

STATE OF NEVADA



STEVE SISOLAK
Governor

DEPARTMENT OF BUSINESS AND INDUSTRY

TERRY REYNOLDS
Director

FINANCIAL INSTITUTIONS DIVISION

SANDY O'LAUGHLIN
Commissioner

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

Date: Wednesday, December 9, 2020

Time: 1:00 p.m.

Location: Webex meeting- videoconference and teleconference

1. Call to Order:

The adoption hearing to consider S.B.432 was called to order Wednesday, December 9, 2020 at 1:02 p.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 Intent to Act Upon a Regulation and Hearing Agenda dated and posted on November 9, 2020.

Financial Institutions Division Staff Present at the Hearing:

Commissioner Sandy O'Laughlin
Deputy Commissioner Mary Young
Deputy Attorney General Vivienne Rakowsky
Examiner Jennifer Ramsay

2. Comments by General Public:

There were three (3) commenters during this public comment period. A total of three (3) written comments were received, of which two (2) of the below commenters submitted written comments.

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

- Eric Schuller, Alliance for Responsible Consumer Legal Funding. Would like a clarification of Section 8 that companies can have electronic communication with a consumer prior to entering into a contract. Also, would like clarification of section 6 regarding unethical advertising, concerned that FID can pre-approve advertisement which can be burdensome to FID and hinder a company's ability to advertise. Would like clarification on when FID would request to review. Mr. Schuller submitted written comments for the record.
- Casey Stiteler, Lewis Roca Rothgerber Christie LLP on behalf of American Legal Finance Association. Would like a clarification of Section 6, as to when the Commissioner would enact its right to review the advertisement, and when would it be considered unethical? Concerned that a company has to submit all changes on its contract and should be if material changes only. Expressed concern about Section 13 and 14, regarding notice to FID of changes to management with "managerial capacity" not sure what "managerial capacity" covers and would like clarification.
- Kim Halvorsen, Oasis Financial. Echoes Eric Schuller comments regarding section 8 and would like that an email could be used with consumers to facilitate the execution of a contract. Ms. Halvorsen 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



150101_0005.MP3

3. Presentation and Discussion of Proposed Regulation:

The following is a summary of the comments received for the regulation. The division received three written comments prior to the 1st workshop and four individuals provided comments during the 1st workshop. The division received six written comments prior to the 2nd workshop and five individuals provided comments during the 2nd workshop. Three written comments were received prior to this adoption hearing.

The Division considered all written comments received from the small business impact survey, all written and verbal comments received prior to and during the first and second workshops as well as written comments received prior to this adoption hearing. The Division removed language and/or requirements that were confusing or would cause unnecessary efforts on the part of NRS 604C licensees based upon those comments, as long as it did not impact the consumer protection responsibility of the Division or the spirit and intent of the law.

The initial agency drafted regulation was submitted to Legislative Council Bureau on March 12, 2020 and revisions in consideration of industry comments were discussed with LCB on August 24, 2020 and additional revisions submitted on November 6, 2020 to LCB for their review to determine that the regulation conformed to legislative authority and intent. Legislative Council Bureau completed their review and provided the revised regulation dated November 20, 2020. LCB file R036-20, dated November 20, 2020 is being adopted here today.

From comments received from the industry prior and during the 2nd workshop held on October 21, 2020 and comments received prior to this adoption hearing, there are a few sections that are still a concern for the industry, the division addressed those concerns as follows:

- Section 3 only allows for one documentation preparation fee per legal claim. Pursuant to NRS 604C.110, document preparation fee means a one-time fee per legal claim, not to exceed \$500, assessed for document preparation services related to the preparation of a consumer litigation funding contract. Since it is a statutory requirement, the division cannot take action and change the language in the law or contradict the meaning of the law in the regulation being adopted today.
- Section 5. Industry was concerned that companies could not comply with this section. The division took action on this item and removed section 5 in it's entirely.
- Concerns with section 7 (now section 6 of the revised regulation) that the commissioner reserves the right to require all consumer litigation funding companies to submit proposed advertising for prior approval. No action was taken to remove this section since this section is reserving the right for the commissioner to require a company to submit its advertising for prior approval if the commissioner deems necessary as a result of consumer complaints or issues that could arise from an examination. This section will not hinder a company's advertising abilities if there are no know issues for the division to request prior review and approval.
- Concerns with section 8 (now section 7 of the revised regulation) which requires all changes to the contract to be reviewed by the commissioner. No action was taken to remove or revise this language since it is not for changes to each specific transaction but for material changes in the contract template itself.
- Concerns that section 9 (now section 8 of the revised regulation) prohibits a consumer litigation funding company from electronic communication with a consumer prior to a contract being signed. No action was taken to remove or revise this language since this section does not prohibit a company from initially communicating with a consumer electronically to facilitate the initial contract. This section applies when a company and consumer enter into the contract, allowing electronic communication to occur through the life of the transaction. A company can have electronic communications with the consumer prior to the execution of the contract.
- Clarification on section 11 (now section 10 of the revised regulation). The industry was concerned that using a registered agent in the state would require that all records need to be at the registered agents Nevada location.

NRS 604C.400 provides, with respect to a registered agent. A licensee who has an office or other place of business located outside of this State shall file with the Commissioner the information required pursuant to NRS 77.310 and continuously maintain a registered agent for service of legal process. Such agent must be an attorney who is licensed to practice law in this State and who has an office located in this State. Therefore, if a licensee is located in this state, that would be the licensed location where books and records must be maintained. If a licensee is out of state, the books and records must be made available to the division in this state, at a registered agent location, and the registered agent must be an

attorney licensed to practice law in this state. If the division needs to fly to the out of state licensed location to review the books and records, a licensee shall pay the costs related to the travel including per diem.

- Sections 14 & 15 (now sections 13 & 14 of the revised regulation) The request was to remove “managerial capacity”. This language is similar to other statutes the division regulates. Section 14 (now section 13) is for changes after initial approval of a license and section 15 (now section 14) is for the initial licensing. The division did not take action and remove “managerial capacity”, the division will work with the individual applicant as needed as we currently do with other license types to determine who may or may not need vetting.
- Section 20 (now section 19 of the revised regulation) had the wrong statutory reference regarding the attorney general assessment. It referenced NRS 659.098, which should have read NRS 658.098. Action was taken on this item and is corrected.
- Section 21 (now section 20 of the revised regulation). For security purposes, the industry does not want to release the consumers names with the annual report required pursuant to NRS 604C.640. The industry also believes that NRS 604C.640 does not require the consumer name to be reported. NRS 604C.640(1)(c) as stated in part “the annual percentage charged to each consumer” NRS 604C.640(3) states in part when a report is made available to the public, the Commissioner shall “maintains the confidentiality of the name of each company and consumer”. The name of each consumer implies that the consumer name be part of the reporting. Such information will be made confidential as all other records received by the division. No action was taken on this item to remove or revise the language.
- Section 22 (now section 21 in the revised regulation) regarding disclosure of records to another state or federal agency if a request is made to the commissioner for such records. Industry would like additional language to be added that all state and federal agencies and employees must keep these records confidential. No action was taken to revise this language since all state and federal agencies and their employees must keep the confidentiality of all records that come in their possession, as well as our division cannot restrict or advise another state or federal agency in our regulation.
- Section 23 (now section 22 in the revised regulation). The industry requests longer than 10 business days to reply to the division regarding a consumer complaint. 10 business days is used with another license type of the division and it current works. Most complaints can be answered quickly, depending on the nature of the complaint. This section does state “the commissioner may, for good cause shown, extend the time to file a verified answer for a period not to exceed 60 days.” The division can provide an extension if needed, if the licensee’s request for an extension and for good cause. No action was taken on this item to change the timeframe.
- There was a question regarding the 180-day payment schedule in NRS 604C.360 (section 19 of senate bill 432) not being address in the regulation and would like the division’s approval to allow companies to provide a payment schedule of 6 months instead of 180-days due to the 180 days being only 360 days and not 365 days. This is a statutory requirement and cannot be changed in the regulation nor can the division approve a timeframe different from the statute.

- Industry would like clarification on renewal date and renewal application. The license must be renewed on or before January 31st of each year. The division will post the renewal form within the next 2-3 weeks.
- Industry would like clarification on when the annual report is due. It is due January 31st the website has not been updated yet with this date but will be soon.

I will now read the proposed regulation R036-20 into the record:

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.

Section. 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.

Section. 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 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 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.

Section. 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.

Section. 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:
Anything if there are no proceeds from the legal claim; and
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.

Section. 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.

Section. 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:

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

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

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

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

At the request of the Commissioner or his or her authorized representative.

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.

A consumer litigation funding contract filed:

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;

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 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:

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

Section 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.

Section. 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:

Translated by an interpreter who is: Certified by the Court Administrator in accordance with the provisions of NRS 1.510 and regulations adopted pursuant thereto; or Approved in writing by the Division of Financial Institutions of the Department of Business and Industry.

Accompanied by a certificate issued by the interpreter. The certificate must: Declare that the translated document is a true and complete translation of the document written in a language other than English;

Identify the document written in a language other than English and its English translation; Include the date of the translation; and Include the name, address, telephone number and electronic mail address, if any, of the interpreter. The Commissioner may require a licensee to provide a translation of any nonstandard document that is written in a language other than English. The Commissioner may assess a licensee for all costs incurred by the Commissioner to verify the licensee's compliance with this section.

Section 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.

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

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

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.

Section. 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.

Section. 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.

Section. 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.

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

The person has been issued a license pursuant to NRS 604C.560; and

The location of each office of the business complies with the provisions of any applicable planning and zoning ordinances.

Section. 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:

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

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.

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.

Section. 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.

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.

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.

Section. 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.

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.

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.

Section. 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.

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.

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.

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

Section. 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:
The name of the consumer; The funded amount for each consumer; and
A detail of all charges and the document preparation fee charged to each consumer.

Section. 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.

Section. 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. 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.

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.

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.

Section. 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:

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.

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.

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 tollfree telephone number: 1 (866) 858-8951.

Section. 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.

That completes the presentation of the proposed regulation, we will now move on to item # 4 adoption of proposed regulation.

4. Adoption of Proposed Regulation

The Financial Institutions Division adopted regulation R036-20, pertaining to Chapter 604C of the Nevada Administrative Code, as that regulation is described in the Legislative Counsel Bureau version dated November 20, 2020.

5. Public Comments:

There were one (1) commenter 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. Requested a copy of the minutes or recording. He was advised it will be posted to FID's website within 30 business days.

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 closed and adjourned on December 9, 2020 at 1:46 p.m.

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



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

SUBJECT: Comments on Proposed Rules on SB 432 for Nevada Department of Financial Institutions
Hearing Date: December 9, 2020

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. 5. The acknowledgement described in paragraph (g) of subsection 3 of NRS 604C.370 must be signed by the consumer, the attorney retained by the consumer in the legal claim and the consumer litigation funding company at the same time.	The document cannot be signed at the same time with all parties. Almost all the transactions are done remotely, and this would be impossible to accomplish. <i>In the Departments latest notice, posted on their website, it states that the contract can be signed via DocuSign.</i>	Recommend striking the phrase “ <i>at the same time</i> ”. (The “wild card” in the execution of the contract is the attorney. They can take up to 4 days to sign the contract due to their schedule.) <u><i>If this section is not corrected it will prevent the product from being offered, as it is impossible for companies to comply. No other state has this requirement of the industry.</i></u>

Section	Comments	Recommendation
<p>Sec. 7. 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.</p>	<p>This can prohibit companies from doing advertising spontaneously if they need to have it approved by the department.</p>	<p>Highly recommend the section be stricken as to the reservation by the department to require pre-approval of advertising but add the following: <i>“The Commissioner reserves the right to review all advertising at the time of audit.”</i></p> <p><i>It is our understanding that no other industry regulated by the State of Nevada has this requirement currently in place.</i></p> <p><i>No other state has this requirement for the industry.</i></p>
<p>Sec. 9. 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.</p>	<p>This suggests that companies cannot communicate with the consumer via email <i>prior to</i> execution of the contract, which presents an operational impossibility for companies.</p>	<p>Recommend this section be clarified or stricken.</p> <p>This section can be interpreted that the companies cannot have any electronic communications with the consumer before a contract is signed.</p> <p><u><i>If that is the case, it would be impossible to operate in the State of Nevada.</i></u></p>

Section	Comments	Recommendation
<p>Sec 17 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.</p>	<p>Current FID Website states the renewal is due on 12/31.</p>	<p>Clarification as to what is the date for 2020 renewal <u>and</u> location of renewal form on FID website.</p>
<p>Sec. 21. The report due on or before January 31 pursuant to NRS 604C.640 must:</p>	<p>Current FID Website states the report is due on April 15.</p>	<p>Clarification as to when the report is due in 2021 and beyond.</p>

Comments and Recommendations for the Nevada Department of Financial Institutions re Proposed Rules for SB 432

Oasis Financial – November 17, 2020

Contact at Oasis Financial: Kim Halvorsen, Senior Counsel, (312) 533-0741, khalvorsen@oasisfinancial.com

Topic	Proposed Rule	Comment & Recommendation
Consumer acknowledgement signed by all parties	Sec. 5. The acknowledgement described in paragraph (g) of subsection 3 of NRS 604C.370 must be signed by the consumer, the attorney retained by the consumer in the legal claim and the consumer litigation funding company at the same time.	<p>Comment: The phrase “at the same time” in Section 5 is problematic for licensees who are conducting business virtually with consumers. Execution of contract documents is conducted electronically over a period ranging, on average, from one to five business days, depending on the availability and responsiveness of both the consumer and the consumer’s attorney. Licensees will be unable to comply with a rule requiring simultaneous signature as it contravenes the practical operation of the consumer legal funding business.</p> <p>The Department’s recent Notice of Intent to Act Upon a Regulation includes a comment confirming that these documents may be executed using DocuSign, which provides helpful guidance, but leaves room for uncertainty given the use of the phrase “at the same time” within Section 5.</p> <p>Recommendation: The Department clarify that the requirement of signing this acknowledgement “at the same time” is satisfied by the consumer, the consumer’s attorney, and the consumer litigation funding company signing this disclosure via DocuSign or other electronic means in connection with the execution of the rest of the consumer litigation funding contract.</p> <p>Alternatively, that the Department define the phrase “at the same time” for the purposes of this rule and provide guidance as to how licensees should comply with this rule when the consumer, the consumer’s attorney, and the consumer litigation funding company are executing the contract in separate locations.</p>
Electronic communication with the consumer prior to execution of the funding contract	Sec. 9. 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	<p>Comment: This rule can be interpreted to forbid a licensee from communicating with a consumer via email absent written consent, either before or after execution of the contract. Importantly, industry practice includes sending contract documents to consumers for execution via email, necessarily preceding obtaining written consent.</p> <p>Recommendation: The Department clarify that email may be used to communicate with consumers to facilitate execution of contract closing documents pertaining to the funding, and that the required written consent</p>

Comments and Recommendations for the Nevada Department of Financial Institutions re Proposed Rules for SB 432

Oasis Financial – November 17, 2020

Contact at Oasis Financial: Kim Halvorsen, Senior Counsel, (312) 533-0741, khalvorsen@oasisfinancial.com

Topic	Proposed Rule	Comment & Recommendation
	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.	applies to post-contract communications. Alternatively, that the Department provide guidance as to how licensees should comply with this rule when the consumer and the consumer litigation funding company are not in the same physical location, given communication by mail would thwart consumers' expectations with respect to timeliness, and communication by facsimile is outdated and largely unavailable to consumers.



Preferred Capital Funding

CASH ADVANCES TO PLAINTIFFS

To: Nevada Department of Financial Institutions

From: Preferred Capital Funding Nevada, LLC

**Subject: Comments on Proposed Rules on SB 432 for Nevada Department of Financial Institutions
(Hearing Date of December 9, 2020)**

Remarks Directed to:

Brian Garelli

Brian@pcfcash.com

630-660-3845

Section

Sec. 5. The acknowledgement described in paragraph (g) of subsection 3 of NRS 604C.370 must be signed by the consumer, the attorney retained by the consumer in the legal claim and the consumer litigation funding company at the same time.

Comment

If all parties have to sign at the same time, it would be virtually impossible due to attorney schedules as well as the extra hurdles the ongoing pandemic presents. Without this section being corrected, we will be unable to provide funding to consumers. Our recommendation is to strike the phrase “at the same time”

Section

Sec 7.

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.

Comment

If pre approval is needed for advertising then this would leave to no opportunities for impromptu advertising. This is not a requirement for any of the other states in the industry. Our recommendation



Preferred Capital Funding

CASH ADVANCES TO PLAINTIFFS

is this section be stricken but add a section that the Commissioner has right to review advertising at the time of audit.

Section

Sec. 9. 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.

Comment

If a company cannot communicate via email prior to the contract being signed, then in essence the contract could not be signed via docusign which would lead to some operational impossibilities for the company. Our recommendation is that this section be stricken or clarified because right now we interpret it as we cannot have any electronic communication with the consumer prior to contract being signed.

Section

Sec. 17

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.

Comment

The FID website currently shows 12/31 as renewal date and we are unable to find the renewal application. Our recommendation is to please clarify date of renewal and location of the renewal application on FID website.

Section

Sec. 21. The report due on or before January 31 pursuant to NRS 604C.640 must:

Comment

Currently on the FID website the due date shown for the annual report is April 15th. Our recommendation is for clarity on the due date of the annual report in 2021.