

Exhibit A – Small Business Impact Statement

Exhibit B – Minutes of February 21, 2020 Workshop on R036-20

Exhibit C – Minutes of October 2, 2020 Second Workshop on R036-20

Exhibit D – Minutes of December 9, 2020 Adoption Hearing on R036-20

