

Amendment No. 856

Senate Amendment to Assembly Bill No. 163 Second Reprint (BDR 52-737)

Proposed by: Senate Committee on Commerce, Labor and Energy

Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	☐	Lost	☐	_____	Adopted	☐	Lost	☐	_____
Concurred In	☐	Not	☐	_____	Concurred In	☐	Not	☐	_____
Receded	☐	Not	☐	_____	Receded	☐	Not	☐	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

MKM/BJF



Date: 5/22/2017

A.B. No. 163—Revises provisions governing certain short-term loans.
(BDR 52-737)



ASSEMBLY BILL NO. 163—ASSEMBLYMAN FLORES

PREFILED FEBRUARY 13, 2017

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions governing certain short-term loans.
(BDR 52-737)

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 services; requiring a person who is licensed to operate certain loan services to verify a customer's ability to repay the loan before making certain short-term loans to the customer; requiring a person who makes a deferred deposit loan to offer an extended payment plan under certain circumstances; providing that certain contracts for the lease of an animal are subject to certain requirements imposed on high-interest loans; revising provisions governing defaults, lengths of term and grace periods relating to certain short-term loans; requiring certain notices to be posted by a person who is licensed to operate certain loan services; revising the requirements for making a title loan; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law establishes standards and procedures governing the making of certain short-term loans, commonly referred to as "payday loans," "high-interest loans" and "title loans." (Chapter 604A of NRS) **Section 1.3** of this bill: (1) prohibits a person from making such a loan unless the person has determined that the customer has the ability to repay the loan; and (2) establishes the factors that the person making the loan must consider when determining whether a customer has the ability to repay the loan. **Section 1.3** also requires that the loan comply with the statutory requirements applicable to the type of loan involved. **Section 1.7** of this bill requires a person who makes a deferred deposit loan to offer an extended payment plan to the customer under certain circumstances.

Section 3.5 of this bill includes in the definition of "high-interest loan" a contract for the lease of an animal for a purpose other than a business, commercial or agricultural purpose which charges an annual percentage rate of more than 40 percent. Thus, under section 3.5, such lease contracts would be subject to the requirements of existing law for high-interest loans.

Existing law allows for a person making a payday loan, high-interest loan or title loan to offer the customer a grace period concerning repayment of the loan. (NRS 604A.210) **Section 3** of this bill distinguishes a grace period from an extension of a loan that complies with certain statutory requirements. **Section 4** of this bill prohibits a person making the loan from granting a grace period for the purpose of artificially increasing the amount a customer qualifies to borrow, or, with certain exceptions, from conditioning the grace period on the

customer's agreement to a new loan or a modification of the terms of the existing loan or the charging of interest at a rate in excess of that provided by the existing loan agreement.

Existing law requires a person making a payday loan, high-interest loan or title loan to post certain notices in a conspicuous place in every location at which the person conducts business. (NRS 604A.405) **Section 5** of this bill provides that the person must post a notice of the existing requirement that the person must offer a repayment plan to a customer who defaults on a loan before the person commences specified collection actions. **Section 5** also provides that the person must post a notice that states the process for customers to file a complaint with the Office of the Commissioner of Financial Institutions.

Existing law sets forth certain restrictions on the actions of a person licensed to operate certain loan services. (NRS 604A.440) **Section 6** of this bill adds to those restrictions a limitation on the reinitiation of electronic debit transactions.

Existing law provides restrictions on the making of title loans. (NRS 604A.450) **Section 7** of this bill adds to those restrictions by specifying that the customer must legally own the vehicle which secures the loan and that the person making the loan cannot consider the income, except for the customer's community ~~income~~ **property**, of anyone who is not a legal owner of the vehicle who enters into a loan agreement with the licensee when determining whether the customer has the ability to repay the loan.

Section 8 of this bill makes conforming changes.

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

Section 1. Chapter 604A of NRS is hereby amended by adding thereto the provisions set forth as sections 1.3 and 1.7 of this act.

Sec. 1.3. 1. *A licensee shall not make a loan pursuant to this chapter unless the licensee determines pursuant to subsection 2 that the customer has the ability to repay the loan and that the loan complies with the provisions of NRS 604A.425, 604A.450 or subsection 2 of NRS 604A.480, as applicable.*

2. *For the purposes of subsection 1, a customer has the ability to repay a loan if the customer has a reasonable ability to repay the loan, as determined by the licensee after considering to the extent available, the following underwriting factors:*

- (a) The current or reasonably expected income of the customer;*
- (b) The current employment status of the customer based on evidence including, without limitation, a pay stub or bank deposit;*
- (c) The credit history of the customer;*
- (d) The amount due under the original term of the loan, the monthly payment on the loan, if the loan is an installment loan, or the potential repayment plan if the customer defaults on the loan; and*
- (e) Other evidence, including, without limitation, bank statements, electronic bank statements and written representations to the licensee.*

3. *For the purposes of subsection 1, a licensee shall not consider the ability of any person other than the customer to repay the loan.*

Sec. 1.7. 1. *A licensee shall allow a customer with an outstanding deferred deposit loan to enter into an extended payment plan if the customer:*

- (a) Has not entered into an extended payment plan for the deferred deposit loan during the immediately preceding 12-month period; and*
- (b) Requests an extended repayment plan before the time the deferred deposit loan is due.*

2. *An extended payment plan entered into pursuant to subsection 1 must:*

- (a) Be in writing and be signed by the licensee and customer; and*

(b) Provide a payment schedule of at least four payments over a period of at least 60 days.

3. An extended payment plan entered into pursuant to subsection 1 must not:

(a) Increase or decrease the amount owed under the deferred deposit loan.

(b) Include any interest or fees in addition to those charged under the terms of the deferred deposit loan.

4. If a customer defaults under an extended payment plan entered into pursuant to this section, the licensee may terminate the extended payment plan and accelerate the requirement to pay the amount owed.

Sec. 2. NRS 604A.045 is hereby amended to read as follows:

604A.045 1. "Default" means the failure of a customer to:

(a) Make a scheduled payment on a loan on or before the due date for the payment under the terms of a lawful loan agreement *that complies with the provisions of NRS 604A.408, 604A.445 or subsection 2 of NRS 604A.480, as applicable*, and any grace period that complies with the provisions of NRS 604A.210 ; ~~for under the terms of any lawful extension or repayment plan relating to the loan, and any grace period that complies with the provisions of NRS 604A.210;~~ or

(b) Pay a loan in full on or before ~~the~~

~~(1) The~~ the expiration of the ~~initial~~ loan period as set forth in a lawful loan agreement *that complies with the provisions of NRS 604A.408, 604A.445 or subsection 2 of NRS 604A.480, as applicable*, and any grace period that complies with the provisions of NRS 604A.210 . ~~the~~ or

~~(2) The due date of any lawful extension or repayment plan relating to the loan and any grace period that complies with the provisions of NRS 604A.210; provided that the due date of the extension or repayment plan does not violate the provisions of this chapter.~~

2. A default occurs on the day immediately following the date of the customer's failure to perform as described in subsection 1.

Sec. 3. NRS 604A.070 is hereby amended to read as follows:

604A.070 1. "Grace period" means any period of deferment offered gratuitously by a licensee to a customer if the licensee complies with the provisions of NRS 604A.210.

2. *The term does not include an extension of a loan that complies with the provisions of NRS 604A.408, 604A.445 or subsection 2 of NRS 604A.480, as applicable.*

Sec. 3.5. NRS 604A.0703 is hereby amended to read as follows:

604A.0703 1. "High-interest loan" means a loan made to a customer pursuant to a loan agreement which, under its original terms, charges an annual percentage rate of more than 40 percent.

2. The term includes, without limitation, any single-payment loan, installment loan , ~~or~~ open-ended loan *or contract for the lease of an animal for a purpose other than a business, commercial or agricultural purpose* which, under ~~its~~ the original terms ~~of the loan or contract~~, charges an annual percentage rate of more than 40 percent.

3. The term does not include:

(a) A deferred deposit loan;

(b) A refund anticipation loan; or

(c) A title loan.

Sec. 4. NRS 604A.210 is hereby amended to read as follows:

604A.210 1. The provisions of this chapter do not prohibit a licensee from offering a customer a grace period on the repayment of a loan or an extension of a loan, except that the licensee shall not ~~charge the customer:~~

~~1. Any fees for granting such a grace period; or~~
~~2. Any additional fees or additional interest on the outstanding loan during such a grace period.~~

1. grant a grace period for the purpose of artificially increasing the amount which a customer would otherwise qualify to borrow.

2. Except for a loan agreement governed by in compliance with the provisions of NRS 604A.408, 604A.445 or subsection 2 of NRS 604A.480, where they apply, a licensee shall not:

(a) Condition the granting of the grace period on the customer making any new loan agreement or adding any addendum or term to an existing loan agreement; or

(b) Charge the customer interest at a rate in excess of that described in the existing loan agreement. ~~1. or~~

~~2. Grant a grace period for the purpose of artificially increasing the amount which a customer would otherwise qualify to borrow.~~

Sec. 5. NRS 604A.405 is hereby amended to read as follows:

604A.405 1. A licensee shall post in a conspicuous place in every location at which the licensee conducts business under his or her license:

(a) A notice that states the fees the licensee charges for providing check-cashing services, deferred deposit loan services, high-interest loan services or title loan services.

(b) *A notice that states that if the customer defaults on a loan, the licensee must offer a repayment plan to the customer before the licensee commences any civil action or process of alternative dispute resolution or repossesses a vehicle.*

(c) A notice that states a toll-free telephone number to the Office of the Commissioner to handle concerns or complaints of customers.

(d) A notice that states the process for filing a complaint with the Commissioner.

➤ The Commissioner shall adopt regulations prescribing the form and size of the notices required by this subsection.

2. If a licensee offers loans to customers at a kiosk, through the Internet, through any telephone, facsimile machine or other telecommunication device or through any other machine, network, system, device or means, except for an automated loan machine prohibited by NRS 604A.400, the licensee shall, as appropriate to the location or method for making the loan, post in a conspicuous place where customers will see it before they enter into a loan, or disclose in an open and obvious manner to customers before they enter into a loan, a notice that states:

(a) The types of loans the licensee offers and the fees he or she charges for making each type of loan; and

(b) A list of the states where the licensee is licensed or authorized to conduct business from outside this State with customers located in this State.

3. A licensee who provides check-cashing services shall give written notice to each customer of the fees he or she charges for cashing checks. The customer must sign the notice before the licensee provides the check-cashing service.

Sec. 5.5. NRS 604A.408 is hereby amended to read as follows:

604A.408 1. Except as otherwise provided in this chapter, the original term of a deferred deposit loan or high-interest loan must not exceed 35 days.

2. The original term of a high-interest loan may be up to 90 days if:

(a) The loan provides for payments in installments;
(b) The payments are calculated to ratably and fully amortize the entire amount of principal and interest payable on the loan;

(c) The loan is not subject to any extension; ~~and~~

(d) The loan does not require a balloon payment of any kind ~~++~~ ; and

(e) The loan is not a deferred deposit loan.

3. Notwithstanding the provisions of NRS 604A.480, a licensee shall not agree to establish or extend the period for the repayment, renewal, refinancing or consolidation of an outstanding deferred deposit loan or high-interest loan for a period that exceeds 90 days after the date of origination of the loan.

Sec. 6. NRS 604A.440 is hereby amended to read as follows:

604A.440 A licensee shall not:

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

2. Commence a civil action or any process of alternative dispute resolution or repossess a vehicle before the customer defaults under the original term of a loan agreement or before the customer defaults under any repayment plan ~~++~~ *or* extension ~~for grace period~~ negotiated and agreed to by the licensee and customer, unless otherwise authorized pursuant to this chapter.

3. Take any confession of judgment or any power of attorney running to the licensee or to any third person to confess judgment or to appear for the customer in a judicial proceeding.

4. Include in any written agreement:

(a) A promise by the customer to hold the licensee harmless;

(b) A confession of judgment by the customer;

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

(d) A waiver of any claim or defense arising out of the loan agreement or a waiver of any provision of this chapter. The provisions of this paragraph do not apply to the extent preempted by federal law.

5. Engage in any deceptive trade practice, as defined in chapter 598 of NRS, including, without limitation, making a false representation.

6. Advertise or permit to be advertised in any manner any false, misleading or deceptive statement or representation with regard to the rates, terms or conditions for loans.

7. Reinitiate an electronic debit transaction that has been returned by a customer's bank except in accordance with the rules prescribed by the National Automated Clearing House Association or its successor organization.

8. Use or attempt to use any agent, affiliate or subsidiary to avoid the requirements or prohibitions of this chapter.

Sec. 6.5. NRS 604A.445 is hereby amended to read as follows:

604A.445 Notwithstanding any other provision of this chapter to the contrary:

1. The original term of a title loan must not exceed 30 days.

2. The title loan may be extended for not more than six additional periods of extension, with each such period not to exceed 30 days, if:

(a) Any interest or charges accrued during the original term of the title loan or any period of extension of the title loan are not capitalized or added to the principal amount of the title loan during any subsequent period of extension;

(b) The annual percentage rate charged on the title loan during any period of extension is not more than the annual percentage rate charged on the title loan during the original term; and

(c) No additional origination fees, set-up fees, collection fees, transaction fees, negotiation fees, handling fees, processing fees, late fees, default fees or any other fees, regardless of the name given to the fees, are charged in connection with any extension of the title loan.

3. The original term of a title loan may be up to 210 days if:

(a) The loan provides for payments in installments;

(b) The payments are calculated to ratably and fully amortize the entire amount of principal and interest payable on the loan;

(c) The loan is not subject to any extension; ~~and~~

(d) The loan does not require a balloon payment of any kind ~~and~~ ; and

(e) The loan is not a deferred deposit loan.

Sec. 7. NRS 604A.450 is hereby amended to read as follows:

604A.450 A licensee who makes title loans shall not:

1. Make a title loan that exceeds the fair market value of the vehicle securing the title loan.

2. *Make a title loan to a customer secured by a vehicle which is not legally owned by the customer.*

3. Make a title loan without ~~regard to the ability of the customer seeking the title loan to repay the title loan, including the customer's current and expected income, obligations and employment.~~

~~—3—~~ *determining that the customer has the ability to repay the title loan, as required by section 1.3 of this act. In complying with this subsection, the licensee shall not consider the income of any person who is not a legal owner of the vehicle securing the title loan but may consider a customer's community ~~income~~ property and the income of any other customers who consent to the loan pursuant to subsection 5 and enter into a loan agreement with the licensee.*

4. Make a title loan without requiring the customer to sign an affidavit which states that:

(a) The customer has provided the licensee with true and correct information concerning the customer's income, obligations, employment and ownership of the vehicle; and

(b) The customer has the ability to repay the title loan.

5. *Make a title loan secured by a vehicle with multiple legal owners without the consent of each owner.*

Sec. 8. NRS 604A.930 is hereby amended to read as follows:

604A.930 1. Subject to the affirmative defense set forth in subsection 3, in addition to any other remedy or penalty, if a person violates any provision of NRS 604A.400, 604A.410 to 604A.500, inclusive, *and sections 1.3 and 1.7 of this act*, 604A.610, 604A.615, 604A.650 or 604A.655 or any regulation adopted pursuant thereto, the customer may bring a civil action against the person for:

(a) Actual and consequential damages;

(b) Punitive damages, which are subject to the provisions of NRS 42.005;

(c) Reasonable attorney's fees and costs; and

(d) Any other legal or equitable relief that the court deems appropriate.

2. Subject to the affirmative defense set forth in subsection 3, in addition to any other remedy or penalty, the customer may bring a civil action against a person pursuant to subsection 1 to recover an additional amount, as statutory damages, which is equal to \$1,000 for each violation if the person knowingly:

(a) Operates a check-cashing service, deferred deposit loan service, high-interest loan service or title loan service without a license, in violation of NRS 604A.400;

(b) Fails to include in a loan agreement a disclosure of the right of the customer to rescind the loan, in violation of NRS 604A.410;

(c) Violates any provision of NRS 604A.420;
(d) Accepts collateral or security for a deferred deposit loan, in violation of NRS 604A.435, except that a check or written authorization for an electronic transfer of money shall not be deemed to be collateral or security for a deferred deposit loan;

(e) Uses or threatens to use the criminal process in this State or any other state to collect on a loan made to the customer, in violation of NRS 604A.440;

(f) Includes in any written agreement a promise by the customer to hold the person harmless, a confession of judgment by the customer or an assignment or order for the payment of wages or other compensation due the customer, in violation of NRS 604A.440;

(g) Violates any provision of NRS 604A.485;

(h) Violates any provision of NRS 604A.490; or

(i) Violates any provision of NRS 604A.442.

3. A person may not be held liable in any civil action brought pursuant to this section if the person proves, by a preponderance of evidence, that the violation:

(a) Was not intentional;

(b) Was technical in nature; and

(c) Resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

4. For the purposes of subsection 3, a bona fide error includes, without limitation, clerical errors, calculation errors, computer malfunction and programming errors and printing errors, except that an error of legal judgment with respect to the person's obligations under this chapter is not a bona fide error.

Sec. 9. 1. Any contract or agreement that is entered into pursuant to chapter 604A of NRS before July 1, 2017, ~~it~~ and that does not comply with sections 1, 1.3, 2, 3, 4, 5.5 to 6.5, inclusive, 8 and 9 of this act remains in effect in accordance with the provisions of the contract or agreement.

2. Any contract or agreement that is entered into pursuant to chapter 604A of NRS before October 1, 2017, and that does not comply with sections 1.7, 3.5, 5 and 7 of this act remains in effect in accordance with the provisions of the contract or agreement.

Sec. 10. 1. This section and sections 1, 1.3, 2, 3, 4, 5.5, 6, 6.5, 8 and 9 of this act ~~becomes~~ become effective on July 1, 2017.

2. Sections 1.7, 3.5, 5 and 7 of this act become effective on October 1, 2017.