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STATE OF NEVADA
FINANCIAL INSTITUTIONS DIVISION
DEPARTMENT OF BUSINESS AND INDUSTRY

GEORGE E. BURNS
Commissioner
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Deputy Commissioner

May 20, 2010

Cindy Armentrout, Esq.
Kalicki Law Offices
5470 Kietzke Lane, Ste. 140,
Reno, NV 89511

RE: Petition for Advisory Opinion Regarding Retail Installment Contracts

Dear Ms. Armentrout:

This letter constitutes the response by the Financial Institutions Division, State of Nevada Department of Business and Industry (hereafter the "Division") regarding your request for an advisory opinion dated April 12, 2010. The request was made pursuant to Nevada Administrative Code (NAC) 232.040, *et seq.*

STATEMENT OF ISSUES

The Kalicki Law Offices (hereafter "Petitioner") has made a request for an advisory opinion based upon the assertion that they are representing an anonymous client, who allegedly engages in the business of selling computers over the internet. Petitioner states that this company wishes to begin financing the computer sales and then selling the financing contracts to unnamed third parties. Because Petitioner does not provide any information regarding the sales agreements, financing arrangements, the name of the client or any documentation, the Division will review this matter as a hypothetical.

Petitioner has requested an advisory opinion as to whether a person providing a retail sales agreement covered under NRS Chapter 97 must be licensed under NRS Chapter 675 if financing for the sale is provided.

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ANALYSIS

The Legislature defined the purpose and scope of NRS Chapter 675 was to “[b]ring under public supervision those engaged in the business of making loans.” NRS 675.030(3)(a). The broad scope of activities covered under NRS Chapter 675 is clearly stated in NRS 675.060 which requires a license under this chapter for anyone engaged in the “business of lending.”

NRS 675.060 Unlicensed dealing in loans prohibited; license required for each office or other place of business.

1. No person may engage in the business of lending 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, except that if a person intends to engage in the business of lending in this State as a deferred deposit loan service, high-interest loan service or title loan service, as those terms are defined in chapter 604A of NRS, the person must obtain a license from the Commissioner pursuant to chapter 604A of NRS before the person may engage in any such business.

2. For the purpose of this section, a person engages in the business of lending in this State if he or she:

(a) Solicits loans in this State or makes loans to persons in this State, unless these are isolated, incidental or occasional transactions; or

(b) Is located in this State and solicits loans outside of this State or makes loans to persons located outside of this State, unless these are isolated, incidental or occasional transactions.

The intent and language of NRS Chapter 675 clearly state that anyone engaged in the business of lending not covered under NRS Chapter 604A is required to have a license under NRS Chapter 675.

The exemptions to NRS Chapter 675 are listed in NRS 675.040 and read as follows:

NRS 675.040 Applicability of chapter; exemptions. This chapter does not apply to:

1. Except as otherwise provided in NRS 675.035, a person doing business under the authority of any law of this State or of the United States relating to banks, national banking associations, savings banks, trust companies, savings and loan associations, credit unions, development corporations, mortgage brokers, mortgage bankers, thrift companies, pawnbrokers or insurance companies.

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

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

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

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

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

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

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

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

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

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

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

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

No exemption is listed for transactions involving the retail sales agreements under NRS Chapter 97. Further, sales where the payment is secured by an interest in the goods sold are specifically defined as a loan and are covered under NRS 675.330.

The payment of money, credit, goods or things in action, as consideration for any sale, assignment or order for the payment of wages, salary, commissions or other compensation for services earned or to be earned, shall, for the purposes of regulation under this chapter, be deemed a loan of money secured by the sale, assignment or order. The amount by which the compensation so sold, assigned or ordered paid exceeds the amount of the consideration actually paid shall, for the purposes of regulation under this chapter, be deemed interest or charges on the loan from the date of the payment to the date the compensation is payable. Such a transaction is subject to the provisions of this chapter.

Moreover, Petitioner asserts that because Nevada Administrative Code (NAC) 675.060 authorizes a person licensed under NRS Chapter 675 to conduct business in the same place as a person conducting retail sales agreement financing pursuant to NRS Chapter 97, the statutes

should be interpreted as drawing a distinction between the two actions. However, NAC 675.060 draws no such distinction, nor can the implication be made that a person can engage in retail sale financing and not be in the business of lending. NAC 675.060 reads as follows:

NAC 675.060 Conduct of loan business with sales finance business. (NRS 675.170, 675.230) Licensees may conduct the business of making loans in the same office or place of business where the licensee, an affiliate or associate also conducts a sales finance business (the purchase of time paper representing the sale of goods or services) if in the conduct of such other business in the office of the licensee, the following is observed:

1. The sales finance business which is subject to chapter 97 of NRS must be carried on in compliance with that chapter.
2. Charges in connection with a retail installment contract subject to chapter 97 of NRS must be made only as expressly authorized by chapter 97 of NRS. No charge may be collected from the debtor on such a contract on the basis of or by reason of the assignment of the contract to the licensee.
3. The validity of any such contract must be determined by the law of the state where it actually is made.
4. Retail installment contracts created pursuant to chapter 97 of NRS are not subject to any maximum term or period of contract, and all such contracts may be purchased by licensees.
5. Default charges, attorney fees, collection costs and similar items which may be collected on such contracts are limited to those expressly provided for in chapter 97 of NRS.

The regulation was created to provide an exemption to the requirement of NRS 675.230(1) which states, "a licensee may not conduct the business of making loans under this chapter within any office, suite, room or place of business in which any other business is solicited or engaged in, except an insurance agency or notary public, or in association or conjunction with any other business, unless authority to do so is given by the Commissioner." The regulation was created to provide that authorization.

The regulation clearly states that a licensee may conduct business in the same location where "the licensee, an affiliate or associate also conducts a sales finance business." NAC 675.060. Because the regulation permits "the licensee" or "an affiliate or associate" of the licensee to conduct retail sales financing, implies that a license under NRS Chapter 675 is required. Nothing in the statutes or regulations exempts retail sales financing from licensing under NRS Chapter 675.

CONCLUSION

Based upon the foregoing, it is the opinion of the Financial Institutions Division, State of Nevada Department of Business and Industry, that a person engaged in the financing of a retail sales agreement under NRS Chapter 97 is in the business of lending under NRS Chapter 675 and is required to be licensed pursuant to NRS Chapter 675. While the NRS 675.040 provides for specific exemptions, there are no exclusions for financing the sale of goods.

Sincerely,

STATE OF NEVADA
DEPARTMENT OF BUSINESS
AND INDUSTRY, FINANCIAL
INSTITUTIONS DIVISION



GEORGE E. BURNS,
Commissioner