

ASSEMBLY BILL NO. 465—COMMITTEE ON JUDICIARY

MARCH 28, 2011

Referred to Committee on Judiciary

SUMMARY—Enacts provisions relating to consumer legal funding. (BDR 56-815)

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

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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 institutions; enacting provisions governing consumer legal funding; prescribing requirements for licensure as a consumer legal funding company; establishing requirements for consumer legal funding transactions; prescribing the maximum fees for licensure; prescribing administrative penalties; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

This bill enacts the Nevada Consumer Legal Funding Act, which authorizes the Commissioner of Financial Institutions to license and supervise certain businesses which purchase from a consumer an assignment of part of the consumer's contingent right to a portion of the potential proceeds from a settlement, judgment, award or verdict obtained in a legal claim of the consumer. **Sections 16-19** of this bill establish general provisions relating to consumer legal funding, including the applicability of this bill. **Sections 20-26 and 31-38** of this bill establish the application process, requirements for licensure as a consumer legal funding company and related provisions concerning licensure. **Section 22** establishes the maximum fees that may be charged to such applicants by the Commissioner of Financial Institutions. **Section 28** of this bill requires the Commissioner to adopt regulations. **Sections 29 and 30** of this bill require a consumer legal funding company to obtain a surety bond or irrevocable letter of credit or deposit certain assets with an approved entity in an amount not less than \$50,000 for the primary office and \$5,000 for each additional location. **Sections 39-41** of this bill establish minimum requirements for contracts for consumer legal funding transactions, including standard clauses which must be included in each contract. **Sections 42 and 45-47** of this bill prescribe certain requirements for entering into contracts for consumer legal funding, including the order of priority for disbursement of proceeds and provisions relating to the attorneys of consumers. **Sections 43 and 44** of this bill prescribe the fees that may be collected by a consumer legal funding company and the manner of collecting and calculating those fees. **Sections 48-52** of



23 this bill set forth prohibited acts and the administrative penalties that may be
24 imposed by the Commissioner for violations of this bill against licensees and
25 unlicensed persons who conduct consumer legal funding transactions.

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

1 **Section 1.** Title 56 of NRS is hereby amended by adding
2 thereto a new chapter to consist of the provisions set forth as
3 sections 2 to 53, inclusive, of this act.

4 **Sec. 2.** *This chapter may be cited as the Nevada Consumer*
5 *Legal Funding Act.*

6 **Sec. 3.** *As used in this chapter, unless the context otherwise*
7 *requires, the words and terms defined in sections 4 to 15,*
8 *inclusive, of this act have the meanings ascribed to them in those*
9 *sections.*

10 **Sec. 4.** *“Administrative fees” means the amount charged by*
11 *a consumer legal funding company to a consumer for the costs*
12 *associated with processing and reviewing an application to enter*
13 *into a contract.*

14 **Sec. 5.** *“Commissioner” means the Commissioner of*
15 *Financial Institutions.*

16 **Sec. 6.** *“Consumer” means a natural person who is a*
17 *resident of Nevada and enters into a contract.*

18 **Sec. 7.** *“Consumer legal funding company” means a person*
19 *who enters into consumer legal funding transactions in this State.*

20 **Sec. 8.** *“Consumer legal funding fees” means the fees which*
21 *are agreed to by the consumer and the consumer legal funding*
22 *company, which are based on a percentage of the funding amount*
23 *and which accrue over time in an amount not to exceed the*
24 *amount set by section 44 of this act.*

25 **Sec. 9.** *“Consumer legal funding transaction” means the*
26 *making of a cash payment to a consumer in exchange for an*
27 *assignment to the consumer legal funding company of a portion of*
28 *the contingent right of the consumer to receive that portion of the*
29 *potential proceeds of a settlement, judgment, award or verdict*
30 *obtained in a legal claim of the consumer.*

31 **Sec. 10.** *“Contract” means the written agreement between a*
32 *consumer and a consumer legal funding company entered into*
33 *pursuant to this chapter.*

34 **Sec. 11.** *“Funding amount” means the amount paid by a*
35 *consumer legal funding company to a consumer in a consumer*
36 *legal funding transaction.*



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1 **Sec. 12.** *“Funding date” means the date on which the*
2 *funding amount is paid to a consumer by a consumer legal*
3 *funding company.*

4 **Sec. 13.** *“Licensee” means a person to whom one or more*
5 *licenses have been issued pursuant to this chapter.*

6 **Sec. 14.** *“Proceeds” means the money available for payment*
7 *to a consumer legal funding company that is calculated after*
8 *payment of all debts or claims having priority over the right of the*
9 *licensee to recover money pursuant to a contract.*

10 **Sec. 15.** *“Resolution date” means the date on which a final*
11 *judgment on a legal claim of a consumer is entered by a court of*
12 *competent jurisdiction.*

13 **Sec. 16.** 1. *A person may assign a contingent right to*
14 *receive a portion of proceeds that the person may receive from a*
15 *legal claim, and such assignment is valid and enforceable for the*
16 *purpose of entering into a contract pursuant to this chapter.*

17 2. *This chapter does not apply to:*

18 (a) *A person doing business under the authority of any law of*
19 *this State or of the United States relating to banks, national*
20 *banking associations, savings banks, trust companies, savings and*
21 *loan associations, credit unions, development corporations,*
22 *mortgage brokers, mortgage bankers, thrift companies,*
23 *pawnbrokers or insurance companies.*

24 (b) *A real estate investment trust, as defined in 26 U.S.C. §*
25 *856.*

26 (c) *A person doing business pursuant to chapter 675 of NRS.*

27 (d) *An attorney at law rendering services in the performance*
28 *of his or her duties.*

29 (e) *A person licensed to do business pursuant to chapter 604A*
30 *of NRS with regard to those services regulated pursuant to chapter*
31 *604A of NRS.*

32 **Sec. 17.** 1. *Except as provided in subsection 2, an officer or*
33 *employee of the Division of Financial Institutions of the*
34 *Department of Business and Industry:*

35 (a) *Must not be directly or indirectly interested in and shall not*
36 *act on behalf of any licensee;*

37 (b) *Shall not receive, directly or indirectly, any payment from*
38 *any licensee;*

39 (c) *Shall not contract with any licensee;*

40 (d) *Shall not engage in the negotiation of a loan for another*
41 *person with any licensee; and*

42 (e) *Shall not obtain credit or services from a licensee*
43 *conditioned upon a fraudulent practice or undue or unfair*
44 *preference over other customers.*



2. Any officer or employee of the Division of Financial Institutions may contract with a licensee on the same terms as are available to the public generally.

3. If an officer or employee of the Division of Financial Institutions has a service, a preferred consideration, an interest or a relationship prohibited by this section at the time of his or her appointment or employment or obtains it during his or her employment, he or she shall terminate it within 120 days after the date of his or her appointment or employment or the discovery of the prohibited act.

Sec. 18. This chapter or any part thereof may be modified, amended or repealed by the Legislature so as to effect a cancellation or alteration of any license or right of a licensee under this chapter, provided that such cancellation or alteration does not impair or affect the obligation of any preexisting lawful contract between a licensee and a consumer.

Sec. 19. A person may not engage in a consumer legal funding transaction in this State without first having obtained a license from the Commissioner pursuant to this chapter for each office or other place of business at which the person engages in such business.

Sec. 20. 1. An application for a license must be in writing, under oath and in the form prescribed by the Commissioner.

2. The application must:

(a) Provide the address of the primary office and each location for which the application is submitted.

(b) Contain additional information as the Commissioner may require, including, without limitation, the names and addresses of the partners, officers, directors or trustees, and of such of the principal owners or members as will provide the basis for the investigations and findings contemplated by section 23 of this act.

(c) Include proof satisfactory to the Commissioner of compliance with section 29 or 30 of this act.

3. A person may apply for a license for an office located outside this State from which the applicant will conduct business in this State if the applicant or a subsidiary or affiliate of the applicant has a license issued pursuant to this chapter for an office located in this State and if the applicant submits with the application for a license a statement signed by the applicant which states that the applicant agrees to:

(a) Make available at a location within this State the books, accounts, papers, records and files of the office located outside this State to the Commissioner or a representative of the Commissioner;



1 (b) Pay the reasonable expenses for travel, meals and lodging
2 of the Commissioner or a representative of the Commissioner
3 incurred during any investigation or examination made at the
4 office located outside this State; or

5 (c) Post a bond in an amount which is 10 times greater than
6 the amount otherwise required pursuant to section 29 of this act or
7 10 times greater than the largest consumer funding amount paid
8 by a licensee in the immediately preceding 12 months, whichever
9 is greater.

10 ↪ The person must be allowed to choose between paragraph (a),
11 (b) or (c) in complying with the provisions of this subsection.

12 4. An application shall be deemed by the Commissioner to be
13 withdrawn if the Commissioner has not received all information
14 and fees required to complete the application within 6 months
15 after the date the application is first submitted to the
16 Commissioner or within such additional period as approved by the
17 Commissioner. If an application is deemed to be withdrawn
18 pursuant to this subsection or if an applicant otherwise withdraws
19 an application, the Commissioner may not issue a license to the
20 applicant unless the applicant submits a new application and pays
21 any required fees.

22 5. The Commissioner may issue a temporary license pending
23 a determination on an application submitted pursuant to this
24 section. A person issued a temporary license pursuant to this
25 subsection shall comply with the provisions of this chapter which
26 are applicable to licensees.

27 **Sec. 21. 1. In addition to any other requirement set forth in**
28 **this chapter, each applicant must submit:**

29 (a) Proof satisfactory to the Commissioner that the applicant:

30 (1) Has a good reputation for honesty, trustworthiness and
31 integrity and is competent to transact the business for which the
32 applicant seeks to be licensed in a manner that protects the
33 interests of the general public.

34 (2) Has not made a false statement of material fact on the
35 application for the license.

36 (3) Has not committed any of the acts specified in
37 subsection 2.

38 (4) Has not had a license issued pursuant to this chapter
39 suspended or revoked within the 10 years immediately preceding
40 the date of the application.

41 (5) Has not been convicted of, or entered a plea of nolo
42 contendere to, a felony or any crime involving fraud,
43 misrepresentation or moral turpitude.

44 (6) If the applicant is a natural person:

45 (1) Is at least 21 years of age; and



1 (II) *Is a citizen of the United States or lawfully entitled*
2 *to remain and work in the United States.*

3 (b) *If the applicant is a person other than a natural person, an*
4 *affidavit attesting to the requirements set forth in paragraph (a)*
5 *for each executive officer and other person involved in the*
6 *management of the consumer legal funding company.*

7 (c) *If the applicant is a:*

8 (1) *Natural person, a complete set of his or her fingerprints*
9 *and written permission authorizing the Division of Financial*
10 *Institutions of the Department of Business and Industry to*
11 *forward the fingerprints to the Central Repository for Nevada*
12 *Records of Criminal History for submission to the Federal Bureau*
13 *of Investigation for its report.*

14 (2) *Person other than a natural person, a complete set of*
15 *fingerprints for each executive officer and other person involved*
16 *in the management of the consumer legal funding company and*
17 *written permission from each such person authorizing the*
18 *Division of Financial Institutions to forward the fingerprints to*
19 *the Central Repository for Nevada Records of Criminal History*
20 *for submission to the Federal Bureau of Investigation for its*
21 *report.*

22 2. *In addition to any other lawful reason, the Commissioner*
23 *may refuse to issue a license to an applicant if the applicant:*

24 (a) *Has committed or participated in any act which, if*
25 *committed or done by a holder of a license, would be grounds for*
26 *the suspension or revocation of the license.*

27 (b) *Has previously been refused a license pursuant to this*
28 *chapter or has had such a license suspended or revoked.*

29 (c) *Has participated in any act which was a basis for the*
30 *refusal or revocation of a license pursuant to this chapter.*

31 (d) *Has falsified any of the information submitted to the*
32 *Commissioner in support of the application for the license.*

33 **Sec. 22. 1. At the time of making the application, the**
34 **applicant must pay to the Commissioner:**

35 (a) *A nonrefundable fee of not more than \$1,000 for the*
36 *application and investigation as established in regulation by the*
37 *Commissioner;*

38 (b) *If the applicant will operate more than one location, a fee*
39 *of not more than \$200 as established in regulation by the*
40 *Commissioner for the second and each additional location;*

41 (c) *Any additional expenses incurred in the process of*
42 *investigation as the Commissioner deems necessary; and*

43 (d) *A fee of not more than \$1,000, prorated on the basis of the*
44 *licensing year as established in regulation by the Commissioner.*



2. All money received by the Commissioner pursuant to this section must be placed in the Investigative Account for Financial Institutions created by NRS 232.545.

Sec. 23. 1. Upon the filing of the application and the payment of the fees, the Commissioner shall investigate the facts concerning the application.

2. The Commissioner may hold a hearing on the application at a time not less than 30 days after the date the application was filed or more than 60 days after that date. The hearing must be held in the Office of the Commissioner or such other place as he or she may designate. Notice of the hearing must be in writing and sent to the applicant and to such other persons as the Commissioner may see fit at least 10 days before the date set for the hearing.

3. The Commissioner shall issue an order granting or denying the application within 10 days after the date of the closing of the hearing, unless the period is extended by written agreement between the applicant and the Commissioner.

4. If the Commissioner finds that the financial responsibility, experience, character and general fitness of the applicant are such as to command the confidence of the public and to warrant belief that the consumer legal funding company will be operated lawfully, honestly, fairly and efficiently and within the purposes of this chapter, the Commissioner shall enter an order granting the application, file his or her findings of fact together with the transcript of any hearing held under this chapter and issue and deliver a license to the applicant.

Sec. 24. Each license must:

1. State the address at which the business is to be conducted; and

2. State fully the name of the licensee and, if the licensee is a partnership or association, the names of its members or, if the licensee is a corporation, the date and place of its incorporation.

Sec. 25. 1. A license expires annually on the anniversary of the issuance of the license unless renewed by the licensee on or before that date. A license may be renewed by submitting to the Commissioner an annual fee of not more than \$500 for the license held by the licensee and not more than \$100 for the second location and each additional location operated by the licensee.

2. If a licensee fails to renew his or her license before the license expires, the Commissioner may reinstate the expired license within 30 days after its expiration upon receipt of the annual fee and a fee of not more than \$200 for reinstatement.



1 3. All money received by the Commissioner pursuant to this
2 section must be placed in the Investigative Account for Financial
3 Institutions created by NRS 232.545.

4 Sec. 26. 1. If the Commissioner finds that an applicant
5 does not possess the requirements specified in this chapter, the
6 Commissioner shall issue an order denying the application and
7 forthwith notify the applicant of the denial.

8 2. Within 10 days after the entry of such an order, the
9 Commissioner shall file his or her findings and a summary of the
10 evidence supporting the findings and deliver a copy thereof to
11 the applicant.

12 Sec. 27. Except as otherwise provided in sections 22 and 25
13 of this act, all fees and charges collected pursuant to this chapter
14 must be deposited in the State Treasury pursuant to the provisions
15 of NRS 658.091.

16 Sec. 28. The Commissioner shall adopt regulations and
17 make orders for the administration and enforcement of this
18 chapter.

19 Sec. 29. 1. Except as otherwise provided in section 30 of
20 this act, each application for a license pursuant to the provisions
21 of this chapter must be accompanied by a surety bond or an
22 irrevocable letter of credit payable to the State of Nevada in the
23 amount of \$50,000 plus an additional \$5,000 for each location at
24 which the licensee is authorized to do business as a consumer
25 legal funding company. The surety bond or irrevocable letter of
26 credit required by this section is for the use and benefit of any
27 consumer receiving the services of the licensee at each office and
28 other place of business at which the licensee is authorized to do
29 business as a consumer legal funding company.

30 2. A licensee shall maintain, at all times while holding a
31 license, the surety bond or irrevocable letter of credit in the
32 amount required by subsection 1.

33 3. Each surety bond must be in a form satisfactory to the
34 Commissioner, be issued by a bonding company authorized to do
35 business in this State and secure the faithful performance of the
36 obligations of the licensee respecting the provision of the services
37 of a consumer legal funding company.

38 4. An irrevocable letter of credit must be issued and
39 confirmed by a financial institution authorized to transact
40 business in this State.

41 5. A licensee shall, within 10 days after the commencement of
42 any action or notice of entry of any judgment against the licensee
43 by any creditor or claimant in this State, give notice thereof to the
44 Commissioner by certified mail with details sufficient to identify
45 the action or judgment. The surety or issuer of an irrevocable



1 letter of credit shall, within 10 days after it pays any claim or
2 judgment to a creditor or claimant, notify the Commissioner by
3 certified mail with details sufficient to identify the creditor or
4 claimant and the claim or judgment so paid.

5 6. The liability of the surety on a bond or the issuer of an
6 irrevocable letter of credit to a creditor or claimant is not affected
7 by any misrepresentation, breach of warranty, failure to pay a
8 premium or other act or omission of the licensee, or by any
9 insolvency or bankruptcy of the licensee.

10 7. The liability of the surety or the issuer of an irrevocable
11 letter of credit continues as to all transactions entered into in good
12 faith by the creditors and claimants with the agents of the licensee
13 within 30 days after the earlier of:

14 (a) The death of the licensee or the dissolution or liquidation
15 of the consumer legal funding company; or

16 (b) The termination of the bond or irrevocable letter of credit.

17 8. A licensee or his or her surety shall not cancel or alter a
18 bond except after notice to the Commissioner by certified mail.
19 The cancellation or alteration is not effective until 10 days after
20 receipt of the notice by the Commissioner. A cancellation or
21 alteration does not affect any liability incurred or accrued on the
22 bond before the expiration of the 30-day period described in
23 subsection 7.

24 **Sec. 30. 1. In lieu of a surety bond or irrevocable letter of**
25 **credit required pursuant to section 29 of this act, an applicant or a**
26 **licensee may, with the approval of the Commissioner, deposit with**
27 **the State Treasurer or with any bank, credit union or trust**
28 **company authorized to do business in this State:**

29 (a) Interest-bearing stocks;

30 (b) Bills, bonds, notes, debentures or other obligations of the
31 United States or any agency or instrumentality thereof, or
32 guaranteed by the United States; or

33 (c) Any obligation of this State or any city, county, town,
34 township, school district or other instrumentality of this State, or
35 guaranteed by this State,

36 ➤ in an aggregate amount, based upon principal amount or
37 market value, whichever is less, not lower than the amount of a
38 surety bond or irrevocable letter of credit as required pursuant to
39 section 29 of this act.

40 2. The securities deposited pursuant to subsection 1 must be
41 held to secure the same obligation as would any surety bond, but
42 the licensee may receive any interest or dividends and, with the
43 approval of the Commissioner, substitute other suitable securities
44 for those deposited.



1 **Sec. 31. 1.** *A license issued pursuant to this chapter is not*
2 *transferable or assignable.*

3 **2.** *Each licensee shall prominently display his or her license*
4 *at each location at which the licensee is authorized to operate as a*
5 *consumer legal funding company. This subsection does not*
6 *require a license for any place of business that is used solely for*
7 *accounting, recordkeeping or administrative purposes.*

8 **Sec. 32. 1.** *A licensee who does not have an office located*
9 *within this State shall, in writing, appoint the Commissioner as*
10 *registered agent, upon whom all legal process may be served with*
11 *the same legal force and validity as if served on the licensee.*

12 **2.** *A copy of the written appointment of the Commissioner as*
13 *registered agent, duly certified:*

14 *(a) Must be filed in the Office of the Commissioner; and*

15 *(b) Is sufficient evidence to subject a licensee to jurisdiction in*
16 *a court of law.*

17 **3.** *The appointment must remain in effect while any liability*
18 *remains outstanding in this State against the licensee. If any legal*
19 *process is served upon the Commissioner as registered agent for a*
20 *licensee, the Commissioner shall, as soon as practicable, notify the*
21 *licensee by registered mail, enclosing the legal process and*
22 *specifying the date of service.*

23 **Sec. 33. 1.** *A licensee who wishes to change the address of*
24 *a location for which the licensee has a license pursuant to this*
25 *chapter must, at least 10 days before changing the address, give*
26 *written notice of the proposed change to the Commissioner.*

27 **2.** *Upon receipt of the proposed change of address pursuant*
28 *to subsection 1, the Commissioner shall provide written approval*
29 *of the change and the date of the approval.*

30 **3.** *If a licensee fails to provide notice as required pursuant to*
31 *subsection 1, the Commissioner may impose a fine in an amount*
32 *not to exceed \$500.*

33 **Sec. 34. 1.** *A licensee must obtain the approval of the*
34 *Commissioner before using or changing a business name.*

35 **2.** *A licensee shall not:*

36 *(a) Use any business name which is identical or similar to a*
37 *business name used by another licensee or which may mislead or*
38 *confuse the public.*

39 *(b) Use any printed forms which may mislead or confuse the*
40 *public.*

41 **Sec. 35. The Commissioner shall:**

42 **1.** *Maintain a file for each licensee that includes, without*
43 *limitation, the application of the licensee and all information*
44 *submitted to the Commissioner by the licensee pursuant to section*
45 *20 of this act;*



2. *Maintain a list of licensees and make that list available to interested consumers and the public;*

3. *Maintain a toll-free telephone number that a consumer may use to obtain information about licensees; and*

4. *Establish a complaint process under which an aggrieved consumer may file a complaint against a licensee or any other person who violates any provision of this chapter.*

Sec. 36. 1. *Each licensee shall keep and use in his or her business such books and accounting records as are consistent with generally accepted accounting practices.*

2. *Each licensee shall maintain a separate record or ledger card for the account of each consumer and shall set forth separately the funding amount and the total amount of administrative fees and consumer legal funding fees.*

3. *Each licensee shall preserve all books and accounting records described in subsections 1 and 2 for at least 2 years after making the final entry therein.*

4. *Each licensee who operates outside this State a location that is licensed pursuant to this chapter shall comply with the requirements of subsection 3 of section 20 of this act.*

Sec. 37. 1. *A licensee shall collect and maintain information concerning the consumer legal funding company, including, without limitation:*

(a) *The total number of consumer legal funding transactions made during the preceding calendar year;*

(b) *The total number of contracts outstanding as of December 31 of the preceding calendar year;*

(c) *The minimum, maximum and average monetary amount of consumer legal funding transactions made during the preceding calendar year;*

(d) *The average amount of administrative fees charged on consumer legal funding transactions made during the preceding year; and*

(e) *The total number of consumer legal funding transactions with respect to which the consumer legal funding company received:*

(1) *The return of the funding amount, plus any administrative fees and consumer legal funding fees agreed upon;*

(2) *No return of the funding amount or any administrative fees or consumer legal funding fees; and*

(3) *An amount lower than the contracted amount.*

2. *Annually, on or before April 15, each licensee shall file with the Commissioner a report of the operations of the consumer legal funding company for the preceding calendar year. The report must be made under oath, contain the information*



1 *described in subsection 1 and be in the form and contain such*
2 *other information as required by the Commissioner. If any*
3 *licensee holds more than one license in this State, the licensee may*
4 *file a composite annual report. If a licensee fails to submit the*
5 *report within the prescribed period, the Commissioner may impose*
6 *and collect a fee of not more than \$10 for each day the report is*
7 *overdue.*

8 **Sec. 38.** *At least 10 days before a licensee ceases operations,*
9 *closes the consumer legal funding company or files for*
10 *bankruptcy, the licensee shall:*

11 *1. Notify the Commissioner of the intended action in writing.*

12 *2. Unless filing for bankruptcy, surrender his or her license*
13 *to the Commissioner for cancellation. The surrender of the license*
14 *does not affect the licensee's civil or criminal liability for acts*
15 *committed before or after the surrender or entitle the licensee to a*
16 *return of any part of the annual license fee.*

17 *3. Notify the Commissioner of the location where the books,*
18 *accounts, contracts and records of the consumer legal funding*
19 *company will be maintained. The books, accounts, contracts and*
20 *records must be maintained and serviced by the licensee, by*
21 *another licensee or by the Commissioner.*

22 **Sec. 39.** *A contract must:*

23 *1. Be in writing.*

24 *2. Contain on the front page, appropriately headed and in at*
25 *least 12-point bold type, the following disclosures:*

26 *(a) The total funding amount that will be paid to the*
27 *consumer;*

28 *(b) An itemization of administrative fees;*

29 *(c) The maximum amount of the proceeds assigned by the*
30 *consumer to the consumer legal funding company, set forth in*
31 *180-day intervals beginning 180 days after the funding date in*
32 *accordance with section 44 of this act; and*

33 *(d) A calculation of the consumer legal funding fee for each*
34 *180-day interval.*

35 *3. Authorize the consumer to cancel the contract within 5*
36 *business days after receiving the funding amount, without penalty*
37 *or further obligation.*

38 *4. Specify the terms for the cancellation to be effective, which*
39 *must require the consumer to return to the consumer legal*
40 *funding company the funding amount by:*

41 *(a) Delivering the uncashed check of the consumer legal*
42 *funding company to the consumer legal funding company in*
43 *person within 5 business days after receipt of the funding amount;*

44 *(b) Sending a notice of cancellation via registered or certified*
45 *mail and including in the mailing a return of the funding amount*



1 *in the form of the uncashed check of the consumer legal funding*
2 *company within 5 business days after receipt of the funding*
3 *amount; or*

4 *(c) Sending a registered, certified or cashier's check or a*
5 *money order for the funding amount, by insured, registered or*
6 *certified United States mail, postmarked within 5 business days*
7 *after receipt of the funding amount, to the address specified in the*
8 *contract for cancellation.*

9 **5. Contain the following notice written in at least 12-point**
10 **bold type:**

11
12 *Consumer's right to cancellation: You may cancel this*
13 *contract without penalty or further obligation within 5*
14 *business days after [insert funding date].*

15
16 **6. Contain the following statements in at least 12-point bold**
17 **type:**

18
19 *[Insert name of the consumer legal funding company]*
20 *agrees that it has no right to and will not make any decision*
21 *with respect to the conduct of your legal claim or any*
22 *settlement or resolution thereof and that the right to make*
23 *those decisions remains solely with you and your attorney in*
24 *the legal claim. [Insert name of the consumer legal funding*
25 *company] further agrees that it has no right to pursue the*
26 *legal claim on your behalf.*

27
28 *[Insert name of the consumer legal funding company]*
29 *agrees that it will only accept an assignment of a contingent*
30 *right to receive a portion of the potential proceeds, rather*
31 *than an assignment of your legal claim and the contracted*
32 *return of the funding amount. In addition, any agreed-upon*
33 *fees to be paid to [insert name of the consumer legal*
34 *funding company] will not be determined as a percentage of*
35 *your recovery from the legal claim but will be set as a*
36 *contractually determined amount based upon intervals of*
37 *time from the funding date through the resolution date.*

38
39 **7. Contain the following statement, in a box with 14-point**
40 **bold type, in all capitalized letters, stating the following:**

41
42 **THE FUNDING AMOUNT, ADMINISTRATIVE FEES**
43 **AGREED UPON AND CONSUMER LEGAL FUNDING**
44 **FEES WILL ONLY BE PAID TO THE CONSUMER**
45 **LEGAL FUNDING COMPANY FROM THE PROCEEDS**



1 **OF YOUR LEGAL CLAIM AND WILL ONLY BE PAID**
2 **TO THE EXTENT THAT THERE ARE AVAILABLE**
3 **PROCEEDS FROM YOUR LEGAL CLAIM. YOU WILL**
4 **NOT OWE [INSERT NAME OF THE CONSUMER**
5 **LEGAL FUNDING COMPANY] ANYTHING IF THERE**
6 **ARE INSUFFICIENT OR NO PROCEEDS FROM YOUR**
7 **LEGAL CLAIM.**

8
9 **8. Contain the following statement in at least 12-point bold**
10 **type located immediately above the space where the consumer's**
11 **signature is required:**
12

13 *Do not sign this Agreement before you read it completely*
14 *or if it contains any blank spaces. You are entitled to a*
15 *completely filled-in copy of this Agreement. Before you sign*
16 *this Agreement you should obtain the advice of an attorney.*
17 *Depending on the circumstances, you may want to consult a*
18 *tax professional, or a public or private benefit planning or*
19 *financial professional. By signing this Agreement, you*
20 *acknowledge that you understand and agree that the money*
21 *you receive from [insert name of the consumer legal*
22 *funding company] must not be used to pay for or be applied*
23 *to the payment of attorney's fees or litigation costs related to*
24 *your legal claim.*
25

26 **9. Contain a written acknowledgement by the consumer that**
27 **he or she has reviewed the contract in its entirety.**

28 **Sec. 40. 1. For non-English speaking consumers, upon the**
29 **written request of the consumer or the attorney of the consumer,**
30 **the principal terms of the contract must be provided to the**
31 **consumer in writing in the primary language of the consumer,**
32 **and the consumer must sign the document containing the**
33 **principal terms and initial each page. The licensee must sign an**
34 **affirmation confirming that the principal terms of the contract**
35 **have been translated into the primary language of the consumer**
36 **from a contract written in English which complies with this**
37 **chapter.**

38 **2. As used in this section, "principal terms" includes, without**
39 **limitation, all items that are required to be disclosed pursuant to**
40 **section 39 of this act.**

41 **Sec. 41. A contract must not include:**

- 42 **1. A promise by the consumer to hold the licensee harmless;**
43 **2. A confession of judgment by the consumer;**
44 **3. A grant of a power of attorney by the consumer;**



1 4. An assignment of wages or other compensation which may
2 be payable to the consumer for work not yet performed; or

3 5. A waiver of any provision of this chapter.

4 **Sec. 42.** 1. A consumer legal funding company may only
5 contract with a consumer who has entered into a contingent fee
6 agreement with an attorney to pursue the legal claim of the
7 consumer.

8 2. Unless an attorney for a consumer acknowledges in
9 writing the terms of a contract, the consumer legal funding
10 company shall provide to the attorney of the consumer written
11 notice of the funding amount provided to the consumer. The
12 notice must be provided not later than 3 business days after the
13 funding date and may be provided by mail, courier service,
14 facsimile or other method of delivery that establishes proof of
15 delivery.

16 3. A consumer shall not use any portion of the funding
17 amount to pay an attorney for costs associated with pursuing the
18 legal claim for which the funding amount was received.

19 **Sec. 43.** 1. A consumer legal funding company shall collect
20 any money due the company for the repayment of the funding
21 amount, administrative fees and consumer legal funding fees only
22 out of proceeds the consumer may receive from the legal claim.

23 2. The consumer may not assign any portion of the potential
24 proceeds which, pursuant to the contingent fee agreement between
25 the consumer and the attorney of the consumer, must be remitted
26 to the attorney of the consumer as attorney's fees or as
27 reimbursement for costs incurred by the attorney for the consumer
28 in connection with the legal claim.

29 3. Any Medicare or Medicaid liens and statutory health care
30 provider liens arising from the underlying legal claim of the
31 consumer take priority over the repayment of money due the
32 consumer legal funding company. All other liens or security
33 interests take priority by normal operation of law.

34 4. If the proceeds are insufficient to pay all money due the
35 consumer legal funding company from the proceeds of the legal
36 claim, the consumer legal funding company is only entitled to
37 repayment to the extent that proceeds are available for that
38 purpose.

39 **Sec. 44.** 1. The consumer legal funding fees to be paid to
40 the consumer legal funding company must:

41 (a) Be paid from proceeds;

42 (b) Be determined on the resolution date;

43 (c) Not be determined as a percentage of the recovery from the
44 legal claim; and



(d) Be set as a contractually determined amount based upon intervals of time from the funding date through the resolution date.

2. The total amount assigned by a consumer to a consumer legal funding company must not exceed:

(a) The funding amount;

(b) The administrative fees established in the contract, which must not be greater than 15 percent of the funding amount; and

(c) The consumer legal funding fee established in the contract, which must not exceed:

(1) If the resolution date occurs on or after the funding date and within 180 days after the funding date, 0.45 times the funding amount;

(2) If the resolution date occurs on or after 181 days after the funding date and within 360 days after the funding date, 0.8 times the funding amount;

(3) If the resolution date occurs on or after 361 days after the funding date and within 540 days after the funding date, 1.5 times the funding amount;

(4) If the resolution date occurs on or after 541 days after the funding date and within 720 days after the funding date, 1.75 times the funding amount; or

(5) If the resolution date occurs on or after 721 days after the funding date, 2.0 times the funding amount.

Sec. 45. A consumer legal funding transaction conducted pursuant to this chapter is not a loan or an investment contract and is not subject to the restrictions or provisions governing loans or investment contracts set forth in any other chapter of NRS.

Sec. 46. 1. An attorney or law firm must not have a financial interest in a consumer legal funding company providing consumer legal funding to a consumer who is represented by that attorney or law firm.

2. A communication between an attorney of a consumer and a consumer legal funding company pertaining to the consumer legal funding transaction of the consumer does not limit, waive or abrogate a statutory or common-law privilege, including, without limitation, the attorney-client privilege.

Sec. 47. The contingent right of a person to receive a potential proceed from a legal action is assignable for the purposes of obtaining consumer legal funding from a licensee pursuant to this chapter.

Sec. 48. A consumer legal funding company shall not:

1. Pay or offer to pay compensation to an attorney, law firm, medical provider, chiropractor or physical therapist or any employee of an attorney, law firm, medical provider, chiropractor



1 *or physical therapist for referring a person to the consumer legal*
2 *funding company.*

3 2. *Accept any compensation from an attorney, law firm,*
4 *medical provider, chiropractor or physical therapist or any*
5 *employee of an attorney, law firm, medical provider, chiropractor*
6 *or physical therapist, other than the amount due the consumer*
7 *legal funding company pursuant to a contract.*

8 3. *Advertise or allow to be advertised in any manner any*
9 *false, misleading or deceptive statement or representation with*
10 *regard to its product or services or the rates, terms or conditions*
11 *for consumer legal funding transactions.*

12 4. *Engage in any deceptive trade practice, as defined in*
13 *chapter 598 of NRS.*

14 5. *Knowingly enter into a contract with a consumer who has*
15 *previously contracted with another consumer legal funding*
16 *company without first purchasing the entire accrued balance of*
17 *the previous contract, unless otherwise agreed to in writing by the*
18 *consumer and each consumer legal funding company with whom*
19 *the consumer has a contract. An accrued balance must not be*
20 *purchased pursuant to this subsection more than three times after*
21 *the initial contract.*

22 6. *Offer or deliver a policy of insurance that will be financed*
23 *using money received by the consumer in a consumer legal*
24 *funding transaction.*

25 7. *Contact a consumer after the funding date in an attempt to*
26 *influence a decision of the consumer relating to the legal claim or*
27 *any settlement or resolution thereof, except that the consumer*
28 *legal funding company may contact the consumer or the attorney*
29 *of the consumer to obtain the status of the legal claim and may*
30 *contact the consumer after the funding date to obtain updated*
31 *contact information for the consumer or the attorney of the*
32 *consumer.*

33 8. *Knowingly enter into a contract with a consumer if the*
34 *legal claim of the consumer is a class action at the time of*
35 *the contract and, if the claim is certified a class action after the*
36 *funding date, no further consumer legal funding is authorized.*

37 9. *Make any decision with respect to the conduct of the*
38 *litigation of the legal claim of a consumer or any settlement or*
39 *resolution thereof. The right to make such decisions remains*
40 *solely with the consumer and the attorney of the consumer in the*
41 *legal claim.*

42 10. *Pursue a legal claim on behalf of a consumer.*

43 11. *Use or threaten to use the criminal process in this State or*
44 *any other state to collect on a contract.*



1 12. *Bring an action or commence any process of alternative*
2 *dispute resolution before the consumer defaults, or demonstrates*
3 *an intent to default, under the original terms of a contract or*
4 *before the consumer defaults under any payment plan, extension*
5 *or grace period negotiated and agreed to by the licensee and*
6 *consumer.*

7 13. *Use or attempt to use any agent, affiliate or subsidiary to*
8 *avoid a requirement or prohibition set forth in this chapter or any*
9 *regulation adopted pursuant thereto.*

10 **Sec. 49.** 1. *Upon the complaint of an interested person or*
11 *upon his or her own initiative, the Commissioner or a designee of*
12 *the Commissioner may investigate the business and examine the*
13 *books, accounts, contracts and records used therein of:*

14 (a) *A licensee;*

15 (b) *Any person engaged in the business of consumer legal*
16 *funding or participating in such business as an agent, broker or*
17 *third-party representative without a license;*

18 (c) *An agent of a licensee; and*

19 (d) *A person who the Commissioner has reasonable cause to*
20 *believe is violating or is about to violate any provision of this*
21 *chapter or any regulation adopted pursuant thereto, whether or*
22 *not the person claims to be within the authority or beyond the*
23 *scope of this chapter.*

24 2. *If, upon investigation, the Commissioner has reasonable*
25 *cause to believe that:*

26 (a) *A licensee is violating or is threatening or intends to violate*
27 *any provision of this chapter or any regulation adopted pursuant*
28 *thereto, the Commissioner may, in addition to any other action*
29 *provided for in this chapter, issue an order requiring the licensee*
30 *to desist or to refrain from the violation. The Commissioner shall*
31 *provide to any such licensee an opportunity for a hearing*
32 *pursuant to the provisions of NRS 233B.121.*

33 (b) *A person other than a licensee is violating or is threatening*
34 *or intends to violate any provision of this chapter or any*
35 *regulation adopted pursuant thereto, the Commissioner may, in*
36 *addition to any other action provided for in this chapter, bring an*
37 *action to enjoin the licensee or person from engaging in or*
38 *continuing a violation or from doing any act in furtherance*
39 *thereof.*

40 3. *An order issued by the Commissioner after a hearing*
41 *pursuant to paragraph (a) of subsection 2 is subject to judicial*
42 *review in the manner provided in chapter 233B of NRS for the*
43 *final decision in a contested case.*

44 **Sec. 50.** 1. *The Commissioner may impose an*
45 *administrative fine of not more than \$10,000 upon a person who,*



1 *without a license, conducts any business or activity for which a*
2 *license is required pursuant to this chapter. The Commissioner*
3 *shall provide to any person so fined an opportunity for a hearing*
4 *pursuant to NRS 233B.121.*

5 *2. A fine imposed by the Commissioner after a hearing*
6 *conducted pursuant to subsection 1 is subject to judicial review in*
7 *the manner provided in chapter 233B of NRS for the final*
8 *decision in a contested case.*

9 **Sec. 51. 1. A license may be suspended or revoked if:**

10 *(a) Except as otherwise provided in subsection 2 of section 25*
11 *of this act, the licensee has failed to pay the annual license fee;*

12 *(b) The licensee, either knowingly or without the exercise of*
13 *due care to prevent it, has violated any provision of this chapter or*
14 *any regulation adopted pursuant thereto;*

15 *(c) The licensee has failed to pay a tax as required pursuant to*
16 *chapter 363A of NRS; or*

17 *(d) Any fact or condition exists which would have justified the*
18 *Commissioner in denying the original application for a license.*

19 *2. If the Commissioner has reason to believe that any ground*
20 *exists for the revocation or suspension of a license, the*
21 *Commissioner shall give 20 days' written notice to the licensee*
22 *stating the contemplated action and specifying each ground*
23 *therefor and set a date for a hearing. At the conclusion of the*
24 *hearing, the Commissioner may:*

25 *(a) Issue a written order dismissing the charges, revoking the*
26 *license or suspending the license for a period of not more than 60*
27 *days;*

28 *(b) Impose upon the licensee an administrative fine of not*
29 *more than \$10,000 for each violation of this chapter or any*
30 *regulation adopted pursuant thereto; and*

31 *(c) Issue an order to recover the costs of the proceeding,*
32 *including, without limitation, investigative costs and attorney's*
33 *fees of the Commissioner.*

34 *↪ The Commissioner shall send a copy of an order issued*
35 *pursuant to this section to the licensee by registered or certified*
36 *mail at his or her last known address.*

37 *3. An order issued or a fine imposed by the Commissioner*
38 *after a hearing pursuant to subsection 2 is subject to judicial*
39 *review in the manner provided in chapter 233B of NRS for the*
40 *final decision in a contested case.*

41 *4. Unless otherwise provided in an order, the order for the*
42 *revocation or suspension of a license applies only to the location*
43 *investigated by the Commissioner at which a ground exists for*
44 *revocation or suspension of the license.*



1 5. An order suspending or revoking a license becomes
2 effective 5 days after being issued unless the order specifies
3 otherwise or a stay is granted.

4 6. The Commissioner shall reinstate a license that was
5 suspended pursuant to this section upon expiration of the
6 suspension period and payment by the licensee of a reinstatement
7 fee of not more than \$200 as established by regulation by the
8 Commissioner.

9 7. The Commissioner may, in an order revoking a license
10 pursuant to subsection 2:

11 (a) Authorize reinstatement of the license on or after a date set
12 by the Commissioner and upon payment by the former licensee of
13 the reinstatement fee established by the Commissioner pursuant to
14 subsection 6; or

15 (b) Allow the former licensee to apply for a license on or after
16 a date set by the Commissioner.

17 8. A revocation or suspension of a license pursuant to this
18 section does not impair or affect the obligation of any preexisting
19 lawful contract between the licensee and any consumers or
20 obligors of the licensee.

21 **Sec. 52. 1.** The Commissioner shall report to the Attorney
22 General any violation of this chapter.

23 2. The Attorney General may:

24 (a) Investigate any suspected violation of this chapter and any
25 regulation adopted pursuant thereto;

26 (b) Enforce the provisions of this chapter and any regulation
27 adopted pursuant thereto; and

28 (c) Institute proceedings on behalf of the State for injunctive
29 relief to prevent and restrain a violation of any provision of this
30 chapter and any regulation adopted pursuant thereto.

31 **Sec. 53. 1.** The provisions of this chapter must be
32 interpreted so as to effectuate their general purpose to provide for,
33 to the extent practicable, uniform regulation of the transactions
34 that are subject to the provisions of this chapter.

35 2. If there is a conflict between the provisions of this chapter
36 and any other general law regulating transactions similar to
37 consumer legal funding transactions, the provisions of this
38 chapter control.

39 **Sec. 54.** NRS 675.040 is hereby amended to read as follows:

40 675.040 This chapter does not apply to:

41 1. Except as otherwise provided in NRS 675.035, a person
42 doing business under the authority of any law of this State or of the
43 United States relating to banks, national banking associations,
44 savings banks, trust companies, savings and loan associations, credit



1 unions, development corporations, mortgage brokers, mortgage
2 bankers, thrift companies, pawnbrokers or insurance companies.

3 2. A real estate investment trust, as defined in 26 U.S.C. § 856.

4 3. An employee benefit plan, as defined in 29 U.S.C. §
5 1002(3), if the loan is made directly from money in the plan by the
6 plan's trustee.

7 4. An attorney at law rendering services in the performance of
8 his or her duties as an attorney at law if the loan is secured by real
9 property.

10 5. A real estate broker rendering services in the performance of
11 his or her duties as a real estate broker if the loan is secured by real
12 property.

13 6. Except as otherwise provided in this subsection, any firm or
14 corporation:

15 (a) Whose principal purpose or activity is lending money on real
16 property which is secured by a mortgage;

17 (b) Approved by the Federal National Mortgage Association as
18 a seller or servicer; and

19 (c) Approved by the Department of Housing and Urban
20 Development and the Department of Veterans Affairs.

21 7. A person who provides money for investment in loans
22 secured by a lien on real property, on his or her own account.

23 8. A seller of real property who offers credit secured by a
24 mortgage of the property sold.

25 9. A person holding a nonrestricted state gaming license issued
26 pursuant to the provisions of chapter 463 of NRS.

27 10. A person licensed to do business pursuant to chapter 604A
28 of NRS with regard to those services regulated pursuant to chapter
29 604A of NRS.

30 *11. A person licensed pursuant to sections 2 to 53, inclusive,*
31 *of this act, with regard to transactions regulated pursuant to*
32 *sections 2 to 53, inclusive, of this act.*

33 **Sec. 55.** NRS 604A.250 is hereby amended to read as follows:

34 604A.250 The provisions of this chapter do not apply to:

35 1. Except as otherwise provided in NRS 604A.200, a person
36 doing business pursuant to the authority of any law of this State or
37 of the United States relating to banks, national banking associations,
38 savings banks, trust companies, savings and loan associations, credit
39 unions, development corporations, mortgage brokers, mortgage
40 bankers, thrift companies or insurance companies, including,
41 without limitation, any affiliate or subsidiary of such a person
42 regardless of whether the affiliate or subsidiary is a bank.

43 2. A person who is primarily engaged in the retail sale of goods
44 or services who:



* A B 4 6 5 *

1 (a) As an incident to or independently of a retail sale or service,
2 from time to time cashes checks for a fee or other consideration of
3 not more than \$2; and

4 (b) Does not hold himself or herself out as a check-cashing
5 service.

6 3. A person while performing any act authorized by a license
7 issued pursuant to chapter 671 of NRS.

8 4. A person who holds a nonrestricted gaming license issued
9 pursuant to chapter 463 of NRS while performing any act in the
10 course of that licensed operation.

11 5. A person who is exclusively engaged in a check-cashing
12 service relating to out-of-state checks.

13 6. A corporation organized pursuant to the laws of this State
14 that has been continuously and exclusively engaged in a check-
15 cashing service in this State since July 1, 1973.

16 7. A pawnbroker, unless the pawnbroker operates a check-
17 cashing service, deferred deposit loan service, high-interest loan
18 service or title loan service.

19 8. A real estate investment trust, as defined in 26 U.S.C. § 856.

20 9. An employee benefit plan, as defined in 29 U.S.C. §
21 1002(3), if the loan is made directly from money in the plan by the
22 plan's trustee.

23 10. An attorney at law rendering services in the performance of
24 his or her duties as an attorney at law if the loan is secured by real
25 property.

26 11. A real estate broker rendering services in the performance
27 of his or her duties as a real estate broker if the loan is secured by
28 real property.

29 12. Any firm or corporation:

30 (a) Whose principal purpose or activity is lending money on real
31 property which is secured by a mortgage;

32 (b) Approved by the Federal National Mortgage Association as
33 a seller or servicer; and

34 (c) Approved by the Department of Housing and Urban
35 Development and the Department of Veterans Affairs.

36 13. A person who provides money for investment in loans
37 secured by a lien on real property, on his or her own account.

38 14. A seller of real property who offers credit secured by a
39 mortgage of the property sold.

40 15. A person who makes a refund anticipation loan, unless the
41 person operates a check-cashing service, deferred deposit loan
42 service, high-interest loan service or title loan service.

43 *16. A person licensed pursuant to sections 2 to 53, inclusive,*
44 *of this act, with regard to transactions regulated pursuant to*
45 *sections 2 to 53, inclusive, of this act.*



- 1 **Sec. 56.** This act becomes effective upon passage and approval
- 2 for the purpose of adopting regulations and on January 1, 2012, for
- 3 all other purposes.

