

Amendment No. 508

Assembly Amendment to Assembly Bill No. 305	(BDR 52-1060)
Proposed by: Assembly Committee on Commerce and Labor	
Amends: Summary: Yes Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes	

Adoption of this amendment will MAINTAIN the 2/3s majority vote requirement for final passage of A.B. 305 (§ 11.8 + NRS 675.060).

ASSEMBLY ACTION			Initial and Date	SENATE ACTION			Initial and Date		
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

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.

SJQ/AAK



Date: 4/19/2019

A.B. No. 305—Revises provisions relating to certain financial transactions.
(BDR 52-1060)



ASSEMBLY BILL NO. 305—ASSEMBLYMEN FLORES; BENITEZ-THOMPSON, JAUREGUI,
MUNK, PETERS AND TORRES

MARCH 18, 2019

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions relating to certain financial transactions.
(BDR ~~[§2-1060]~~ **56-1060**)

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]~~ **imposing various requirements** **on** certain ~~[persons who provide]~~ **financial transactions in which a person provides** money to a consumer who is a party to a pending legal action in this State **;** ~~[to register with the Commissioner of Financial Institutions,]~~ **a person** from charging an annual percentage rate greater than 40 percent; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides for the regulation of installment loans, including the regulation and licensing of persons engaged in the business of lending in this State, by the Commissioner of Financial Institutions. (Chapter 675 of NRS). Sections 2-11.8 of this bill establish provisions relating to transactions in which a person provides a consumer who is a party to a pending legal action in this State with money and the consumer confers to that person the right to receive the proceeds or a part of the proceeds of the settlement, insurance payment, award of damages or any other money expected as a result of the legal action of the consumer. Section 9 of this bill designates this type of transaction as a "presettlement funding transaction." Section 8 of this bill designates the provider of money to a consumer in such a transaction as a "presettlement funding provider." Section 11.8 of this bill provides that such a transaction is deemed a loan of money, thereby subjecting presettlement funding transactions and presettlement funding providers to the applicable provisions of existing law, including licensure requirements, governing installment loans. [Section 12 of this bill requires a person who wishes to act as a presettlement funding provider to register with the Commissioner of Financial Institutions. Sections 12-14 of this bill establish certain requirements for the registration of presettlement funding providers. Section 15 of this bill: (1)]

Section 11.2 of this bill requires a presettlement funding contract to: (1) authorize a consumer to receive cash advances in periodic installments or a lump sum; (2) provide for the establishment of an open-end account for the consumer; (3) require interest and other charges to be computed periodically; (4) authorize a consumer to pay his or her account in full without penalty; and (5) contain a statement of the maximum amount the consumer may be obligated to pay under the transaction. Section 11.3 of this bill prohibits a presettlement funding provider from entering into a presettlement funding transaction with a consumer if the annual percentage rate charged is more than 40 percent.

and (2) provides that a presettlement funding contract entered into in violation of section 15 is void. Section 11.3 also sets forth the method in which interest is required to be calculated.

Section 11.6 of this bill prohibits a presettlement funding provider from: (1) paying certain commissions for the referral of a consumer; (2) referring a consumer to engage certain professionals; (3) entering into a presettlement funding transaction with a consumer who has previously entered into such a transaction concerning the same legal action; (4) influencing decisions with respect to the underlying legal action; (5) determining the amount to be repaid as a percentage of the recovery of the legal claim of the consumer; or (6) taking certain actions that result in charging an interest rate that exceeds an annual percentage rate of 40 percent. Section 11.7 of this bill provides that certain violations of the provisions of this bill cause a presettlement funding contract to be void.

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

Section 1. Chapter ~~§597~~ 675 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to ~~§15~~ 11.7, inclusive, of this act.

Sec. 2. *As used in sections 2 to ~~§15~~ 11.7 inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections ~~§2~~ 4 to 11, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 3. ~~“Commissioner” means the Commissioner of Financial Institutions.~~ (Deleted by amendment.)

Sec. 4. “Consumer” means a natural person who:

1. Resides or is domiciled in this State; or

2. Is a party to a legal action pending before a federal or state court located in this State.

Sec. 5. 1. “Legal action” means:

(a) A bona fide civil action or statutory or regulatory claim for which damages may be awarded to the claiming party; or

(b) A cause of action or legal claim upon which a civil action or statutory or regulatory claim described in paragraph (a) may be based.

2. The term includes, without limitation:

(a) Any settlement or negotiation toward a settlement of a civil action or statutory or regulatory claim described in paragraph (a) of subsection 1; or

(b) Any agreement or negotiations toward an agreement pursuant to which a civil action or statutory or regulatory claim based upon a cause of action described in paragraph (b) of subsection 1 would not be initiated.

Sec. 6. “Presettlement funding” means the money provided ~~directly or indirectly~~ to a consumer by a presettlement funding provider in a presettlement funding transaction.

Sec. 7. “Presettlement funding contract” means a written ~~for or oral~~ nonrecourse agreement between a consumer and a presettlement funding provider that provides for a presettlement funding transaction.

Sec. 8. 1. “Presettlement funding provider” means a person who enters into a presettlement funding transaction with a consumer.

2. The term includes, without limitation:

(a) An affiliate or subsidiary of a presettlement funding provider;

(b) A person who buys a whole or partial interest in presettlement funding;

(c) A person who acts as an agent to provide presettlement funding from a third party for a fee; and

1 (d) A person who acts as an agent for a third party in providing presettlement
2 funding for a fee, regardless of whether approval or acceptance by the third party
3 is necessary to create a legal obligation for the third party.

4 3. The term does not include an attorney who provides professional services
5 to a consumer on a contingency basis in relation to the legal claim of the
6 consumer.

7 Sec. 9. "Presettlement funding transaction" means a transaction in which:

8 1. A presettlement funding provider provides presettlement funding to a
9 consumer; and

10 2. The consumer assigns, conveys or otherwise confers to the presettlement
11 funding provider the right to receive the proceeds or part thereof, of the
12 settlement, insurance payment or award of damages obtained in the legal action
13 of the consumer or any other money expected as a result of the legal action of the
14 consumer.

15 Sec. 10. "Regulation Z" means the federal regulations, as amended, 12
16 C.F.R. Part 226, adopted pursuant to the Truth in Lending Act and commonly
17 known as Regulation Z.

18 Sec. 11. "Truth in Lending Act" means the federal Truth in Lending Act,
19 as amended, 15 U.S.C. §§ 1601 et seq.

20 Sec. 11.2. 1. A licensee may enter into a presettlement funding contract
21 with a consumer. Pursuant to a presettlement funding contract:

22 (a) The consumer may obtain cash advances in a lump sum or in periodic
23 installments by a check, draft, credit card or any other means or the licensee may
24 pay out money at the consumer's direction or on his or her behalf;

25 (b) An open-end account must be established for the consumer and the
26 amount of each cash advance made to the consumer and any interest, charges
27 and other costs must be debited to that account and any payments on the loan or
28 other credits must be credited to that account;

29 (c) The interest and other charges must be computed periodically on the
30 unpaid balance in the consumer's account; and

31 (d) The consumer may pay his or her account in full at any time without a
32 penalty for prepayment.

33 2. The presettlement funding contract must contain a statement of the
34 maximum amount the consumer may be obligated to pay under the presettlement
35 funding contract.

36 Sec. 11.3. 1. A licensee who is a presettlement funding provider shall not
37 enter into a presettlement funding transaction with a consumer if the annual
38 percentage rate charged by the presettlement funding provider is more than 40
39 percent.

40 2. The interest charged in a presettlement funding transaction must be
41 calculated in the manner set forth in paragraph (a) or (b) of subsection 1 of NRS
42 675.363.

43 3. If, pursuant to a presettlement funding contract:

44 (a) The consumer receives cash advances in periodic installments or the
45 presettlement funding provider pays out money at the consumer's direction or on
46 his or her behalf periodically, the billing cycle must be monthly.

47 (b) The consumer receives a cash advance in a single lump sum or the
48 presettlement funding provider pays out money at the consumer's direction or on
49 his or her behalf in a single lump sum, the billing cycle must be at least annually.

50 4. All aspects of a presettlement funding transaction, including, without
51 limitation, interest calculations, must comply with the Truth in Lending Act and
52 Regulation Z.

1 Sec. 11.4. In addition to the interest allowed pursuant to section 11.3 of this
2 act, a licensee who is a presettlement funding provider may, pursuant to the
3 presettlement funding contract, receive from the consumer or add to the unpaid
4 balance in that consumer's account any applicable fee or charge set forth in NRS
5 675.365.

6 Sec. 11.5. 1. If the account of a consumer on a presettlement funding
7 transaction shows a balance due or if any debits or credits were entered on that
8 account during a billing cycle, the licensee shall furnish to the consumer, within
9 a reasonable time after the end of the billing cycle, a written statement setting
10 forth:

11 (a) The total amount borrowed on his or her account at the beginning of the
12 billing cycle;

13 (b) The date and amount of any advances made on the account during the
14 billing cycle;

15 (c) Any payments or other credits made or received on the account during
16 the billing cycle, if any;

17 (d) The amount of interest and other charges, if any, made on the account
18 during the billing cycle;

19 (e) The amount of the installment due and the date on which that payment
20 must be received; and

21 (f) The total amount remaining unpaid in the account at the end of that
22 billing cycle.

23 2. The total amount remaining unpaid in the account at the end of the
24 billing cycle must not at any time exceed the maximum amount the consumer
25 may be obligated to pay under the presettlement funding contract less any and all
26 payments and other credits received on the account.

27 Sec. 11.6. A licensee who is a presettlement funding provider shall not:

28 1. Pay a commission or other form of consideration to an attorney or
29 medical provider for referring a consumer to the presettlement funding provider;

30 2. Refer a consumer to engage a specific attorney or medical provider;

31 3. Knowingly provide presettlement funding to a consumer who has
32 previously entered into a presettlement funding transaction concerning the same
33 legal action;

34 4. Influence or attempt to influence any decisions with respect to the legal
35 action of the consumer;

36 5. Enter into a presettlement funding contract in which the amount to be
37 paid to the presettlement funding provider is determined as a percentage of the
38 recovery of the legal claim of a consumer; or

39 6. Refinance, roll over or extend a presettlement funding contract if such
40 action results in compounding interest or interest exceeding an annual
41 percentage rate of 40 percent.

42 Sec. 11.7. In addition to any other remedy or penalty, if a licensee who is a
43 presettlement funding provider willfully:

44 1. Enters into a presettlement funding contract for an amount of interest or
45 any other charge or fee that violates the provisions of sections 2 to 11.7 of this act
46 or any regulation adopted pursuant thereto;

47 2. Demands, collects or receives an amount of interest or any other charge
48 or fee that violates the provisions of sections 2 to 11.7 of this act or any
49 regulation adopted pursuant thereto; or

50 3. Commits any other act or omission that violates the provisions of sections
51 2 to 11.7 of this act or any regulations adopted pursuant thereto.

1 ↳ the presettlement funding contract is void and the licensee is not entitled to
2 collect, receive or retain any interest or other charges or fees with respect to the
3 presettlement funding contract other than the return of the principal.

4 **Sec. 11.8. NRS 675.330 is hereby amended to read as follows:**

5 675.330 The payment of money, credit, goods or things in action, as
6 consideration for any sale, assignment or order for the payment of wages, salary,
7 commissions or other compensation for services earned or to be earned ~~or~~ or as
8 consideration for an assignment or conveyance of the contingent right to receive
9 the potential proceeds or part thereof of a settlement, insurance payment or
10 award of damages obtained in a legal action, shall, for the purposes of regulation
11 under this chapter, be deemed a loan of money secured by the sale, assignment or
12 order. The amount by which the compensation so sold, assigned or ordered paid
13 exceeds the amount of the consideration actually paid shall, for the purposes of
14 regulation under this chapter, be deemed interest or charges on the loan from the
15 date of the payment to the date the compensation is payable. Such a transaction is
16 subject to the provisions of this chapter.

17 **Sec. 12. ~~[1. A person shall not act as a presettlement funding provider~~**
18 **~~unless the person is registered with the Commissioner as a presettlement funding~~**
19 **~~provider.~~**

20 ~~2. A person who wishes to register with the Commissioner as a~~
21 ~~presettlement funding provider must submit to the Commissioner the fee~~
22 ~~established pursuant to subsection 5 and an application, on a form prescribed by~~
23 ~~the Commissioner, which must contain:~~

24 ~~(a) The name and address of the applicant; and~~
25 ~~(b) Such other information as the Commissioner may require by regulation.~~

26 ~~3. Each applicant for initial registration as a presettlement funding provider~~
27 ~~shall submit with the application a complete set of his or her fingerprints and~~
28 ~~written permission authorizing the Department of Financial Institutions of the~~
29 ~~Department of Business and Industry to forward the fingerprints to the Central~~
30 ~~Repository for Nevada Records of Criminal History for submission to the Federal~~
31 ~~Bureau of Investigation for its report.~~

32 ~~4. Registration as a presettlement funding provider expires on December 31~~
33 ~~of each year and may be renewed upon submission of an application for renewal~~
34 ~~containing such information as the Commissioner may require by regulation.~~

35 ~~5. The Commissioner shall establish by regulation fees for the issuance and~~
36 ~~renewal of registration as a presettlement funding provider in an amount~~
37 ~~necessary to cover the costs of carrying out sections 2 to 15, inclusive, of this act.]~~
38 **(Deleted by amendment.)**

39 **Sec. 13. ~~[1. In addition to the requirements set forth in section 12 of this~~**
40 **~~act, a natural person who applies for registration or the renewal of registration as~~**
41 **~~a presettlement funding provider shall:~~**

42 ~~(a) Include the social security number of the applicant in the application~~
43 ~~submitted to the Commissioner; and~~

44 ~~(b) Submit to the Commissioner the statement prescribed by the Division of~~
45 ~~Welfare and Supportive Services of the Department of Health and Human~~
46 ~~Services pursuant to NRS 425.520. The statement must be completed and signed~~
47 ~~by the applicant.~~

48 ~~2. The Commissioner shall include the statement required pursuant to~~
49 ~~subsection 1 in:~~

50 ~~(a) The application or any other forms that must be submitted for the~~
51 ~~issuance or renewal of the registration; or~~

52 ~~(b) A separate form prescribed by the Commissioner.~~

~~3. Registration as a presettlement funding provider may not be issued or renewed by the Commissioner if the applicant:~~

~~(a) Fails to submit the statement required pursuant to subsection 1; or~~

~~(b) Indicates on the statement submitted pursuant to subsection 1 that the applicant is subject to a court order for the support of a child and is not in compliance with the order or a plan approved by the district attorney or other public agency enforcing the order for the repayment of the amount owed pursuant to the order.~~

~~4. If an applicant indicates on the statement submitted pursuant to subsection 1 that the applicant is subject to a court order for the support of a child and is not in compliance with the order or a plan approved by the district attorney or other public agency enforcing the order for the repayment of the amount owed pursuant to the order, the Commissioner shall advise the applicant to contact the district attorney or other public agency enforcing the order to determine the actions that the applicant may take to satisfy the arrearage.]~~
(Deleted by amendment.)

Sec. 14. ~~[1. If the Commissioner receives a copy of a court order issued pursuant to NRS 425.540 that provides for the suspension of all professional, occupational and recreational licenses, certificates and permits issued to a person who is registered as a presettlement funding provider, the Commissioner shall deem the registration issued to that person to be suspended at the end of the 30th day after the date on which the court order was issued unless the Commissioner receives a letter issued to the registrant by the district attorney or other public agency pursuant to NRS 425.550 stating that the registrant has complied with the subpoena or warrant or has satisfied the arrearage pursuant to NRS 425.560.~~

~~2. The Commissioner shall reinstate the registration of a presettlement funding provider that has been suspended by a district court pursuant to NRS 425.540 if the Commissioner receives a letter issued by the district attorney or other public agency pursuant to NRS 425.550 to the person whose registration was suspended stating that the person whose registration was suspended has complied with the subpoena or warrant or has satisfied the arrearage pursuant to NRS 425.560.]~~
(Deleted by amendment.)

Sec. 15. ~~[1. A presettlement funding provider shall not enter into a presettlement funding transaction with a consumer if the annual percentage rate charged by the presettlement funding provider is more than 40 percent.~~

~~2. For the purposes of this section, the annual percentage rate charged by the presettlement funding provider must be calculated in accordance with the Truth in Lending Act and Regulation Z.~~

~~3. A presettlement funding contract entered into in violation of this section is void.]~~
(Deleted by amendment.)

Sec. 16. The amendatory provisions of this act do not apply to any contract entered into before October 1, 2019, until the contract is extended or renewed.

Sec. 17. ~~[1. This act becomes effective on October 1, 2019.~~

~~2. Sections 13 and 14 of this act expire by limitation on the date on which the provisions of 42 U.S.C. § 666 requiring each state to establish procedures under which the state has authority to withhold or suspend, or to restrict the use of professional, occupational and recreational licenses of persons who:~~

~~(a) Have failed to comply with a subpoena or warrant relating to a proceeding to determine the paternity of a child or to establish or enforce an obligation for the support of a child; or~~

~~(b) Are in arrears in the payment for the support of one or more children;~~
~~are repealed by the Congress of the United States.]~~
(Deleted by amendment.)