

STATE OF NEVADA



STEVE SISOLAK
Governor

DEPARTMENT OF BUSINESS AND INDUSTRY

TERRY REYNOLDS
Director

FINANCIAL INSTITUTIONS DIVISION

SANDY O'LAUGHLIN
Commissioner

**Minutes of Workshop to Solicit Comments on
Proposed Regulations S.B.432- NRS/NAC 604C**

Date: Friday, February 21, 2020

Time: 9:00 a.m.

Locations through simultaneous videoconference:

In Las Vegas: Grant Sawyer Building
555 E. Washington Avenue
Hearing Room 4412
Las Vegas, NV 89101

In Carson City: Legislative Counsel Bureau
401 South Carson Street
Hearing Room 2135
Carson City, NV 89701

1. Call to Order:

The workshop to consider S.B.432 was called to order Friday 21, 2020 at 9:00 a.m. The purpose of the workshop was to receive input with respect to the proposed regulation pertaining to Chapter 604C of the Nevada Administrative Code ("NAC"), as provided by Senate Bill No. 432, requiring the Commissioner of Financial Institutions license and regulate consumer litigation funding in Nevada to customers in this State; and providing other matters properly relating thereto, as described by the Notice of Workshop dated and posted on February 4, 2020.

Financial Institutions Division Staff Present at the Hearing in Las Vegas:

Commissioner Sandy O’Laughlin
Deputy Commissioner Mary Young
Deputy Attorney General Vivienne Rakowsky
Supervisory Examiner Julie Hanevold
Supervisory Examiner Harveen Sekhon
Examiner Jennifer Ramsay

Financial Institutions Division Staff Present at the Hearing in Carson City:

Examinations Manager Doug Liveringhouse

2. Comments by General Public:

There was one (1) commenter during this public comment period. A total of three (3) written comments were received, of which one (1) of the below commenters submitted written comments.

The comments made during this comment section included, but are not limited to, as summarized below:

- Eric Schuller, Alliance for Responsible Consumer Legal Funding. Would like to ensure that we come to some conclusion to make the laws and rules work that protects the consumers and allow businesses to operate. He is willing to help, and he offered his expertise to the division. Mr. Schuller submitted written comments for the record.

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



SB 432
2.21.2020.mp3

3. Presentation and Discussion of Proposed Regulation:

Regulation:

Mary Young read section 1 to section 10:

Section.1. Chapter 604C of NAC is hereby created by adding thereto the provisions set forth as sections 2 to 38 of this regulation.

Sec. 2. Unless the context otherwise requires, the words and terms used in this chapter have the meanings ascribed to them in sections 3 through 16 of Senate Bill 432 and section 3 of this chapter.

Sec. 3. “Promptly” means the action must occur within one business day.

Sec. 4. For the purpose of section 4 of Senate Bill 432 and this chapter, denominated means any amount over the funded amount to include, without limitations, interest, fees or charges. Denominated does not include the one-time document preparation fee.

Sec. 5. A license is required for any person who solicits or engages in consumer litigation funding or provides funds to a consumer based upon a legal claim, regardless if the transaction is a nonrecourse or recourse transaction.

Sec. 6. For the purpose of section 8.1(b) and (d) of Senate Bill 432, the chapter does not apply to an attorney who is in compliance with Model Rule 1.8, an accountant, or medical factoring company that provides services to a client in the usual course of the practice of their profession. If an attorney, an accountant, or medical factoring company engages in the business of consumer litigation funding, regardless of how often the funding is provided or the funded amount provided to a consumer shall be considered a consumer litigation funding company as defined in NRS 604C, and shall require licensing accordingly.

Sec. 7. The funded amount cannot exceed \$500,000 per consumer, per legal claim, regardless of the number of draws the consumer may seek, or regardless if the transaction is rolled over, refinanced, extended, or consolidated.

Sec. 8. Only one document preparation fee may be charged per consumer, per legal claim, regardless of the number of draws the consumer may seek, or regardless if the transaction is rolled over, refinanced, extended, or consolidated.

Sec. 9. Under no circumstances may a consumer litigation funding company refinance, rollover, extend, or consolidate, a consumer litigation funding transaction at the end of the 180 day period, which would have the effect, impact, or result of compounding interest, charges, fees, or any of the like on the transaction. The funded amount plus charges, however denominated, of each transaction must not exceed a rate of 40 percent of the funded amount annually, regardless of how many transactions are provided each year.

Sec. 10. All required notices from the consumer litigation funding company to the consumer's attorney must occur promptly.

Consideration of the audience to provide comment on any of the preceding proposed regulation sections 1 – 10

Comments made for sections 1-10 included, but are not limited to, as summarized below:

There were two (2) commenters during this public comment period.

- Eric Schuller, Alliance for Responsible Consumer Legal Funding. Section 3 “promptly” is defined as one business day. Clarify that means that the funding company made the attempt to deliver in this timeframe and not responsible for the actions of the receiving party if received after this timeframe. Mary Young stated the intent is for the necessary action by the licensee to occur in one business day and the licensee must attempt to deliver it within said timeframe. Section 9, he believes that a company should get more than 40% if more than one transaction is given during the year. For example, a \$1,000 in January and \$1,000 in August. He stated this could force a company to give more up front or if the case changes it may stop the company for wanting to provide more funding.
- Mario Sanchez, Legal Loans. Agrees with Eric Schuller regarding section 9.

Harveen Sekhon read section 11 to section 20:

Sec. 11. All consumer litigation funding contracts, notices, or any of the like that require a signed acknowledgement must have the consumer, the consumer's attorney and licensee's signature.

Sec. 12. For the purpose of section 19(4) of Senate Bill 432, the consumer will not owe the consumer litigation funding company anything if there are no proceeds from the legal claim, nor will the consumer owe a deficiency should the amount funded plus allowable charges exceed the proceeds from the legal claim.

Sec. 13. If a consumer chooses to cancel a consumer litigation funding contract, the consumer must provide to a licensee notice of cancellation along with repayment of any funds received. Upon notice of cancellation of a consumer litigation funding contract and upon receipt of funds owed to a licensee, a licensee shall promptly notify the attorney representing the consumer in the legal claim.

Sec. 14. For the purpose of section 20(1)(c) of Senate Bill 432, intentionally advertise includes advertising false or deceptive statements, results, testimonials, or any of the like.

Sec. 15. 1. No licensee may advertise in any manner that may tend to confuse the identity of the licensee with any other unrelated licensee.

2. No licensee may advertise in any manner that a loan or transaction of a prospective consumer with another licensee will be paid or increased if the loan or transaction is transferred to the advertising licensee. This includes a license holder of any chapter regulated by the Division.

3. No unethical advertising by licensees will be permitted and the Commissioner of Financial Institutions reserves the right to require all licensees to submit proposed advertising for approval before its dissemination through the press, by radio or television.

Sec. 16. For the purpose of section 20(5) of Senate Bill 432, a consumer litigation funding company must file its consumer litigation funding contract with the Commissioner upon application for licensure, during an examination or investigation, when any changes are made to the contract, or at the request of the Commissioner or his or her authorized representatives. Filing of a consumer litigation funding contract does not deem it to be approved or endorsed by the Division. It is the responsibility of a licensee to comply with statutes and regulations. The contract is subject to the examination process and will be reviewed for compliance during that time.

Sec. 17. For the purpose of section 22 of Senate Bill 432, a court of competent jurisdiction includes an administrative law hearing.

Sec. 18. The Commissioner or designee of the Commissioner may bring suit to any licensee that violates the provisions of this chapter or Senate Bill 432. The district court or any judicial district may grant injunctions to prevent and restrain such practices or transactions in violation of this chapter or Senate Bill 432.

Sec. 19. Any claimed attorney-client privilege or work-product doctrine shall not apply to the Commissioner or his or her authorized representatives, as it pertains to activities licensed under Senate Bill 432 and this chapter. The Division shall have and be given full and complete access to any office and place of business, to any and all documents, files, and any of the like, relating to consumer funding transactions and the consumer funding transaction company.

Sec. 20. Electronic communication is acceptable if the consumer consents to electronic delivery set forth in the contract.

Consideration of the audience to provide comment on any of the preceding proposed regulation sections 11 – 20

Comments made for sections 11-20 included, but are not limited to, as summarized below:

There were two (2) commenters during this public comment period. Both submitted written comments.

- Eric Schuller, Alliance for Responsible Consumer Legal Funding. Section 11, not sure what notices are required. This could delay the funding process. Section 13, objects to this section since no timeframe but statute states five days. Would like clarification of section 15 and doesn't want the language "reserve the right" in this section. Mary Young requested written comments to ensure the questions are understood and addressed in any revisions, if necessary. Section 19, he does not think that the division can waive the attorney-client privilege. Mary Young stated that this is to ensure the division can review all documentation related to the examination, to allow the division to do its job without interference if a funding company should say they do not want to release documents to the division.
- Adam Smith, Money First Lending. Regarding section 19. He understands the intent of this section but suggests there be different language to get to the division's intent. He understands that the documents will be confidential when given to the division.

Julie Hanevold read section 21 to section 30:

Sec. 21. An application submitted pursuant to this chapter must be accompanied by:

1. A nonrefundable application fee of \$1,000;
2. A nonrefundable investigation fee of \$50 for each individual Owner, Partner, Officer, Director and Manager; and
3. An initial licensing fee of \$1,000

Sec. 22. If the Commissioner approves the application, a license will be issued. Each licensee shall prominently display the license at the location where the licensee is authorized to operate. A license will be issued for each location in which the Commissioner grants the authority to a licensee to operate.

Sec. 23. A licensee shall notify the Commissioner in writing of any change of control, ownership, officer, director, address or name of the licensee, or any other material change. Such changes require prior approval from the Division.

Sec. 24. 1. A person who acquires stock, partnership or member interests resulting in a change of control of the licensee shall apply to the Commissioner for approval of the transfer. The application must contain information which shows that the requirements for obtaining a license pursuant to the provisions of this chapter will be satisfied after the change of control. If the Commissioner determines that those requirements will not be satisfied, he or she may deny the application and prohibit the applicant from participating in the business of the licensee.

2. As used in this section, "change of control" means:

(a) A transfer of voting stock, partnership or member interests which results in giving a person, directly or indirectly, the power to direct the management and policy of a licensee; or

(b) A transfer of at least 25 percent of the outstanding voting stock, partnership or member interests of the licensee.

Sec. 25. If an application for a license is submitted by a business entity, the Commissioner will not issue a license to the applicant unless each partner, principal officer, member, manager, director and trustee, whichever are applicable to the business entity, satisfies the requirements of section 27 of Senate Bill No. 432.

Sec. 26. Books, records, and accounts of each consumer must be kept and maintained separately and in compliance with section 36 of Senate Bill No. 432.

Sec. 27. A person shall not engage in the business of consumer litigation funding in this State unless:

1. The person possesses each license, certificate and permit required by this chapter, Senate Bill No. 432 and a local governmental entity; and

2. The location of the business complies with any applicable planning and zoning ordinances.

Sec. 28. 1. A licensee shall pay annually to the Division a fee of \$1,000 for the renewal of a license on or before the license expiration date of January 31 of each year.

2. If a licensee does not submit a complete application for renewal of its license and the required fee by the expiration date, the company cannot operate until such time the license is reinstated. If not reinstated, a new initial application for licensure must be submitted and approved by the Division and a new license issued prior to operating.

3. The Commissioner may reinstate an expired license if the licensee notifies the Division within 10 days after the expiration of the license of its intent to reinstate its license, submits the renewal application, and pays a reinstatement fee of \$400 in addition to the renewal fee prescribed in subsection 1.

4. It is the responsibility of the licensee to renew a license issued pursuant to this chapter and Senate Bill No. 432 on or before the expiration of the license. A lack of notice from the Division to any person concerning the expiration of a license or the renewal of a license is not justification for the failure of a person to renew a license in a timely manner and does not constitute grounds for the waiver of any of the requirements of this chapter or Senate Bill No. 432.

Sec. 29. 1. The Commissioner of the Financial Institutions Division will charge and collect a fee of \$75 per hour, or as determined by NRS 658.101, from a consumer litigation funding company for any supervision, examination, audit, investigation or hearing conducted pursuant to Senate Bill No. 432.

2. The Commissioner will bill each consumer litigation funding company upon the completion of the activity for the fee established in subsection 1. The fee must be paid within 30 days after the date the bill is received. 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 consumer litigation funding company to pay the fee required by subsection 1 as provided in this section constitutes grounds for revocation of its license.

Sec. 30. Annual assessments to cover costs related to performance of audits and examinations.

1. Except as otherwise provided in NAC 658.030, each licensee shall pay to the Division of Financial Institutions an annual assessment of \$300 to cover the costs related to the employment of a certified public accountant and the performance of audits and examinations conducted by the Division.
2. The Division will bill each licensee for the assessment. The assessment must be paid within 30 days after the date the bill is received.
3. 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.

Consideration of the audience to provide comment on any of the preceding proposed regulation sections 21 – 30

Comments made for sections 21-30 included, but are not limited to, as summarized below:

There were three (3) commenters during this public comment period. One submitted written comment.

- Eric Schuller, Alliance for Responsible Consumer Legal Funding. Section 23 and 24, make it clear that if there is new ownership or partner that the old company can still operate while the background is being conducted on the new person(s). He is also concerned of the confidentiality of the change and approval time. Mary Young stated the license is non-transferable, the new entity will have to apply and be approved before they can operate. The current entity can still operate but the new entity cannot operate until approved. If a change in director or officer, they can still operate since it's the same entity. Furthermore, she stated that all documentation is confidential and in most cases a sale of a company provides ample time to the division to complete the transaction.
- Mario Sanchez, Legal Loans. Question that his old license under the old statute NRS 675 has expired but being questioned by attorneys of their licensure. Mary Young stated S.B.432 allows an entity that holds a license under NRS 675 to operate under S.B. 432 if an application is submitted by January 1, 2020 but applications and acknowledging that an application was received is confidential, the Division will discuss offline and provide something to the industry.
- Paula Steinmetz, Preferred Capital. They are also having the same issue as Mario Sanchez stated above.

Mary Young read sections 31 and 32:

- Sec. 31. 1. Annual assessments to cover the cost of legal services provided by the Attorney General to the Commissioner and to the Division as determined in section 38.95 of Senate Bill No. 432, shall be paid to the Division within 30 days after the date the bill is received.
2. 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. 32. Except as otherwise provided in section 38(3) of Senate Bill No. 432, an application for a license and financial records submitted by an applicant pursuant to the provisions of this chapter and Senate Bill No. 432, financial records or other documents submitted by a licensee pursuant to an audit, examination, or investigation conducted by the Division and any report of examination made by the Division are confidential and may be disclosed only to an authorized employee of the

Division or an agency of this State, any other state or the Federal Government that is investigating the activities of an applicant or a licensee, or a court order subpoena.

Julie Hanevold read section 33 to section 35:

Sec. 33. 1. If a licensee, or an authorized representative of that licensee, fails to respond to the Commissioner of Financial Institutions Division within 10 business days after receipt of a written notice that a complaint has been filed against the licensee, the licensee is deemed to have admitted to the allegations contained in the complaint.

2. Subject to the discretion of the Commissioner of Financial Institutions Division, a complaint filed with the Division, any documents filed with the complaint, and any report or information resulting from an investigation of the complaint are confidential.

Sec. 34. For the purpose of section 38.9 of Senate Bill No. 432, a licensee shall post the following notice in substantially the following form, on its website, at the licensed location and as a disclosure in the contract:

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

You may file a written complaint with the Commissioner of the Financial Institutions Division by submitting a signed complaint form to the Office of the Commissioner. The required complaint form can be found on the homepage of the Financial Institution's website: www.fid.nv.gov, or you may request a complaint form via telephone by calling the toll-free telephone number: 1 (866) 858-8951.

- If printed, the notice must be in boldface type. Information that must be printed in all upper case letters must be printed in at least 18-point type. All other information must be printed in at least 16-point type.
- If handwritten or displayed digitally or by other electronic means, the notice must be in characters that are equivalent in intensity, legibility and size to the characters required for printed notice.
- A licensee who uses a form or contract written in a language other than English should also post this notice in that language. The notice must be translated by an interpreter who is certified by the Court Administrator in accordance with NRS 1.510 and comply with section 35 of this chapter.

Sec. 35. 1. A licensee who uses a form or contract written in a language other than English shall cause the document to be translated into English and maintain together a copy of the document and 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.
- (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 the language other than English;
 - (2) Identify the document written in a language other than English and its English translation;
 - (3) Include the date of 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.

Harveen Sekhon read section 36 to section 38:

Sec. 36. If the Commissioner finds that a licensee's records are not maintained in compliance with this chapter or Senate Bill No. 432, the Commissioner may require the licensee to deliver an audited, compiled, or reviewed 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. The statement must be submitted within 60 days after the Commissioner requests it. The Commissioner may grant a reasonable extension for the submission of the financial statement if an extension is requested before the statement is due.

Sec. 37. For the purpose of section 38 of Senate Bill No. 432, the report due on or before January 31 of each year shall:

- (a) Be filed with the Division with the renewal application on a form prescribed by the Commissioner; and
- (b) List each consumer litigation transaction to include:
 - I. Consumer name;
 - II. Amount funded to each consumer;
 - III. The annual percentage charged to each consumer; and
 - IV. A detail of all charges and the document preparation fee charged to the consumer.

Sec. 38. The Commissioner of Financial Institutions may revoke or suspend a license in accordance with this chapter and Senate Bill No. 432, if a licensee violates any provision of this chapter including, without limitation, a provision that imposes a fee or assessment on a licensee.

4. Public Comments:

There were three (3) commenters during this final public comment period.

Final comments made during the workshop included, but are not limited to, as summarized below:

- Eric Schuller, Alliance for Responsible Consumer Legal Funding. Requests the Division to notify a licensee if the Division receives a subpoena so the licensee could extend their legal protections associated with that. Vivienne Rakowsky replied that certain legal subpoenas cannot be shared, if they can be shared the Division can share but if they cannot share, they will not share. Section 33 regarding complaints, is a copy of the original complaint going to be sent to the licensee? Mary Young stated a copy will always be attached so the licensee can see the allegations.
- Adam Smith, Money First Lending. Section 37, one of the pieces of the information required in the reporting is a consumer name. Wants to make sure the name doesn't get out to the public, maybe request an identification number instead.
- Mario Sanchez, Legal Loans. Is there a requirement for a brick-and-mortar for the licensed location and local business license address? Mary Young stated yes.

To review and/or listen to comments in its entirety, please refer to the attached written comments and/or the audio recording above. The recording can also be found at: www.fid.nv.gov

5.Close Workshop (Adjournment):

The workshop pertaining to Senate Bill 432 and Chapter 604C of the Nevada Administrative Code was hereby closed and adjourned on February 21, 2020 at 9:55 a.m.

TO: Nevada Department of Financial Institutions
Mary Young, Interim Commissioner, FIDmaster@fid.state.nv.us



FROM: The Alliance for Responsible Consumer Legal Funding (ARC)

SUBJECT: Comments and recommendations regarding proposal for rules regulating the implementation of SB 432.

The following comments and recommendations are done on behalf of all the members of ARC.

Any comments or clarification of the remarks should be directed to:

Eric Schuller
President
ARC
eschuller@arclegalfunding.org
815-341-9564 (cell)

Section	Comments	Recommendation
Sec. 3. [S.B. 432, §18-§19.7] "Promptly" means the action must occur within one business day.	<ul style="list-style-type: none">• Does "promptly" mean sent by the company within one business day or received by the other party in one business day.	<ul style="list-style-type: none">• Would like this to be clear that the company must send or initiate sending of material within one business day and not received by the other party in one business day.

Section	Comments	Recommendation
<p>Sec. 9. [S.B. 432, §11, §19, and §21] Under no circumstances may a consumer litigation funding company refinance, rollover, extend, or consolidate, a consumer litigation funding transaction at the end of the 180 day period, which would have the effect, impact, or result of compounding interest, charges, fees, or any of the like on the transaction. The funded amount plus charges, however denominated, of each transaction must not exceed a rate of 40 percent of the funded amount annually, regardless of how many transactions are provided each year.</p>	<ul style="list-style-type: none"> • The final line “<i>regardless of how many transactions are provided each year</i>” implies that no matter how many funding transactions the consumer gets in a year, a total of 40% is the maximum amount that can be charged on all fundings. • As an example, if a consumer received \$500 in January and then request an additional \$500 in November the proposed rule implies that the company can only charge 40% on the initial \$500 rather than 40% on the funding in January and then 40% on the funding in November. • The language implies 180 days as the term of the transaction. Still, the statute allows for several consecutive 180-days periods until the maximum amount is due (See NRS 432, Sec. 19(1)(d)) requiring a disclosure of the amount owed at the end of <u>each</u> 180-period “<u>until the date the maximum amount is due</u>”. <u>If the regulation limits the term of the transaction to one 180-day period, this would run against the statute.</u> 	<ul style="list-style-type: none"> • The rule should state that the 40% fee is per funding agreement and not on how many fundings or transactions are provided each year. • The rule should state: Under no circumstances may a consumer litigation funding company refinance, rollover, extend, or consolidate, a consumer litigation funding transaction which would have the effect, impact, or result of compounding interest, charges, fees, or any of the like on the transaction.

Section	Comments	Recommendation
<p>Sec. 10. [S.B. 432, §18-§19.7 and §30] All required notices from the consumer litigation funding company to the consumer's attorney must occur promptly.</p>	<ul style="list-style-type: none"> • Need a clearer definition on “promptly”. 	<ul style="list-style-type: none"> • Like in Sec 3 would like “promptly” defined as delivery in one business day

Section	Comments	Recommendation
<p>Sec.11. [S.B. 432, §18 and §19.3] All consumer litigation funding contracts, notices, or any of the like that require a signed acknowledgement must have the consumer, the consumer's attorney and licensee's signature.</p>	<ul style="list-style-type: none"> • Unsure what is referred to as “Notices”. • Usually, a notice is given from one party to another and signed only by the party who gives the notice, which makes it impossible for all three signatures to appear on a notice. 	<ul style="list-style-type: none"> • Would like a clearer definition as to what is meant by “notices” or removal of the term from the section.

Section	Comments	Recommendation
<p>Sec. 13. [S.B. 432, §19.7] <i>If a consumer chooses to cancel a consumer litigation funding contract, the consumer must provide a licensee notice of cancellation along with repayment of any funds received.</i> Upon notice of cancellation of a consumer litigation funding contract and <i>upon receipt of funds owed to a licensee</i>, a licensee shall promptly notify the attorney representing the consumer in the legal claim.</p>	<ul style="list-style-type: none"> • This new language implies that a consumer can cancel the contract at anytime rather than that 5 business days that were put into place in the statute. • This would allow the consumer to cancel the contract up to the day of settlement and as a result have free money. • This is not fair to the companies and is outside the boundary of the statute. 	<ul style="list-style-type: none"> • Would like this section removed and stick with what was passed by the legislature, 5 business days, as a cancelation period.

Section	Comments	Recommendation
<p>Sec. 15. [S.B. 432, §3 and §20(1)(c)]. No licensee may advertise in any manner that may tend to confuse the identity of the licensee with any other unrelated licensee.</p> <ul style="list-style-type: none"> No licensee may advertise in any manner that a loan or transaction of a prospective consumer with another licensee will be paid or increased if the loan or transaction is transferred to the advertising licensee. This includes a license holder of any chapter regulated by the Division. No unethical advertising by licensees will be permitted and the Commissioner of Financial Institutions reserves the right to require all licensees to submit proposed advertising for approval before its dissemination through the press, by radio or television. 	<ul style="list-style-type: none"> In Number 3 (<i>No unethical advertising by licensees will be permitted and the Commissioner of Financial Institutions reserves the right to require all licensees to submit proposed advertising for approval before its dissemination through the press, by radio or television.</i>) By giving the department the ability to approve any advertising will have an impact on companies in their ability to promote their product. This is outside the scope of the legislation. 	<ul style="list-style-type: none"> We would like to have Number 3 removed. If a company intentionally does put out any deceptive or misleading advertising, then they should be held accountable by the department. But companies should not have to get prior approval of advertisement of the department. To our knowledge this is not required by any other industry in the state.

Section	Comments	Recommendation
<p>Sec. 19. [S.B. 432, §24] Any claimed attorney-client privilege or work-product doctrine shall not apply to the Commissioner or his or her authorized representatives, as it pertains to activities licensed under Senate Bill No. 432 and this chapter. The Division shall have and be given full and complete access to any office and place of business, to any and all documents, files, and any of the like, relating to consumer funding transactions and the consumer funding transaction company.</p>	<ul style="list-style-type: none"> • The statute was clear that the Attorney-Client privilege does extend to the funding companies to protect the consumer. • We understand the Department needs to have access to the files pertaining to the consumers transactions to ensure that they were executed properly. 	<ul style="list-style-type: none"> • This should be modified to state the Department shall have full access to all documents relating to the execution of the funding agreement to the consumer and not blanket liberty to look at any documents in the company.

Section	Comments	Recommendation
<p>Sec. 33. [S.B. 432, §38.9] 1. If a licensee, or an authorized representative of that licensee, fails to respond to the Commissioner of Financial Institutions Division within 10 business days after receipt of a written notice that a complaint has been filed against the licensee, the licensee is deemed to have admitted to the allegations contained in the complaint.</p>	<ul style="list-style-type: none"> • Clarification that a copy of the complaint be included in any documentation sent to the company. 	<ul style="list-style-type: none"> • Should state that a copy of the complaint shall be included in all documentation sent to the company.

Section	Comments	Recommendation
<p>Sec. 34. [S.B. 432, §38.9]</p>	<ul style="list-style-type: none"> The Rule introduces mandatory language for the contracts, which language was not required at the time some of the applicants submitted their applications and contracts. 	<ul style="list-style-type: none"> Should state that, applicants who, prior to the Regulation, have submitted an application and supporting documents (such as the contract), can resubmit the supporting documents to compensate for any additional requirements introduced with the Regulation.

Section	Comments	Recommendation
<p>Sec. 34. [S.B. 432, §38.9] For the purpose of section 38.9 of Senate Bill No. 432, a licensee shall post the following notice in substantially the following form, <i>on its website, at the licensed location and as a disclosure in the contract:</i></p>	<ul style="list-style-type: none"> Clarification as to where this shall be placed on the contract and website 	<ul style="list-style-type: none"> We feel that as long as a Nevada consumer can readily see the notice it should be up to the companies as to the exact placement of the notice should be.

Section	Comments	Recommendation
<p>Sec. 35. [S.B. 432, §18-§23] 1. A licensee who uses a form or contract written in a language other than English shall cause the document to be translated into English and maintain together a copy of the document and its English translation.</p>	<ul style="list-style-type: none"> Clarification as to if the entire site which is in a different language, i.e. Spanish, needs to be certified by the Department or Court Administrator. 	<ul style="list-style-type: none"> The companies need to provide documentation to the department that the site or contract was done in full compliance of standard translations protocols.

Section	Comments	Recommendation
<p>Sec. 37. [S.B. 432, §38] For the purpose of section 38 of Senate Bill No. 432, the report due on or before January 31 of each year shall:</p> <p>(a) Be filed with the Division with the renewal application on a form prescribed by the Commissioner; and</p> <p>(b) List each consumer litigation transaction to include:</p> <p>I. Consumer name;</p> <p>II. Amount funded to each consumer;</p> <p>III. The annual percentage charged to each consumer; and</p> <p>IV. A detail of all charges and the document preparation fee charged to the consumer.</p>	<ul style="list-style-type: none"> • Clarification to ensure the consumers name is kept confidential. 	<ul style="list-style-type: none"> • Stipulate that the consumers name shall not be made public or subject to a Freedom of Information Request to protect the consumer in their legal claim.

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March 5, 2020

VIA E-MAIL

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RE: Comments Regarding Proposed Regulations for Consumer Litigation Funding Companies

Dear Ms. Young:

Our firm represents the American Legal Finance Association, which represents the leading consumer legal funding companies in the United States, some of which are seeking licensure with the Financial Institutions Division (the "FID") as consumer litigation funding companies under Senate Bill 432 ("SB 432"). Below is a summary of concerns and suggestions related to the proposed regulations pertaining to SB 432.

With regard to the proposed regulations, we would propose the following:

1. Section 13: Section 13 of the proposed regulations states that "[i]f a consumer chooses to cancel a consumer litigation funding contract, the consumer must provide a licensee notice of cancellation along with **repayment of any funds received.**" (Emphasis added.) It is unclear whether "repayment of any funds received" includes any interest on the funds received or fees advanced to the consumer. We would suggest adding language clarifying that the consumer is required to provide "repayment of any *unpaid fees and any* funds received *with all interest due thereon.*"
2. Section 15: Subsection 3 of Section 15 of the proposed regulations states that the "Commissioner of Financial Institutions reserves the right to require all licensees to submit proposed advertising for approval before its dissemination through the press, by radio or television." As currently drafted, the language in Subsection 3 essentially gives the Commissioner of Financial Institutions (the "Commissioner") the unfettered authority to regulate commercial speech without cause or notice. This may present First Amendment considerations as it does not indicate under what circumstances the Commissioner may invoke this authority or what will serve as a basis for the review and approval or denial of any advertising. Additionally, in the event that the Commissioner requires a licensee to submit proposed advertising for approval before dissemination, Subsection 3 does not

state the timeframe in which the Commissioner will issue approval. Without a timeframe for review and approval, this could potentially inhibit paid advertising efforts that are commonly tied to strict timeframes and deadlines. Accordingly, we would suggest deletion of Subsection 3 entirely. Alternatively, we would suggest clarifying the language in Subsection 3 to clearly identify (1) under what circumstances the Commissioner may invoke this authority, (2) that the basis for the review of any advertising will be based on the prohibitions in SB 432, and (3) what the timeframe for any potential review and approval will be.

3. Section 19: Section 19 of the proposed regulations states that “[a]ny claimed attorney-client privilege or work product doctrine shall not apply to the Commissioner or his or her authorized representatives , as it pertains to activities licensed under Senate Bill No. 432 and this chapter.” The language in Section 19 is very broad and risks forcing consumers to waive attorney-client privilege and work product doctrine defenses by waiving these privileges for the Commissioner. We would suggest adding language that explicitly states that any such waiver pursuant to Section 19 does not constitute a full waiver of attorney-client privilege or the work product doctrine for trial purposes.
4. Section 22: Section 22 of the proposed regulations requires each licensee to “display the license at the location where the licensee is authorized to operate”. It is unclear how this section would be applied to a licensee who does not have a physical location in Nevada. We would propose adding additional clarification in Section 22 stating whether and how this will be applied to a licensee who does not have a physical office in Nevada.
5. Sections 23: Section 23 of the proposed regulations requires a licensee to promptly (within one business day, pursuant to Section 3 of the proposed regulations) “notify the Commissioner of any change in control, ownership, officer, director, address or name of the licensee, or any other material change.” Notwithstanding the definition of “change in control” in Section 24, for larger businesses that likely have numerous owners, officers, and directors, this provision seems unnecessarily broad and likely to include a large number of individuals who were not required to be identified or to make any disclosures in the original application. We would propose limiting the language in this provision to apply only to those “officers, managers, and/or directors *with the power to direct the management and policy of the licensee*” so as not to unintentionally include individuals who have no management obligations or control over the licensed entity and to bring it into conformance with Section 24.
6. Section 27: Section 27 of the proposed regulations states that “[a] persons shall not engage in the business of consumer litigation funding” unless “[t]he location of the business complies with any applicable planning and zoning ordinances.” This language suggests that a licensee must maintain a physical location in Nevada. However, SB 432 does not require that a licensee maintain a physical location in Nevada. We would suggest clarifying this language such that it is clear no physical location is required in Nevada.

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

Sincerely,



Casey J. Stiteler
Lewis Roca Rothgerber Christie LLP

CJS

Jennifer Ramsay

From: FID Master
Sent: Friday, February 21, 2020 1:17 PM
To: Mary M. Young
Subject: FW: SB 432 proposed regulations

Here is a comment from earlier today

From: Adam Smith <adam@moneyfirstlending.com>
Sent: Friday, February 21, 2020 11:42 AM
To: FID Master <FIDMaster@fid.state.nv.us>
Subject: SB 432 proposed regulations

Thank you again for all of your help and the hard work you have put into drafting regulations. I was asked today to put a couple of suggestions in writing, and wanted to provide proposed solutions for other sections that were addressed at the workshop.

Sec. 19 of the proposed regulations:

My concern with this section is that it is not very clear what it means with the attorney-client privilege and work product doctrine not applying to the Commissioner. For example, that could mean documents in the Division's possession might not be subject to the privileges anymore. My understanding is the intent of the section is that the attorney-client privilege and work product doctrine will not bar the Division from obtaining access to licensees' files. I would suggest language like the following:

Any claimed attorney-client privilege or attorney work product doctrine shall not impede the Division's full and complete access to any office and place of business of a licensee, to any and all documents of a licensee relating to consumer funding transactions and the consumer funding transaction company, and to any and all files of a licensee relating to consumer funding transactions and the consumer funding transaction company. The Division shall keep all such documents and information confidential, and the Division's access to such documents and information shall not operate to waive any protections granted by the attorney-client privilege or the attorney work product doctrine.

Sec. 24 of the proposed regulations:

Would you consider a time period within which the Division must act on a license? In other words, if, for example, a change of ownership application is not acted on in 60 days, the new owner could operate while the license is pending? The concern from the companies is if there was a sale of a business, that sale could not be finalized until the application is approved. Should the licensing take too long, any potential sale would likely fall through.

Sec. 37 of the proposed regulations:

It appears this stems from Sec. 38 of the bill. Sec. 38 seems to require summary information, including the total number of transactions for the immediately preceding year, a "summation of the total funded amount" for all transactions for the immediately preceding year, and the "annual percentage charged to each consumer

when repayment was made." The proposed regulations are more specific to each funding and require a list by consumer that would include the consumer name, amount funded to each consumer, annual percentage rate charged to each consumer, and a detail of all charges and document preparation fees charged to the consumer. My suggestion was to allow companies to include an identifier for the transaction as opposed to the consumer name. The intent in suggesting that is to limit transmission of consumer names in a way that they could be stolen or hacked. In other words, companies assign an identifying number to each client and each transaction (akin to a loan number). We could provide that information instead of a name. If there is an audit, the identifying number could be matched to the names in the company's database.

There was also a discussion about the way companies who already hold NRS 675 licenses are portrayed in a license search on the Division's website. A couple of people said the licenses say "expired." I just looked them up and they actually say "closed." Would it be possible to say "NRS 604C application pending" or "conditional conversion to NRS 604C license"? Or anything similar that would show to consumers and their attorneys that we are allowed to operate because our license is pending? We certainly understand the Division's desire to keep applications confidential, and I think we all agree with that. That said, my understanding is this issue only applies to three entities. If there are more, I do not need to know, but maybe the Division could get permission from each licensee in this situation to show application pending or conditional approval or something similar? This really was not on my radar before today so I haven't had a ton of time to digest it, and it may be irrelevant if licenses will be issued soon. I did want to provide these suggestions when I thought of them, though.

Again, we really appreciate the Division's hard work, and I'm sure it is not easy to get a new law in place like this. If you need anything else, please let us know.