

REQUIRES TWO-THIRDS MAJORITY VOTE

(§ 11.8 + NRS 675.060)

(Reprinted with amendments adopted on April 22, 2019)

FIRST REPRINT

A.B. 305

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 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; imposing various requirements on certain financial transactions in which a person provides money to a consumer who is a party to a pending legal action in this State; prohibiting such 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 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



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20 consumer to pay his or her account in full without penalty; and (5) contain a
21 statement of the maximum amount the consumer may be obligated to pay under the
22 transaction. **Section 11.3** of this bill prohibits a presettlement funding provider
23 from entering into a presettlement funding transaction with a consumer if the
24 annual percentage rate charged is more than 40 percent. **Section 11.3** also sets forth
25 the method in which interest is required to be calculated.

26 **Section 11.6** of this bill prohibits a presettlement funding provider from: (1)
27 paying certain commissions for the referral of a consumer; (2) referring a consumer
28 to engage certain professionals; (3) entering into a presettlement funding
29 transaction with a consumer who has previously entered into such a transaction
30 concerning the same legal action; (4) influencing decisions with respect to the
31 underlying legal action; (5) determining the amount to be repaid as a percentage of
32 the recovery of the legal claim of the consumer; or (6) taking certain actions that
33 result in charging an interest rate that exceeds an annual percentage rate of 40
34 percent. **Section 11.7** of this bill provides that certain violations of the provisions of
35 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:

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

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

8 **Sec. 3.** (Deleted by amendment.)

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

10 1. *Resides or is domiciled in this State; or*

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

13 **Sec. 5.** 1. *“Legal action” means:*

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

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

19 2. *The term includes, without limitation:*

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

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



1 **Sec. 6.** *“Presettlement funding” means the money provided*
2 *to a consumer by a presettlement funding provider in a*
3 *presettlement funding transaction.*

4 **Sec. 7.** *“Presettlement funding contract” means a written*
5 *nonrecourse agreement between a consumer and a presettlement*
6 *funding provider that provides for a presettlement funding*
7 *transaction.*

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

11 **2.** *The term includes, without limitation:*

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

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

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

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

22 **3.** *The term does not include an attorney who provides*
23 *professional services to a consumer on a contingency basis in*
24 *relation to the legal claim of the consumer.*

25 **Sec. 9.** *“Presettlement funding transaction” means a*
26 *transaction in which:*

27 **1.** *A presettlement funding provider provides presettlement*
28 *funding to a consumer; and*

29 **2.** *The consumer assigns, conveys or otherwise confers to the*
30 *presettlement funding provider the right to receive the proceeds or*
31 *part thereof, of the settlement, insurance payment or award of*
32 *damages obtained in the legal action of the consumer or any other*
33 *money expected as a result of the legal action of the consumer.*

34 **Sec. 10.** *“Regulation Z” means the federal regulations, as*
35 *amended, 12 C.F.R. Part 226, adopted pursuant to the Truth in*
36 *Lending Act and commonly known as Regulation Z.*

37 **Sec. 11.** *“Truth in Lending Act” means the federal Truth in*
38 *Lending Act, as amended, 15 U.S.C. §§ 1601 et seq.*

39 **Sec. 11.2. 1.** *A licensee may enter into a presettlement*
40 *funding contract with a consumer. Pursuant to a presettlement*
41 *funding contract:*

42 **(a)** *The consumer may obtain cash advances in a lump sum or*
43 *in periodic installments by a check, draft, credit card or any other*
44 *means or the licensee may pay out money at the consumer’s*
45 *direction or on his or her behalf;*



1 (b) *An open-end account must be established for the consumer*
2 *and the amount of each cash advance made to the consumer and*
3 *any interest, charges and other costs must be debited to that*
4 *account and any payments on the loan or other credits must be*
5 *credited to that account;*

6 (c) *The interest and other charges must be computed*
7 *periodically on the unpaid balance in the consumer's account;*
8 *and*

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

11 2. *The presettlement funding contract must contain a*
12 *statement of the maximum amount the consumer may be obligated*
13 *to pay under the presettlement funding contract.*

14 **Sec. 11.3.** 1. *A licensee who is a presettlement funding*
15 *provider shall not enter into a presettlement funding transaction*
16 *with a consumer if the annual percentage rate charged by the*
17 *presettlement funding provider is more than 40 percent.*

18 2. *The interest charged in a presettlement funding*
19 *transaction must be calculated in the manner set forth in*
20 *paragraph (a) or (b) of subsection 1 of NRS 675.363.*

21 3. *If, pursuant to a presettlement funding contract:*

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

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

30 4. *All aspects of a presettlement funding transaction,*
31 *including, without limitation, interest calculations, must comply*
32 *with the Truth in Lending Act and Regulation Z.*

33 **Sec. 11.4.** *In addition to the interest allowed pursuant to*
34 *section 11.3 of this act, a licensee who is a presettlement funding*
35 *provider may, pursuant to the presettlement funding contract,*
36 *receive from the consumer or add to the unpaid balance in that*
37 *consumer's account any applicable fee or charge set forth in*
38 *NRS 675.365.*

39 **Sec. 11.5.** 1. *If the account of a consumer on a*
40 *presettlement funding transaction shows a balance due or if any*
41 *debits or credits were entered on that account during a billing*
42 *cycle, the licensee shall furnish to the consumer, within a*
43 *reasonable time after the end of the billing cycle, a written*
44 *statement setting forth:*



1 (a) *The total amount borrowed on his or her account at the*
2 *beginning of the billing cycle;*

3 (b) *The date and amount of any advances made on the account*
4 *during the billing cycle;*

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

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

9 (e) *The amount of the installment due and the date on which*
10 *that payment must be received; and*

11 (f) *The total amount remaining unpaid in the account at the*
12 *end of that billing cycle.*

13 2. *The total amount remaining unpaid in the account at the*
14 *end of the billing cycle must not at any time exceed the maximum*
15 *amount the consumer may be obligated to pay under the*
16 *presettlement funding contract less any and all payments and*
17 *other credits received on the account.*

18 **Sec. 11.6.** *A licensee who is a presettlement funding provider*
19 *shall not:*

20 1. *Pay a commission or other form of consideration to an*
21 *attorney or medical provider for referring a consumer to the*
22 *presettlement funding provider;*

23 2. *Refer a consumer to engage a specific attorney or medical*
24 *provider;*

25 3. *Knowingly provide presettlement funding to a consumer*
26 *who has previously entered into a presettlement funding*
27 *transaction concerning the same legal action;*

28 4. *Influence or attempt to influence any decisions with*
29 *respect to the legal action of the consumer;*

30 5. *Enter into a presettlement funding contract in which the*
31 *amount to be paid to the presettlement funding provider is*
32 *determined as a percentage of the recovery of the legal claim of a*
33 *consumer; or*

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

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

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

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



1 3. *Commits any other act or omission that violates the*
2 *provisions of sections 2 to 11.7 of this act or any regulations*
3 *adopted pursuant thereto,*
4 *↳ the presettlement funding contract is void and the licensee is*
5 *not entitled to collect, receive or retain any interest or other*
6 *charges or fees with respect to the presettlement funding contract*
7 *other than the return of the principal.*

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

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

24 **Sec. 12.** (Deleted by amendment.)

25 **Sec. 13.** (Deleted by amendment.)

26 **Sec. 14.** (Deleted by amendment.)

27 **Sec. 15.** (Deleted by amendment.)

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

31 **Sec. 17.** (Deleted by amendment.)

