

ASSEMBLY BILL NO. 340—ASSEMBLYMEN GIUNCHIGLIANI, LESLIE,
PARKS, OHRENSCHALL, ANDERSON, BUCKLEY, CLABORN,
DENIS, KOIVISTO, MCCLAIN, MCCLEARY AND PERKINS

MARCH 21, 2005

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions relating to certain short-term,
high interest loans. (BDR 52-126)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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

AN ACT relating to financial services; revising certain provisions relating to check-cashing services, deferred deposit services and payday loan services; limiting the interest and fees on certain types of services; limiting the amount of certain loans made to each borrower; requiring an investigation of the loan history of certain borrowers through an electronic database; requiring the Commissioner of Financial Institutions to adopt regulations regarding such databases; prohibiting the rollover of certain loans; requiring local governing bodies to adopt zoning regulations restricting the location of businesses which offer certain services; requiring persons who provide loans secured by tax refunds to provide certain notices regarding fees; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 **Section 1.** Chapter 604 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2 to 5, inclusive, of this
3 act.
4 **Sec. 2. 1. *A registrant who makes a loan in the form of a***
5 *deferred deposit may charge interest at a rate not to exceed the*



1 *prime rate at the largest bank in Nevada, as ascertained by the*
2 *Commissioner, on January 1 or July 1, as the case may be,*
3 *immediately preceding the date of the transaction, plus 2 percent,*
4 *upon all money from the time it becomes due.*

5 2. A registrant who provides check-cashing services may
6 charge a fee which is a percentage of the face value of the check
7 not to exceed the prime rate at the largest bank in Nevada, as
8 ascertained by the Commissioner, on January 1 or July 1, as the
9 case may be, immediately preceding the date of the transaction,
10 plus 2 percent.

11 **Sec. 3.** Before making a loan in the form of a deferred
12 deposit to a borrower pursuant to the provisions of this chapter, a
13 registrant shall provide to the borrower written notice which:

14 1. Explains in plain language, in English and Spanish, all of
15 the rights and responsibilities of the borrower as provided by the
16 provisions of this chapter;

17 2. Includes a toll-free telephone number to the Office of the
18 Commissioner to handle concerns or complaints of borrowers;
19 and

20 3. States that the Commissioner can provide information
21 about a person who provides deferred deposit services, including,
22 without limitation, whether:

23 (a) The person is registered pursuant to the provisions of this
24 chapter;

25 (b) Any complaint about the person has been filed with the
26 Commissioner; and

27 (c) Any complaint about the person has been investigated and
28 resolved.

29 **Sec. 4.** 1. A registrant shall not make:

30 (a) A loan in the form of a deferred deposit that exceeds 25
31 percent of the expected gross monthly income of the borrower
32 during the term of the loan;

33 (b) More than one loan in the form of a deferred deposit
34 to the same borrower at one time, unless the borrower is
35 seeking multiple loans that do not exceed the limit set forth in
36 paragraph (a);

37 (c) A loan to a borrower who has any other outstanding loan
38 in the form of a deferred deposit pursuant to this chapter or a
39 payday loan pursuant to the provisions of chapter 675 of NRS,
40 unless the borrower is seeking multiple loans that do not exceed
41 the limit set forth in paragraph (a); or

42 (d) A loan in the form of a deferred deposit to a borrower
43 within 30 days after the borrower has paid in full another loan in
44 the form of a deferred deposit pursuant to this chapter or a payday
45 loan pursuant to chapter 675 of NRS.



1 2. *Before making a loan in the form of a deferred deposit to a*
2 *borrower, a registrant shall determine whether the borrower:*

3 (a) *Is seeking a loan in an amount that exceeds 25 percent of*
4 *his expected gross monthly income during the term of the loan by*
5 *requiring the borrower to sign an affidavit which states his*
6 *expected gross monthly income; and*

7 (b) *Has any other outstanding loan in the form of a deferred*
8 *deposit pursuant to this chapter or a payday loan pursuant to*
9 *chapter 675 of NRS by:*

10 (1) *Requiring the borrower to sign an affidavit which states*
11 *whether the borrower has any such other outstanding loan and the*
12 *amount due on any such other outstanding loan; and*

13 (2) *Verifying the accuracy of the affidavit through*
14 *commercially reasonable means, including, without limitation, a*
15 *manual investigation or an electronic query of:*

16 (I) *The records of the registrant, including, without*
17 *limitation, records maintained at the location where the borrower*
18 *applies for the loan and records maintained at other locations that*
19 *are owned and operated by the registrant or affiliates of the*
20 *registrant; and*

21 (II) *Any database which is approved by the*
22 *Commissioner for use in carrying out the provisions of this*
23 *section.*

24 3. *A registrant is not in violation of the provisions of*
25 *paragraph (a) of subsection 1 if the borrower:*

26 (a) *Presents evidence of his gross monthly income to the*
27 *registrant; and*

28 (b) *Represents to the registrant in writing that the loan and*
29 *any such outstanding loans do not exceed 25 percent of his*
30 *expected gross monthly income during the term of the loan.*

31 4. *A registrant may charge a borrower a fee for the use of a*
32 *database pursuant to this section in an amount which does not*
33 *exceed the fee the registrant pays to use the database.*

34 5. *Not later than June 1, 2006, a registrant shall subscribe to*
35 *a database which is approved by the Commissioner for use in*
36 *carrying out the provisions of this section.*

37 **Sec. 5.** 1. *A registrant shall not rollover any loan made in*
38 *the form of a deferred deposit or charge a borrower any fee for the*
39 *rollover of such a loan.*

40 2. *As used in this section, "rollover" means the extension or*
41 *renewal of the term of a loan made in the form of a deferred*
42 *deposit by a registrant who charges a fee to extend or renew the*
43 *term of the loan to prevent the borrower from defaulting on the*
44 *loan.*



Sec. 6. NRS 604.130 is hereby amended to read as follows:

604.130 1. The Commissioner shall issue to each registrant a certificate of registration in such form and size as is prescribed by the Commissioner for each location at which the registrant proposes to do business. Each certificate of registration must show the name and address of the registrant.

2. Each registrant shall prominently display his certificate of registration at the location where he does business.

3. The Commissioner shall not issue to any registrant a certificate of registration for a kiosk at which the registrant proposes to do business.

Sec. 7. NRS 604.170 is hereby amended to read as follows:

604.170 1. The Commissioner may establish by regulation:

(a) The fees that may be imposed by a check-cashing service for cashing checks; and

(b) The penalties that may be imposed by the Commissioner for a violation of the provisions of this chapter or the regulations adopted pursuant thereto.

2. The Commissioner shall prescribe by regulation the form and contents of:

(a) The loan agreement which a registrant must use when making a loan in the form of a deferred deposit to a borrower; and

(b) The written notice required pursuant to the provisions of section 3 of this act.

3. The Commissioner shall adopt any regulations as are necessary to carry out the provisions of section 4 of this act, including, without limitation, regulations that prescribe:

(a) The standards and procedures the Commissioner will use in determining whether to approve a database which registrants must use pursuant to the provisions of section 4 of this act; and

(b) The requirements and procedures by which registrants must submit information to an approved database.

4. The Commissioner shall adopt such other regulations as are necessary to carry out the provisions of this chapter.

Sec. 8. NRS 604.180 is hereby amended to read as follows:

604.180 It is unlawful for a registrant to:

1. Use or threaten to use the criminal process in this or any other state, or any civil process not available to creditors generally, to collect on a deferred deposit.

~~2. [Make a loan made in the form of a deferred deposit that exceeds one-third of the borrower's expected monthly net income during the term of the deferred deposit unless justified by particular circumstances. A registrant is not in violation of the provisions of this subsection if the borrower presents evidence of monthly net income to the registrant and represents to the registrant in writing~~



~~that the deferred deposit does not exceed one third of the borrower's expected monthly net income during the term of the deferred deposit.~~

~~3.]~~ Charge to cash a check representing the proceeds of a deferred deposit.

~~[4. Make more than one loan in the form of a deferred deposit to the same borrower at one time unless the borrower is seeking multiple loans in the form of a deferred deposit that do not exceed the limit set forth in subsection 2.~~

~~5.]~~ 3. Establish or extend the period for the repayment, renewal, refinancing or consolidation of an outstanding loan made in the form of a deferred deposit to the same borrower beyond 10 weeks after the expiration of the initial loan period.

~~[6.]~~ 4. Accept any collateral for a loan made in the form of a deferred deposit.

~~[7.]~~ 5. Include in the written agreement required by NRS 604.164 for a loan made in the form of a deferred deposit:

(a) A promise by the borrower to hold the lender harmless;

(b) A confession of judgment by the borrower;

(c) An assignment or order for payment of wages or other compensation due the borrower; or

(d) A waiver of any claim or defense arising out of the agreement or a waiver of any provision of this chapter.

Sec. 9. Chapter 278 of NRS is hereby amended by adding thereto a new section to read as follows:

1. A governing body shall adopt zoning regulations which restrict to specific districts within the geographical jurisdiction of the governing body the construction, reconstruction, alteration, repair or use of buildings, structures or land of a business that offers:

(a) Check-cashing services or deferred deposit services pursuant to chapter 604 of NRS; or

(b) Payday loans pursuant to chapter 675 of NRS.

2. The provisions of this section do not apply to any place of business devoted to accounting, recordkeeping or administrative purposes only.

Sec. 10. NRS 278.250 is hereby amended to read as follows:

278.250 1. For the purposes of NRS 278.010 to 278.630, inclusive, *and section 9 of this act*, the governing body may divide the city, county or region into zoning districts of such number, shape and area as are best suited to carry out the purposes of NRS 278.010 to 278.630, inclusive ~~[]~~, *and section 9 of this act*. Within the zoning district it may regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land.



2. The zoning regulations must be adopted in accordance with the master plan for land use and be designed:

(a) To preserve the quality of air and water resources.

(b) To promote the conservation of open space and the protection of other natural and scenic resources from unreasonable impairment.

(c) To provide for recreational needs.

(d) To protect life and property in areas subject to floods, landslides and other natural disasters.

(e) To conform to the adopted population plan, if required by NRS 278.170.

(f) To develop a timely, orderly and efficient arrangement of transportation and public facilities and services, including facilities and services for bicycles.

(g) To ensure that the development on land is commensurate with the character and the physical limitations of the land.

(h) To take into account the immediate and long-range financial impact of the application of particular land to particular kinds of development, and the relative suitability of the land for development.

(i) To promote health and the general welfare.

(j) To ensure the development of an adequate supply of housing for the community, including the development of affordable housing.

(k) To ensure the protection of existing neighborhoods and communities, including the protection of rural preservation neighborhoods.

3. The zoning regulations must be adopted with reasonable consideration, among other things, to the character of the area and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the city, county or region.

4. In exercising the powers granted in this section, the governing body may use any controls relating to land use or principles of zoning that the governing body determines to be appropriate, including, without limitation, density bonuses, inclusionary zoning and minimum density zoning.

5. As used in this section:

(a) "Density bonus" means an incentive granted by a governing body to a developer of real property that authorizes the developer to build at a greater density than would otherwise be allowed under the master plan, in exchange for an agreement by the developer to perform certain functions that the governing body determines to be socially desirable, including, without limitation, developing an area to include a certain proportion of affordable housing.



(b) "Inclusionary zoning" means a type of zoning pursuant to which a governing body requires or provides incentives to a developer who builds residential dwellings to build a certain percentage of those dwellings as affordable housing.

(c) "Minimum density zoning" means a type of zoning pursuant to which development must be carried out at or above a certain density to maintain conformance with the master plan.

Sec. 11. Chapter 675 of NRS is hereby amended by adding thereto the provisions set forth as sections 12 to 18, inclusive, of this act.

Sec. 12. *As used in sections 12 to 17, inclusive, of this act, unless the context otherwise requires, "payday loan" has the meaning ascribed to it by the Commissioner, pursuant to section 17 of this act.*

Sec. 13. *Before making any payday loan to a borrower pursuant to the provisions of this chapter, a licensee shall provide to the borrower written notice which:*

1. Explains in plain language, in English and Spanish, all of the rights and responsibilities of the borrower as provided by the provisions of this chapter;

2. Includes a toll-free telephone number to the Office of the Commissioner to handle concerns or complaints of borrowers; and

3. States that the Commissioner can provide information about a person who makes payday loans, including, without limitation, whether:

(a) The person is licensed pursuant to the provisions of this chapter;

(b) Any complaint about the person has been filed with the Commissioner; and

(c) Any complaint about the person has been investigated and resolved.

Sec. 14. 1. *A licensee shall not make:*

(a) A payday loan that exceeds 25 percent of the expected gross monthly income of the borrower during the term of the payday loan;

(b) More than one payday loan to the same borrower at one time, unless the borrower is seeking multiple loans that do not exceed the limit set forth in paragraph (a);

(c) A loan to a borrower who has any other outstanding payday loan pursuant to this chapter or loan in the form of a deferred deposit pursuant to the provisions of chapter 604 of NRS, unless the borrower is seeking multiple loans that do not exceed the limit set forth in paragraph (a); or



1 (d) A payday loan to a borrower within 30 days after the
2 borrower has paid in full another payday loan pursuant to this
3 chapter or a loan in the form of a deferred deposit pursuant to
4 chapter 604 of NRS.

5 2. Before making a payday loan to a borrower, a licensee
6 shall determine whether the borrower:

7 (a) Is seeking a payday loan in an amount that exceeds 25
8 percent of his expected gross monthly income during the term of
9 the payday loan by requiring the borrower to sign an affidavit
10 which states his expected gross monthly income; and

11 (b) Has any other outstanding payday loan pursuant to this
12 chapter or loan in the form of a deferred deposit pursuant to
13 chapter 604 of NRS by:

14 (1) Requiring the borrower to sign an affidavit which states
15 whether the borrower has any such other outstanding loan and the
16 amount due on any such other outstanding loan; and

17 (2) Verifying the accuracy of the affidavit through
18 commercially reasonable means, including, without limitation, a
19 manual investigation or an electronic query of:

20 (I) The records of the licensee, including, without
21 limitation, records maintained at the location where the borrower
22 applies for the payday loan and records maintained at other
23 locations that are owned and operated by the licensee or affiliates
24 of the licensee; and

25 (II) Any database which is approved by the
26 Commissioner for use in carrying out the provisions of this
27 section.

28 3. A licensee is not in violation of the provisions of paragraph
29 (a) of subsection 1 if the borrower:

30 (a) Presents evidence of his gross monthly income to the
31 licensee; and

32 (b) Represents to the licensee in writing that the payday loan
33 and any outstanding payday loans do not exceed 25 percent of his
34 expected gross monthly income during the term of the payday
35 loan.

36 4. A licensee may charge a borrower a fee for the use of a
37 database pursuant to this section in an amount that does not
38 exceed the fee the licensee pays to use the database.

39 5. Not later than June 1, 2006, a licensee shall subscribe to a
40 database which is approved by the Commissioner for use in
41 carrying out the provisions of this section.

42 **Sec. 15. 1.** A licensee shall not rollover any payday loan or
43 charge a borrower any fee for the rollover of a payday loan.

44 2. As used in this section, "rollover" means the extension or
45 renewal of the term of a payday loan by a licensee who charges a



1 *fee to extend or renew the term of the payday loan to prevent the*
2 *borrower from defaulting on the payday loan.*

3 **Sec. 16.** *The Commissioner shall not issue to any licensee*
4 *who makes payday loans a license for a kiosk at which the licensee*
5 *proposes to do business.*

6 **Sec. 17.** 1. *The Commissioner shall adopt by regulation a*
7 *definition of the term “payday loan,” including, without*
8 *limitation, regulations that define a payday loan as a loan made by*
9 *a licensee to a borrower who secures the loan with a promissory*
10 *note.*

11 2. *The Commissioner shall prescribe by regulation the form*
12 *and contents of:*

13 (a) *The loan agreement which a licensee must use when*
14 *making a payday loan to a borrower; and*

15 (b) *The written notice required pursuant to the provisions of*
16 *section 13 of this act.*

17 3. *The Commissioner shall adopt regulations as are*
18 *necessary to carry out the provisions of section 14 of this act,*
19 *including, without limitation, regulations that prescribe:*

20 (a) *The standards and procedures the Commissioner will use*
21 *in determining whether to approve a database which licensees*
22 *must use pursuant to the provisions of section 14 of this act; and*

23 (b) *The requirements and procedures by which licensees must*
24 *submit information to an approved database.*

25 4. *The Commissioner shall adopt such other regulations as*
26 *are necessary to carry out the provisions of sections 12 to 17,*
27 *inclusive, of this act.*

28 **Sec. 18.** 1. *A licensee who makes any loan which is secured*
29 *by a tax refund shall:*

30 (a) *Post in a conspicuous place in every location at which he*
31 *conducts business under his license a notice that states the fees he*
32 *charges for making such loans; and*

33 (b) *Give written notice to each customer of the fees he charges*
34 *for making such loans. The customer must sign the notice before*
35 *the licensee makes such a loan to the customer.*

36 2. *The Commissioner shall prescribe by regulation the form*
37 *and contents of the written notice required pursuant to the*
38 *provisions of this section.*

39 3. *As used in this section, “loan which is secured by a tax*
40 *refund” means a transaction in which, pursuant to a written*
41 *agreement:*

42 (a) *The customer agrees to give to the licensee any amount due*
43 *to the customer from a tax refund from the Internal Revenue*
44 *Service of the United States Department of the Treasury or from*
45 *any state or local governmental entity; and*



- 1 *(b) The licensee makes a loan to the customer in that amount,*
- 2 *less any fees charged for the transaction.*



