

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAILYPAY, INC., a Delaware Corporation; NEVADANS FOR FINANCIAL CHOICE, a Nevada Political Action Committee; CHRISTINA BAUER, an individual; ACTIVEHOURS, INC., a Delaware Corporation; STACY PRESS, an individual; PREFERRED CAPITAL FUNDING NEVADA, LLC, a Nevada Limited Liability Company; and ALLIANCE FOR RESPONSIBLE CONSUMER LEGAL FUNDING, an Illinois Nonprofit Corporation,

Appellants,

v.

FRANCISCO V. AGUILAR IN HIS OFFICIAL CAPACITY AS NEVADA SECRETARY OF STATE; KATE FELDMAN, an individual; and STOP PREDATORY LENDING NV, a Nevada Nonprofit Corp.,

Respondents.

Electronically Filed
Case No. 88557 May 29 2024 02:30 PM
Elizabeth A. Brown
Clerk of Supreme Court

**MOTION FOR SUMMARY
REVERSAL OR, IN THE
ALTERNATIVE,
MUNSINGWEAR VACATUR**

NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

Appellant Nevadans for Financial Choice is a Nevada Political Action Committee. Appellant Christina Bauer is an individual. Pisanelli Bice PLLC is the only law firm whose attorneys are expected to appear for Appellants Nevadans for Financial Choice and Christina Bauer on appeal. Pisanelli Bice PLLC was also the only law firm who appeared for Appellants Nevadans for Financial Choice and Christina Bauer below.

DATED this 29th day of May, 2024.

PISANELLI BICE PLLC

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I. INTRODUCTION

Intervening events may change cases, often resolving issues or otherwise clarifying the issues that this Court must resolve. Here, during the pendency of this litigation, Nevada codified Senate Bill 290 as NRS Chapter 604D: Earned Wage Access Services. Unfortunately for Respondents, the at-issue initiative petition – S-03-2024 ("Petition" or "S-03-2024") – proposes to create a different NRS Chapter 604D: Preventing Predatory Payday and Other Loans Act. Now, the Petition is functionally a referendum, requiring the repeal of the current Chapter 604D to accommodate the proposed different Chapter 604D, which regulates some of the same types of financial transactions governed by the current Chapter 604D. But the description of effect mentions none of that. And the Petition does not include the full text of NRS Chapter 604D, which is necessary to give potential signers an understanding of what the law is now and what the law will be should the Petition succeed. Accordingly, this Court should summarily reverse the district court's order. Alternatively, this Court may grant *Munsingwear* vacatur to allow the parties to relitigate the propriety of S-03-2024 below.

II. STATEMENT OF RELEVANT FACTS

On January 5, 2024, Respondent Kate Feldman filed a petition for ballot initiative S-01-2024. (1 AA 8).¹ Shortly thereafter, on January 24, 2024, Feldman

¹ Cites to "AA" reference the appellants appendix filed in Docket 88526.

filed S-03-2024, the Petition at issue in this appeal. (3 AA 449). The Petition proposed to enact "Chapter 604D: Preventing Predatory Payday and Other Loans Act." (*Id.* at 449-65). It is substantively identical to the petition at issue in Docket 88526, with the exception that S-03-2024 does not include the writ of execution and garnishment provisions. (*Compare id., with* 1 AA 8-32). S-03-2024 includes the following description of effect:

This measure addresses high-interest lending practices by establishing maximum interest rates charged to consumers.

Currently, most consumer loans have no interest rate cap. The proposed cap would set a maximum interest rate of 36% annually on the unpaid balance of the amount financed, and would apply to consumer loans; deferred-deposit transactions ("payday loans"); title loans; and other loan types dependent on future earnings and income.

The initiative also prohibits evading the interest rate cap by structuring transactions to mask their nature as loans covered by this measure, or partnering with out-of-state lenders to violate the rate cap. The initiative voids transactions that violate the cap, and establishes civil penalties.

(3 AA 460).

The parties raised a variety of arguments, but pertinent here are the description of effect and full-text arguments. As to the description of effect, the parties asserted that the description did not sufficiently detail the proposed changes and effect of the

Docket 88526 is the related appeal regarding petition S-01-2024, the companion initiative to S-03-2024, the initiative at issue in this appeal. Because the petitions were proposed closely in time and are virtually identical, the parties briefed them in the same briefing below. Thus, the record on appeal in Docket 88526 will be the same record on appeal in this Docket.

Petition. (1 AA 39-40, 153-56; 2 AA 271-72, 327-330). And, they asserted that the Petition lacked the full text of the proposed changes. (2 AA 330-332; 3 AA 467-68). The district court disagreed, labeling the description of effect as sufficient. (4 AA 794). The district court also rejected the full-text argument, concluding that the Petition "contains every provision that is proposed to be circulated for signatures." (*Id.* at 795). Also, the district court rejected Appellant DailyPay's argument that the Petition was a referendum to SB 290 (2023), because "[t]he Petition does not change a single word of SB 290." (*Id.* at 796 n.2).

However, after the district court's decision and while the appeal remains pending, the Nevada Legislature codified SB 290 as NRS Chapter 604D: Earned Wage Access Services. (Ex. 1).² Thus, contrary to the district court's order, the Petition now "change[s]" every word of SB 290, as codified in NRS Chapter 604D, because the Petition proposes replacing all of NRS Chapter 604D: Earned Wage Access Services with a new NRS Chapter 604D: Preventing Predatory Payday and Other Loans Act.

² This Court took judicial notice of the codification of SB 290 as NRS Chapter 604D. *Feldman v. Aguilar, et al.*, No. 88526, at *1 (Order Granting Motion May 24, 2024) (granting DailyPay, Inc.'s motion for judicial notice of the codification of SB 290 in the related appeal regarding S-01-2024).

III. ARGUMENT

A. Legal Standard.

This Court has the authority to summarily reverse a district court's order. *See* NRAP 2 ("On the court's own or a party's motion, the court may – to expedite its decision or for other good cause – suspend any provision of these Rules in a particular case and order proceedings as the court directs."); *see also Groendyke Transport, Inc. v. Davis*, 406 F.2d 1158, 1161 (5th Cir. 1969) (explaining that FRAP 2 allows appellate courts to summarily dispose of appeals).³ Summary reversal is appropriate where the result is clear from the face of the record. *See, e.g., United States v. Hooton*, 693 F.2d 857, 858-59 (9th Cir. 1982) (explaining that summary disposition is appropriate where the record shows "the outcome of a case is beyond dispute"); *Groendyke Transport, Inc.*, 406 F.2d at 1162 (explaining that summary disposition is proper where "the position of one of the parties is clearly right as a matter of law").

³ "Federal cases interpreting the Federal Rules of Civil Procedure 'are strong persuasive authority, because the Nevada Rules of Civil Procedure are based in large part upon their federal counterparts.'" *Exec. Mgmt., Ltd. v. Ticor Title Ins. Co.*, 118 Nev. 46, 53, 38 P.3d 872, 876 (2002) (quoting *Las Vegas Novelty v. Fernandez*, 106 Nev. 113, 119, 787 P.2d 772, 776 (1990)).

The codification of SB 290, which addresses "Earned Wage Access Services," as NRS Chapter 604D," renders this appeal ripe for summary reversal. Specifically, as discussed below, this Court's description-of-effect jurisprudence and full-text-requirement jurisprudence clearly require reversal.⁴

B. The Description of Effect is Insufficient as a Matter of Law.

"[A] description of effect must be 'straightforward, succinct, and nonargumentative.'" *Educ. Initiative PAC v. Comm. to Protect Nev. Jobs*, 129 Nev. 35, 42, 293 P.3d 874, 879 (2013) (quoting *Las Vegas Taxpayer Accountability Comm. v. City Council*, 125 Nev. 165, 183, 208 P.3d 429, 441 (2009)). It must summarize "what the initiative is designed to achieve and how it intends to reach those goals." *Id.* at 37, 293 P.3d at 876. Descriptions of effect serve an important purpose: they help "prevent voter confusion and promote informed decisions." *Las Vegas Taxpayer Accountability Comm.*, 125 Nev. at 183, 208 P.3d at 441 (quoting *Nevadans for Nev. v. Beers*, 122 Nev. 930, 939, 142 P.3d 339, 345 (2006)).

⁴ These identified errors do not encapsulate the multitude of reasons why the district court's order should be reversed. Appellants reserve the right to make any argument supported by the record should this Court deny the instant Motion for Summary Reversal.

Here, the description of effect makes no mention of the wholesale repeal of NRS Chapter 604D. (3 AA 460). As drafted, a potential signer could read the Petition and its description of effect and not know the drastic effects the Petition has. Indeed, no signer would know that the Petition, which is proposing to enact "Chapter 604D: Preventing Predatory Payday and Other Loans Act," would result in the repeal of the current "Chapter 604D: Earned Wage Access Services." (*See* Ex. 1). The description of effect is thus clearly deficient. *See Prevent Sanctuary Cities v. Haley*, No. 74966, 2018 WL 2272955, at *4 (Nev. May 16, 2018) (explaining that while "the description at issue here describes the prohibitory effect of the initiative, the impact of that prohibition on existing policies and laws is not described").

C. The Petition Also Violates the Full-Text Requirement.

Under Nevada law, each "petition shall include the full text of the measure proposed." Nev. Const. art. 19, § 3. Such a requirement serves to give each potential signer the ability "and opportunity before signing to read the full text of the act or resolution upon which the initiative or referendum is demanded." NRS 295.0575(6). "[T]he requirement that each signer be given the opportunity to review a measure's full text serves the purpose of ensuring that signers know what they are supporting." *Las Vegas Convention & Visitors Auth. v. Miller*, 124 Nev. 669, 686, 191 P.3d 1138, 1149 (2008).

To satisfy the full-text requirement, the initiative must include the full text of the statutes it purports to enact, including redlines to the existing statutory scheme. *We Care-Santa Paula v. Herrera*, 42 Cal. Rptr. 3d 577, 578 (Ct. App. 2006) (collecting cases where various courts found initiatives or referendums invalid because the petitions "referenced portions of the general plan by heading and chapter number without including any part of the text" or "referred to the ordinance to be repealed only by number and title").

This Court's recent decision, *Schools over Stadiums v. Thompson*, No. 87613, 2024 WL 2138152 (May 13, 2024), is illustrative. There, the petition proposed a referendum to disapprove select portions of Senate Bill 1, passed during the 2023 special session. *Id.* at *1. The proponents included only the text of the provisions of S.B.1 that they specifically sought to repeal; they did not include the entire text of S.B.1. *Id.* As such, the petition did not include the full text necessary "to provide voters the complete context of the proposed measure so that they can understand what the law is now and what the law will be should they approve or disapprove the parts of S.B.1 that are being submitted to a vote of the people." *Id.*

Similarly, here, the Petition does not include a redline of any change to any statutes – such as the entirety of NRS Chapter 604D, which the Petition proposes to replace. (3 AA 449-65). It includes solely the new chapter it purports to add. (*See id.*). Since it functionally repeals the entirety of the now-existing

NRS Chapter 604D, the Petition, much like in *Schools over Stadiums*, does not give voters "the complete context of the proposed measure so that they can understand what the law is now and what the law will be should they approve or disapprove the parts" of NRS Chapter 604D.

D. Alternatively, this Court Should Dismiss this Case as Moot.

Alternatively, this Court should direct the district court to reverse its order as moot. In *United States v. Munsingwear, Inc.*, 340 U.S. 36 (1950), the United States Supreme Court addressed how courts should handle cases where the appeal becomes moot during the appellate process. As the Supreme Court explained, "[t]he established practice of the Court in dealing with a civil case from a court in the federal system which has become moot while on its way here or pending our decision on the merits is to reverse or vacate the judgment below and remand with a direction to dismiss." *Id.* at 39. Such a procedure "clears the path for future relitigation of the issues between the parties and eliminates a judgment, review of which was prevented through happenstance." *Id.*

IV. CONCLUSION

The factual situation underlying this litigation has fundamentally changed. As discussed above, this change warrants reversal of the district court's order as the order is facially wrong as a matter of law. Alternatively, this Court could grant *Munsingwear* vacatur, dismissing the case, which would allow the parties the

opportunity to relitigate the single-subject rule, description-of-effect violation, and full-text argument in light of the current factual record without prejudice to any parties.

DATED this 29th day of May, 2024.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Pisanelli Bice, PLLC, and that on this 29th day of May, 2024, I electronically filed and served a true and correct copy of the above and foregoing **MOTION FOR SUMMARY REVERSAL OR, IN THE ALTERNATIVE, *MUNSINGWEAR VACATUR*** to all parties registered for electronic service.

/s/ Kimberly Peets
An employee of Pisanelli Bice PLLC

EXHIBIT 1

CHAPTER 604D

EARNED WAGE ACCESS SERVICES

GENERAL PROVISIONS

- NRS 604D.010 Definitions. [Effective July 1, 2024, and expires by limitation on December 31, 2029.]
- NRS 604D.020 “Commissioner” defined. [Effective July 1, 2024, and expires by limitation on December 31, 2029.]
- NRS 604D.030 “Direct-to-consumer earned wage access provider” defined. [Effective July 1, 2024, and expires by limitation on December 31, 2029.]
- NRS 604D.040 “Direct-to-consumer earned wage access services” defined. [Effective July 1, 2024, and expires by limitation on December 31, 2029.]
- NRS 604D.050 “Earned but unpaid income” defined. [Effective July 1, 2024, and expires by limitation on December 31, 2029.]
- NRS 604D.060 “Earned wage access services” defined. [Effective July 1, 2024, and expires by limitation on December 31, 2029.]
- NRS 604D.070 “Employer” defined. [Effective July 1, 2024, and expires by limitation on December 31, 2029.]
- NRS 604D.080 “Employer-integrated earned wage access provider” defined. [Effective July 1, 2024, and expires by limitation on December 31, 2029.]
- NRS 604D.090 “Employer-integrated earned wage access services” defined. [Effective July 1, 2024, and expires by limitation on December 31, 2029.]
- NRS 604D.100 “Fee” defined. [Effective July 1, 2024, and expires by limitation on December 31, 2029.]
- NRS 604D.110 “Licensee” defined. [Effective July 1, 2024, and expires by limitation on December 31, 2029.]
- NRS 604D.120 “Nationwide Multistate Licensing System and Registry” and “Registry” defined. [Effective on the date on which the Commissioner of Financial Institutions notifies the Governor and the Director of the Legislative Counsel Bureau that the Nationwide Multistate Licensing System and Registry has sufficient capabilities to allow the Commissioner to carry out the provisions of chapter 400, Statutes of Nevada 2023, at page 2393, and expires by limitation on December 31, 2029.]
- NRS 604D.130 “Outstanding proceeds” defined. [Effective July 1, 2024, and expires by limitation on December 31, 2029.]
- NRS 604D.140 “Preauthorized electronic fund transfer” defined. [Effective July 1, 2024, and expires by limitation on December 31, 2029.]

CH. 604D**EARNED WAGE ACCESS SERVICES**

- NRS 604D.150 “Proceeds” defined. [Effective July 1, 2024, and expires by limitation on December 31, 2029.]
- NRS 604D.160 “Provider” defined. [Effective July 1, 2024, and expires by limitation on December 31, 2029.]
- NRS 604D.170 “User” defined. [Effective July 1, 2024, and expires by limitation on December 31, 2029.]
- NRS 604D.180 Commissioner authorized to adopt regulations. [Effective July 1, 2024, and expires by limitation on December 31, 2029.]
- NRS 604D.190 Construction of chapter; resolution of conflicts. [Effective July 1, 2024, and expires by limitation on December 31, 2029.]

LICENSING

- NRS 604D.200 License required; application; issuance; expiration; renewal; Commissioner to adopt regulations establishing amount of fees; license not transferrable or assignable; applicability. [Effective July 1, 2024, and expires by limitation on December 31, 2029.]
- NRS 604D.210 Additional requirements for licensure; grounds for refusal to issue license. [Effective July 1, 2024, and expires by limitation on December 31, 2029.]
- NRS 604D.220 Statement concerning obligation for child support required for issuance or renewal of license. [Effective July 1, 2024, and expires by limitation on the earlier of December 31, 2029, or the date of the repeal of 42 U.S.C. § 666, the federal law requiring each state to establish procedures for withholding, suspending and restricting the professional, occupational and recreational licenses for child support arrearages and for noncompliance with certain processes relating to paternity or child support proceedings.]
- NRS 604D.230 Suspension of license; reinstatement of license. [Effective July 1, 2024, and expires by limitation on the earlier of December 31, 2029, or the date of the repeal of 42 U.S.C. § 666, the federal law requiring each state to establish procedures for withholding, suspending and restricting the professional, occupational and recreational licenses for child support arrearages and for noncompliance with certain processes relating to paternity or child support proceedings.]
- NRS 604D.240 License remains effective until expiration, surrender, revocation or suspension. [Expires by limitation on December 31, 2029.]
- NRS 604D.250 Bond: Amount; form; notice to Commissioner; replenishment; liability of surety. [Effective July 1, 2024, and expires by limitation on December 31, 2029.]
- NRS 604D.260 Certain changes of licensee prohibited without prior approval of Commissioner; notice of proposed change to Commissioner; approval of Commissioner. [Effective July 1, 2024, and expires by limitation on December 31, 2029.]
- NRS 604D.270 Change in principal officers or directors of licensee. [Effective July 1, 2024, and expires by limitation on December 31, 2029.]

**NATIONWIDE MULTISTATE LICENSING
SYSTEM AND REGISTRY**

- NRS 604D.300 Commissioner authorized to take action to participate in Registry; fingerprints; charges for use; regulations; provisions do not replace or affect authority of Commissioner regarding licensure. [Effective on the date on which the Commissioner of Financial Institutions notifies the Governor and the Director of the Legislative Counsel Bureau that the Nationwide Multistate Licensing System and Registry has sufficient capabilities to allow the Commissioner to carry out the provisions of chapter 400, Statutes of Nevada 2023, at page 2393.]
- NRS 604D.310 Additional materials required to be submitted to Registry. [Effective on the date on which the Commissioner of Financial Institutions notifies the Governor and the Director of the Legislative Counsel Bureau that the Nationwide Multistate Licensing System and Registry has sufficient capabilities to allow the Commissioner to carry out the provisions of chapter 400, Statutes of Nevada 2023, at page 2393.]
- NRS 604D.320 Licensee to register and maintain unique identifier; Commissioner authorized to issue license through Registry; references to Commissioner deemed references to Registry. [Effective on the date on which the Commissioner of Financial Institutions notifies the Governor and the Director of the Legislative Counsel Bureau that the Nationwide Multistate Licensing System and Registry has sufficient capabilities to allow the Commissioner to carry out the provisions of chapter 400, Statutes of Nevada 2023, at page 2393.]
- NRS 604D.330 Commissioner to report information to Registry; confidentiality of information provided; Commissioner authorized to enter into certain agreements and arrangements. [Effective on the date on which the Commissioner of Financial Institutions notifies the Governor and the Director of the Legislative Counsel Bureau that the Nationwide Multistate Licensing System and Registry has sufficient capabilities to allow the Commissioner to carry out the provisions of chapter 400, Statutes of Nevada 2023, at page 2393, and expires by limitation on December 31, 2029.]

REGULATION OF BUSINESS PRACTICES

- NRS 604D.400 Duties of provider; applicability to certain payments. [Effective July 1, 2024, and expires by limitation on December 31, 2029.]
- NRS 604D.410 Prohibited acts by provider; certain acts not precluded. [Effective July 1, 2024, and expires by limitation on December 31, 2029.]

**REPORTS; EXAMINATIONS
AND INVESTIGATIONS**

- NRS 604D.500 Licensee to submit annual report to Commissioner; unavailability of audited financial statements; confidentiality of documents and information; annual publication by Commissioner. [Effective July 1, 2024, and expires by limitation on December 31, 2029.]
- NRS 604D.510 Annual examinations by Commissioner. [Effective July 1, 2024, and expires by limitation on December 31, 2029.]
- NRS 604D.520 Examination of books and records by Commissioner; reasonable access required; presumption of engagement in business of provider requiring license; exception. [Effective July 1, 2024, and expires by limitation on December 31, 2029.]
- NRS 604D.530 Investigations and hearings; required attendance and testimony of persons and production of documents. [Effective July 1, 2024, and expires by limitation on December 31, 2029.]
- NRS 604D.540 Authority of Commissioner to require attendance of witnesses and production of books and records. [Effective July 1, 2024, and expires by limitation on December 31, 2029.]
- NRS 604D.550 Fee for supervision, audit, examination, investigation or hearing; employment of certified public accountant; deposit in State Treasury. [Effective July 1, 2024, and expires by limitation on December 31, 2029.]

DISCIPLINARY ACTION

- NRS 604D.600 Person may file complaint alleging violation; duties of Commissioner when complaint is filed; verified answer by licensee; certain records relating to complaint or investigation deemed confidential. [Effective July 1, 2024, and expires by limitation on December 31, 2029.]
- NRS 604D.610 Temporary suspension of license; notice of hearing to revoke or suspend license. [Effective July 1, 2024, and expires by limitation on December 31, 2029.]
- NRS 604D.620 Order to desist and refrain; action to enjoin violation; administrative fine. [Effective July 1, 2024, and expires by limitation on December 31, 2029.]

MISCELLANEOUS PROVISIONS

- NRS 604D.900 Applicability of chapters 604A and 675 of NRS. [Effective July 1, 2024, and expires by limitation on December 31, 2029.]

CHAPTER 604D
EARNED WAGE ACCESS SERVICES

CROSS REFERENCES

Examination and supervision, fee, NRS 658.101
Installment Loan and Finance Act, Nevada, applicability, NRS ch. 675
Security and privacy of personal information, applicability of laws, NRS ch. 604A
State Treasury, deposits, NRS 658.091

GENERAL PROVISIONS

NRS 604D.010 Definitions. [Effective July 1, 2024, and expires by limitation on December 31, 2029.] As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 604D.020 to 604D.170, inclusive, have the meanings ascribed to them in those sections.

(Added to NRS by 2023, 2395, effective July 1, 2024)

NRS 604D.020 “Commissioner” defined. [Effective July 1, 2024, and expires by limitation on December 31, 2029.] “Commissioner” means the Commissioner of Financial Institutions.

(Added to NRS by 2023, 2395, effective July 1, 2024)

NRS 604D.030 “Direct-to-consumer earned wage access provider” defined. [Effective July 1, 2024, and expires by limitation on December 31, 2029.] “Direct-to-consumer earned wage access provider” means a person who is engaged in the business of providing direct-to-consumer earned wage access services.

(Added to NRS by 2023, 2395, effective July 1, 2024)

NRS 604D.040 “Direct-to-consumer earned wage access services” defined. [Effective July 1, 2024, and expires by limitation on December 31, 2029.] “Direct-to-consumer earned wage access services” means the delivery to a user of an advance of earned but unpaid income based on data that is not employment, income or attendance data obtained directly from an employer or an employer’s payroll service provider.

(Added to NRS by 2023, 2395, effective July 1, 2024)

NRS 604D.050 “Earned but unpaid income” defined. [Effective July 1, 2024, and expires by limitation on December 31, 2029.]

1. “Earned but unpaid income” means salary, wages, compensation or other income that:

(a) A user or employer has represented, and a provider has reasonably determined to have been, earned or accrued to the benefit of the user in exchange for the user’s provision of services to the employer or on behalf of the employer; and

(b) Has not been paid to the user by the employer at the time a provider delivers the payment of the proceeds to a user.

2. The term includes, without limitation, salary, wages, compensation or other income earned:

(a) On an hourly, project-based, piecework or other basis.

(b) Through services rendered as an independent contractor.

(Added to NRS by 2023, 2395, effective July 1, 2024)

NRS 604D.060 “Earned wage access services” defined. [Effective July 1, 2024, and expires by limitation on December 31, 2029.]

1. “Earned wage access services” means the delivery to a user of money that represents earned but unpaid income.

2. The term includes both employer-integrated earned wage access services and direct-to-consumer earned wage access services.

(Added to NRS by 2023, 2395, effective July 1, 2024)

NRS 604D.070 “Employer” defined. [Effective July 1, 2024, and expires by limitation on December 31, 2029.]

1. “Employer” means:
 - (a) A person who employs a user; or
 - (b) Any other person who is contractually obligated to pay a user any earned but unpaid income.
 2. The term does not include:
 - (a) A customer of an employer; or
 - (b) Any other person whose obligation to make a payment of salary, wages, compensation or other income to a user is not based on the provision of services by that user for or on behalf of such person.
- (Added to NRS by 2023, 2395, effective July 1, 2024)

NRS 604D.080 “Employer-integrated earned wage access provider” defined. [Effective July 1, 2024, and expires by limitation on December 31, 2029.]

1. “Employer-integrated earned wage access provider” means a person who is engaged in the business of offering to provide or providing employer-integrated earned wage access services.
 2. The term does not include payroll service providers, including, without limitation, payroll service providers whose role may include verifying the available earnings but who are not contractually obligated to fund earned wage access service proceeds to a user.
- (Added to NRS by 2023, 2395, effective July 1, 2024)

NRS 604D.090 “Employer-integrated earned wage access services” defined. [Effective July 1, 2024, and expires by limitation on December 31, 2029.] “Employer-integrated earned wage access services” means the delivery to a user of access to earned but unpaid income determined based on employment, income or attendance data obtained directly or indirectly from an employer, including, without limitation, an employer’s payroll service provider.

(Added to NRS by 2023, 2396, effective July 1, 2024)

NRS 604D.100 “Fee” defined. [Effective July 1, 2024, and expires by limitation on December 31, 2029.]

1. “Fee” includes:
 - (a) A fee imposed by a provider for delivery or expedited delivery of proceeds to a user; and
 - (b) A subscription or membership fee imposed by a provider for a bona fide group of services that include earned wage access services.
 2. The term does not include a voluntary tip, gratuity or donation.
- (Added to NRS by 2023, 2396, effective July 1, 2024)

NRS 604D.110 “Licensee” defined. [Effective July 1, 2024, and expires by limitation on December 31, 2029.] “Licensee” means a person who has been issued one or more licenses to engage in the business of:

1. An employer-integrated earned wage access provider; or
 2. A direct-to-consumer earned wage access service provider.
- (Added to NRS by 2023, 2396, effective July 1, 2024)

NRS 604D.120 “Nationwide Multistate Licensing System and Registry” and “Registry” defined. [Effective on the date on which the Commissioner of Financial Institutions notifies the Governor and the Director of the Legislative Counsel Bureau that the Nationwide Multistate Licensing System and Registry has sufficient capabilities to allow the Commissioner to carry out the provisions of chapter 400, Statutes of Nevada 2023, at page 2393, and expires by limitation on December 31, 2029.] “Nationwide Multistate Licensing System and Registry” or “Registry” means a multistate licensing system developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators and operated by the State Regulatory Registry, LLC, for the licensing and registration of non-depository financial service entities by participating state agencies, or any successor to the Nationwide Multistate Licensing System and Registry.

(Added to NRS by 2023, 2396, effective on the date on which the Commissioner of Financial Institutions notifies the Governor and the Director of the Legislative Counsel Bureau that the Nationwide Multistate Licensing System and Registry has sufficient capabilities to allow the Commissioner to carry out the provisions of chapter 400, Statutes of Nevada 2023, at page 2393)

NRS 604D.130 “Outstanding proceeds” defined. [Effective July 1, 2024, and expires by limitation on December 31, 2029.] “Outstanding proceeds” means proceeds remitted to a user by a provider that have not yet been repaid to that provider.

(Added to NRS by 2023, 2396, effective July 1, 2024)

NRS 604D.140 “Preauthorized electronic fund transfer” defined. [Effective July 1, 2024, and expires by limitation on December 31, 2029.] “Preauthorized electronic fund transfer” has the meaning ascribed to it in 12 C.F.R. § 1005.2(k).

(Added to NRS by 2023, 2396, effective July 1, 2024)

NRS 604D.150 “Proceeds” defined. [Effective July 1, 2024, and expires by limitation on December 31, 2029.] “Proceeds” means a payment delivered to a user by a provider that is based on earned but unpaid income.

(Added to NRS by 2023, 2396, effective July 1, 2024)

NRS 604D.160 “Provider” defined. [Effective July 1, 2024, and expires by limitation on December 31, 2029.]

1. “Provider” means a person who is engaged in the business of providing earned wage access services, including a direct-to-consumer earned wage access provider and an employer-integrated earned wage access provider.

2. The term does not include payroll service providers, including, without limitation, payroll service providers whose role may include verifying available earners but who are not contractually obligated to fund proceeds to a user.

(Added to NRS by 2023, 2396, effective July 1, 2024)

NRS 604D.170 “User” defined. [Effective July 1, 2024, and expires by limitation on December 31, 2029.] “User” means a natural person residing in this State who receives earned wage access services.

(Added to NRS by 2023, 2396, effective July 1, 2024)

NRS 604D.180 Commissioner authorized to adopt regulations. [Effective July 1, 2024, and expires by limitation on December 31, 2029.] The Commissioner may adopt regulations for the administration and enforcement of this chapter, in addition to and not inconsistent with this chapter. Such regulations may include, without limitation, requirements relating to the retention of records by a provider.

(Added to NRS by 2023, 2407, effective July 1, 2024)

NRS 604D.190 Construction of chapter; resolution of conflicts. [Effective July 1, 2024, and expires by limitation on December 31, 2029.]

1. Nothing in this chapter shall be construed to cause:

(a) Any earned wage access services provided by a licensee in compliance with this chapter to be deemed:

(1) A loan or other form of credit;

(2) As violating or noncompliant with the laws of this State governing the sale or assignment of, or an order of, earned but unpaid income; or

(3) A money transmission, or to be subject to any of the provisions of law governing loans or money transmitters;

(b) Any licensee in compliance with this chapter to be deemed a creditor, lender or money transmitter; and

(c) Any fee provided to a consumer by a provider in compliance of this chapter to be deemed an interest or finance charge.

2. If there is a conflict between the provisions of this chapter and any other statute, the provisions of this chapter control.

(Added to NRS by 2023, 2407, effective July 1, 2024)

LICENSING

NRS 604D.200 License required; application; issuance; expiration; renewal; Commissioner to adopt regulations establishing amount of fees; license not transferrable or assignable; applicability. [Effective July 1, 2024, and expires by limitation on December 31, 2029.]

1. A person shall not engage in the business of a provider unless the person has been issued a license by the Commissioner pursuant to this section.

2. A person who wishes to be licensed as a provider must submit to the Commissioner the application fee established pursuant to subsection 7, and an application, on a form prescribed by the Commissioner, which must contain:

(a) The name and address of the applicant;

(b) A copy of the proposed terms and conditions of use which will govern the provision of earned wage access services by the applicant, which must include, without limitation, a statement by the applicant that he or she will provide services in accordance with the applicable provisions of the federal Electronic Fund Transfer Act, 15 U.S.C. §§ 1693 et seq., and the regulations thereunder;

(c) A copy of the policy of the applicant relating to the privacy of information concerning users;

(d) A schedule of fees proposed to be charged to a user or employer for the provision of earned wage access services, which must include, without limitation, a statement identifying at least one option for a user to obtain earned wage access services from the applicant at no cost to the user;

(e) A statement that the applicant is applying to be licensed as an employer-integrated earned wage access provider or a direct-to-consumer earned wage access provider, or both;

(f) Financial statements of the applicant for the immediately preceding year that have been audited by an independent certified public accountant; and

(g) Any other information required by any regulations adopted by the Commissioner pursuant to NRS 604D.180.

3. Upon receipt of the application for licensure and when satisfied that the applicant is entitled thereto, the Commissioner shall notify the applicant of the Commissioner's approval of the application and issue to the applicant a license as a provider that contains a unique license number. A licensee shall prominently display the license on the Internet website of the licensee.

4. Except as otherwise provided by regulation of the Commissioner, a license issued pursuant to this section expires on December 31 of each year unless it is earlier surrendered, suspended or revoked.

5. The license may be renewed annually upon approval of the Commissioner if the licensee, on or after November 1 and on or before December 31 of each year, files an application conforming to the requirements for an initial application.

6. An application for the annual renewal of the license must be accompanied by a fee of not more than \$1,000. No investigation fee may be charged for the renewal of the license. If the application or fee for renewal is not filed within the required time, the Commissioner may reinstate the expired license if the licensee files the application, submits the fee for renewal and submits a fee of not more than \$1,000 for late renewal, if applicable, on or before February 28 of the year following the expiration date of the license.

7. The Commissioner shall adopt regulations establishing the amount of fees required pursuant to this section. The fees for the application, initial license, and license renewal shall not exceed \$1,000. All fees collected pursuant to this section must be deposited in the State Treasury pursuant to the provisions of NRS 658.091.

8. A license issued pursuant to this section is not transferrable or assignable.

9. This section does not apply to a depository institution in which the deposits are federally insured up to applicable limits.

(Added to NRS by 2023, 2396, effective July 1, 2024)

NRS CROSS REFERENCES.

State Treasury, deposits, NRS 658.091

REVISER'S NOTE.

Ch. 400, Stats. 2023, the source of this section, contains the following provisions not included in NRS:

"Sec. 36.1. 1. On or before September 30, 2023, the Commissioner shall prescribe the form and content of an application for a license to provide earned wage access services pursuant to sections 2 to 33.5, inclusive, of this act [chapter 604D of NRS].

2. As used in this section, "earned wage access services" has the meaning ascribed to it in section 7 of this act [NRS 604D.060].

Sec. 36.2. 1. Notwithstanding the amendatory provisions of this act, a person who, as of January 1, 2023, was engaged in the business of providing earned wage access services in this State may, until December 31, 2024, continue to engage in the business of providing earned wage access services in this State without obtaining a license pursuant to sections 2 to 33.5, inclusive, of this act [chapter 604D of NRS] if the person submits an application for such a license before January 1, 2024, and otherwise complies with this act.

2. As used in this section, "earned wage access services" has the meaning ascribed to it in section 7 of this act [NRS 604D.060]."

NRS 604D.210 Additional requirements for licensure; grounds for refusal to issue license. [Effective July 1, 2024, and expires by limitation on December 31, 2029.]

1. In addition to any other requirements set forth in this chapter, each applicant for licensure as a provider must submit:

- (a) Proof satisfactory to the Commissioner that the applicant:
 - (1) Is competent to transact the business of a provider.
 - (2) Has not made a false statement on the application for the license.
 - (3) Has not committed any of the acts specified in subsection 2.
 - (4) Has not had a license as a provider suspended or revoked within the 10 years immediately preceding the date of the application.
 - (5) Has not been convicted of, or entered a plea of nolo contendere to, a felony or any crime involving fraud, misrepresentation or moral turpitude.
 - (b) If the applicant is a corporation or association:
 - (1) The name and address of each of the directors, trustees and principals of the corporation and of any stockholder who owns 25 percent or more of the applicant's stock;
 - (2) If required by the Commissioner, a complete set of fingerprints for submission to the Federal Bureau of Investigation and any other governmental agency or entity authorized to receive such information for a state, national or international background check on the criminal history of the principal officers of the corporation or association, which must include a written statement authorizing the Division of Financial Institutions of the Department of Business and Industry to forward the fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report;
 - (3) If required by the Commissioner, information concerning the personal history and experience of the principal officers of the corporation or association; and
 - (4) If required by the Commissioner, information related to any administrative, civil or criminal findings made by any governmental jurisdiction concerning the principal officers of the corporation or association.
 - (c) If the applicant is a natural person:
 - (1) Proof satisfactory to the Commissioner that the applicant is at least 21 years of age;
 - (2) Proof satisfactory to the Commissioner that the applicant is a citizen of the United States or lawfully entitled to work in the United States; and
 - (3) A complete set of his or her fingerprints and written permission authorizing the Division of Financial Institutions of the Department of Business and Industry to forward the fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report.
2. In addition to any other lawful reasons, the Commissioner may refuse to issue a license to an applicant for licensure as a provider if the applicant:
- (a) Has committed or participated in any act for which, if committed or done by a licensee, would be grounds for the suspension or revocation of the license.
 - (b) Has previously been refused a license pursuant to this chapter or has had such a license suspended or revoked.
 - (c) Has participated in any act which was a basis for the refusal or revocation of a license pursuant to this chapter.
 - (d) Has falsified any of the information submitted to the Commissioner in support of the application for the license.
- (Added to NRS by 2023, 2397, effective July 1, 2024)

NRS 604D.220 Statement concerning obligation for child support required for issuance or renewal of license. [Effective July 1, 2024, and expires by limitation on the earlier of December 31, 2029, or the date of the repeal of 42 U.S.C. § 666, the federal law requiring each state to establish procedures for withholding, suspending and restricting the professional, occupational and recreational licenses for child support arrearages and for noncompliance with certain processes relating to paternity or child support proceedings.]

1. In addition to the requirements set forth in NRS 604D.200 and 604D.210, a natural person who applies for the issuance or renewal of a license as a provider shall:

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

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

2. The Commissioner shall include the statement required pursuant to paragraph (b) of subsection 1 in:

(a) The application or any other forms that must be submitted for the issuance or renewal of the license; or

(b) A separate form prescribed by the Commissioner.

3. A license as a provider may not be issued or renewed by the Commissioner if the applicant:

(a) Fails to submit the statement required pursuant to paragraph (b) of subsection 1; or

(b) Indicates on the statement submitted pursuant to paragraph (b) of 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 paragraph (b) of 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.

(Added to NRS by 2023, 2400, effective July 1, 2024)

NRS 604D.230 Suspension of license; reinstatement of license. [Effective July 1, 2024, and expires by limitation on the earlier of December 31, 2029, or the date of the repeal of 42 U.S.C. § 666, the federal law requiring each state to establish procedures for withholding, suspending and restricting the professional, occupational and recreational licenses for child support arrearages and for noncompliance with certain processes relating to paternity or child support proceedings.]

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 the holder of a license as a provider, the Commissioner shall deem the license 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 holder of the license

by the district attorney or other public agency pursuant to NRS 425.550 stating that the holder of the license has complied with the subpoena or warrant or has satisfied the arrearage pursuant to NRS 425.560.

2. The Commissioner shall reinstate a license as a 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 license was suspended stating that the person whose license was suspended has complied with the subpoena or warrant or has satisfied the arrearage pursuant to NRS 425.560.

(Added to NRS by 2023, 2401, effective July 1, 2024)

NRS 604D.240 License remains effective until expiration, surrender, revocation or suspension. [Expires by limitation on December 31, 2029.] Each license as a provider shall remain in full force and effect until it expires or is surrendered, revoked or suspended as provided in this chapter and the regulations adopted pursuant thereto.

(Added to NRS by 2023, 2402)

NRS 604D.250 Bond: Amount; form; notice to Commissioner; replenishment; liability of surety. [Effective July 1, 2024, and expires by limitation on December 31, 2029.]

1. Each licensee shall have in force a surety bond payable to the State of Nevada in the amount of \$35,000.

2. The bond must be in a form satisfactory to the Commissioner, issued by a bonding company authorized to do business in this State and must secure the faithful performance of the obligations of the licensee respecting the provision of earned wage access services.

3. A licensee shall, within 10 days after the commencement of any action or notice of entry of any judgment against the licensee by any creditor or claimant arising out of the business of a provider of earned wage access services in this State, give notice thereof to the Commissioner by registered or certified mail with details sufficient to identify the action or judgment. The surety shall, within 10 days after it pays any claim or judgment to a creditor or claimant, give notice thereof to the Commissioner by certified mail with details sufficient to identify the creditor or claimant and the claim or judgment so paid.

4. Whenever the principal sum of the bond is reduced by recoveries or payments thereon, the licensee shall furnish:

(a) A new or additional bond so that the total or aggregate principal sum of the bonds equals the sum required pursuant to subsection 1; or

(b) An endorsement, duly executed by the surety, reinstating the bond to the required principal sum.

5. The liability of the surety on a bond to a creditor or claimant is not affected by any misrepresentation, breach of warranty, failure to pay a premium or other act or omission of the licensee, or by any insolvency or bankruptcy of the licensee.

6. The liability of the surety continues as to all transactions entered into in good faith by the creditors and claimants with the agents of the licensee within 30 days after:

(a) The death of the licensee or the dissolution or liquidation of the business of the licensee; or

(b) The termination of the bond,

↳ whichever occurs first.

(Added to NRS by 2023, 2401, effective July 1, 2024)

NRS 604D.260 Certain changes of licensee prohibited without prior approval of Commissioner; notice of proposed change to Commissioner; approval of Commissioner. [Effective July 1, 2024, and expires by limitation on December 31, 2029.]

1. A licensee shall not make any of the following changes unless the licensee has obtained the prior approval of the Commissioner in accordance with the provisions of this section:

(a) A change in the ownership of 25 percent or more of the capital stock or other equivalent ownership interest of the licensee;

(b) A change in control of the licensee;

(c) A change in the name of the licensee, including the name under which the licensee is doing business; or

(d) A change in the principal business address of the licensee or in the address of any office of the licensee in this State.

2. A licensee who wishes to make any change described in subsection 1 must, not less than 10 business days before the date on which the change is to occur, submit a notice to the Commissioner. Such notice must include any information that the Commissioner may require.

3. Upon receipt of a notice submitted pursuant to subsection 2, the Commissioner shall approve or disapprove the proposed change. The Commissioner may disapprove a proposed change if, in the reasonable judgment of the Commissioner, the proposed change is inconsistent with the requirements of this chapter. If the Commissioner does not respond to a licensee who submits a notice pursuant to subsection 2, including, without limitation, any request by the Commissioner for additional information from the licensee, within 10 business days of the date on which the notice was submitted, the proposed change shall be deemed approved.

4. As used in this section, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policy of the licensee.

(Added to NRS by 2023, 2404, effective July 1, 2024)

NRS 604D.270 Change in principal officers or directors of licensee. [Effective July 1, 2024, and expires by limitation on December 31, 2029.] In addition to the notice requirements set forth in NRS 604D.260, a licensee must, before making a change in the principal officers or directors of a licensee, submit a notice to the Commissioner within a time period prescribed by the Commissioner. If the submission of such a notice is not possible before the change due to the unilateral resignation of a principal officer or director or other similar circumstance, the licensee must submit to the Commissioner a notice as promptly as possible after such a change. If, in the reasonable judgment of the Commissioner, the change in the principal officers or directors of the licensee is inconsistent with the requirements of this chapter, the Commissioner may require the licensee to take such action as the Commissioner deems necessary to ensure compliance with the provisions of this chapter.

(Added to NRS by 2023, 2405, effective July 1, 2024)

NATIONWIDE MULTISTATE LICENSING
SYSTEM AND REGISTRY

NRS 604D.300 Commissioner authorized to take action to participate in Registry; fingerprints; charges for use; regulations; provisions do not replace or affect authority of Commissioner regarding licensure. [Effective on the date on which the Commissioner of Financial Institutions notifies the Governor and the Director of the Legislative Counsel Bureau that the Nationwide Multistate Licensing System and Registry has sufficient capabilities to allow the Commissioner to carry out the provisions of chapter 400, Statutes of Nevada 2023, at page 2393.]

1. The Commissioner may, in furtherance of his or her duties with respect to the issuance and renewal of licenses pursuant to this chapter, participate in the Nationwide Multistate Licensing System and Registry. The Commissioner may take any action with respect to participation in the Registry that the Commissioner deems necessary to carry out his or her duties, including, without limitation:

(a) Facilitating and participating in the establishment and implementation of the Registry;

(b) Establishing relationships or contracts with the Registry or other entities designated by the Registry;

(c) Authorizing the Registry to collect and maintain records of applicants for licenses and licensees;

(d) Authorizing the Registry to, on behalf of the Commissioner, collect and process any fees associated with licensure, examinations, fines, assessments and any other similar fees;

(e) Requiring an applicant for a license or a licensee to use the Registry to:

(1) Apply for the issuance or renewal of a license;

(2) Amend or surrender a license;

(3) Submit any reports or the results of any examination that the Commissioner may require;

(4) Pay any applicable fees; and

(5) Engage in any other activity that the Commissioner may require; and

(f) Authorizing the Registry to, on behalf of the Commissioner, collect fingerprints in order to receive or conduct a background check on the criminal history of an applicant for a license or a licensee.

2. The Commissioner may require an applicant for a license or a licensee to submit a complete set of fingerprints when the Commissioner determines necessary. The Commissioner may use the services of the Registry to process and to submit the fingerprints to the Federal Bureau of Investigation, to the Central Repository for Nevada Records of Criminal History, to any federal or state law enforcement agency or to any other entity authorized to receive such information for the purpose of conducting a background check of the criminal history of an applicant for a license or a licensee.

3. An applicant for a license or a licensee shall, in addition to any other fees associated with the license, pay all applicable charges to use the Registry, including, without limitation, any processing charges established by the administrator of the Registry.

4. The Commissioner may adopt any regulations the Commissioner determines to be necessary or appropriate to carry out the provisions of this section. Such regulations may, without limitation, establish additional procedures and requirements for participation in the Registry.

5. The provisions of this section shall not be construed to replace or affect the authority of the Commissioner to grant, deny, suspend, terminate, revoke or refuse to renew a license.

(Added to NRS by 2023, 2398, effective on the date on which the Commissioner of Financial Institutions notifies the Governor and the Director of the Legislative Counsel Bureau that the Nationwide Multistate Licensing System and Registry has sufficient capabilities to allow the Commissioner to carry out the provisions of chapter 400, Statutes of Nevada 2023, at page 2393)

NRS 604D.310 Additional materials required to be submitted to Registry. [Effective on the date on which the Commissioner of Financial Institutions notifies the Governor and the Director of the Legislative Counsel Bureau that the Nationwide Multistate Licensing System and Registry has sufficient capabilities to allow the Commissioner to carry out the provisions of chapter 400, Statutes of Nevada 2023, at page 2393.]

1. In addition to any other requirements set forth in this chapter, each applicant for the issuance of a license pursuant to this chapter and each owner, officer, director and responsible person of the applicant, each person in control of the applicant and any other person the Commissioner may require in accordance with guidelines of the Registry or other multistate agreements shall submit to the Registry:

(a) A complete set of fingerprints for submission to the Federal Bureau of Investigation and any other governmental agency or entity authorized to receive such information for a state, national and international background check on the criminal history of the person;

(b) Information concerning the personal history, financial history and experience of the person in a form prescribed by the Registry, including, without limitation, an authorization of the person for the Registry and the Commissioner to obtain:

(1) An independent credit report and credit score from a consumer reporting agency described in section 603(f) of the Fair Credit Reporting Act, 15 U.S.C. § 1681a(f), for the purpose of evaluating the financial responsibility of the person at the time of the submission of the application; and

(2) Additional independent credit reports and credit scores to confirm that the person continues to comply with any applicable requirements concerning financial responsibility;

(c) Information related to any administrative, civil or criminal findings made by any governmental jurisdiction concerning the person; and

(d) Any other information concerning the person that the Registry or the Commissioner may require.

2. As used in this section:

(a) "Control" has the meaning ascribed to it in NRS 682A.047.

(b) "Responsible person" means a person who is employed by an applicant and who has principal, active managerial authority over the provision of services in this State.

(Added to NRS by 2023, 2399, effective on the date on which the Commissioner of Financial Institutions notifies the Governor and the Director of the Legislative Counsel Bureau that the Nationwide Multistate Licensing System and Registry has sufficient capabilities to allow the Commissioner to carry out the provisions of chapter 400, Statutes of Nevada 2023, at page 2393)

NRS 604D.320 Licensee to register and maintain unique identifier; Commissioner authorized to issue license through Registry; references to Commissioner deemed references to Registry. [Effective on the date on which the Commissioner of Financial Institutions notifies the Governor and the Director of the Legislative Counsel Bureau that the Nationwide Multistate Licensing System and Registry has sufficient capabilities to allow the Commissioner to carry out the provisions of chapter 400, Statutes of Nevada 2023, at page 2393.]

1. Each licensee shall register with and maintain a valid unique identifier with the Registry.

2. The Commissioner may issue a license through the Registry.

3. To the extent that the Commissioner has delegated to the Registry any of his or her duties with respect to the issuance and renewal of licenses as authorized by the provisions of this chapter, any reference to the Commissioner in this chapter shall be deemed to be a reference to the Registry.

4. As used in this section, "unique identifier" means a number or other identifier assigned by the protocols established by the Registry.

(Added to NRS by 2023, 2400, effective on the date on which the Commissioner of Financial Institutions notifies the Governor and the Director of the Legislative Counsel Bureau that the Nationwide Multistate Licensing System and Registry has sufficient capabilities to allow the Commissioner to carry out the provisions of chapter 400, Statutes of Nevada 2023, at page 2393)

NRS 604D.330 Commissioner to report information to Registry; confidentiality of information provided; Commissioner authorized to enter into certain agreements and arrangements. [Effective on the date on which the Commissioner of Financial Institutions notifies the Governor and the Director of the Legislative Counsel Bureau that the Nationwide Multistate Licensing System and Registry has sufficient capabilities to allow the Commissioner to carry out the provisions of chapter 400, Statutes of Nevada 2023, at page 2393, and expires by limitation on December 31, 2029.]

1. Subject to any limitations or restrictions contained in federal or state law governing the privacy or confidentiality of records, the Commissioner shall report regularly any violations of applicable laws committed by applicants for licenses or licensees, enforcement actions and other relevant information to the Registry.

2. The requirements under any federal or state law, including, without limitation, rules of a federal or state court, regarding the privacy and confidentiality of any information or material provided to the Registry and any privilege arising under federal or state law with respect to such information or material, continue to apply to such information or material after it has been disclosed to the Registry. Such information and material may be shared with federal and state regulatory officials with oversight authority over licensees without the loss of privilege or the loss of confidentiality protections provided by federal or state law.

3. The Commissioner may enter into agreements or sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, the State Regulatory Registry, LLC, or other associations representing governmental agencies.

(Added to NRS by 2023, 2403, effective on the date on which the Commissioner of Financial Institutions notifies the Governor and the Director of the Legislative Counsel Bureau that the Nationwide Multistate Licensing System and Registry has sufficient capabilities to allow the Commissioner to carry out the provisions of chapter 400, Statutes of Nevada 2023, at page 2393)

REGULATION OF BUSINESS PRACTICES

**NRS 604D.400 Duties of provider; applicability to certain payments.
[Effective July 1, 2024, and expires by limitation on December 31, 2029.]**

1. A provider shall:
 - (a) Develop and implement policies and procedures to respond to questions raised by users and address complaints from users in an expedient manner;
 - (b) Before entering into an agreement with a user for the provision of earned wage access services:
 - (1) Inform the user of his or her rights under the agreement; and
 - (2) Fully and clearly disclose all fees associated with the earned wage access services;
 - (c) Allow the user to cancel, at any time and without incurring a fee, his or her participation in an agreement for the provision of earned wage access services;
 - (d) Comply with all local, state and federal privacy and information security laws;
 - (e) If the provider solicits, charges or receives a tip, gratuity or donation from a user:
 - (1) Conspicuously disclose or cause to be disclosed to the user that any tip, gratuity or donation paid by the user does not inure to the direct benefit of any specific employee of the provider or any other person; and
 - (2) Conspicuously provide an option for the user to select zero as an amount for such tip, gratuity or donation; and
 - (f) If a provider seeks payment of outstanding proceeds, fees or other payments including, without limitation, voluntary tips, gratuities or other donations from a user's account at a depository institution, including through a preauthorized electronic fund transfer:
 - (1) Comply with the applicable provisions of the Federal Electronic Fund Transfer Act and regulations thereunder; and
 - (2) Reimburse the user for the full amount of any overdraft or non-sufficient funds fee imposed on a user by the user's depository institution that were caused by the provider attempting to seek payment of any outstanding proceeds, fees or other payments, including, without limitation, voluntary tips, gratuities or other donations on a date before, or in an incorrect amount from, the date or amount disclosed to the user.
2. The requirements set forth in subparagraphs (1) and (2) of paragraph (f) of subsection 1 do not apply to any payments of outstanding amounts or fees incurred by a user through fraudulent or other unlawful means.
(Added to NRS by 2023, 2406, effective July 1, 2024)

**NRS 604D.410 Prohibited acts by provider; certain acts not precluded.
[Effective July 1, 2024, and expires by limitation on December 31, 2029.]**

1. A provider shall not:
 - (a) Share with an employer any fees, voluntary tips, gratuities or other donations that were received from or charged to a user for earned wage access services;
 - (b) Use a user's consumer credit report, as defined in NRS 686A.630, or a user's credit score to determine the user's eligibility for earned wage access services;
 - (c) Charge a late fee, deferral fee, interest or any other penalty or charge for failure to pay outstanding proceeds, fees, voluntary tips, gratuities or other donations;

(d) Report any information about the user regarding the inability of the provider to be repaid outstanding proceeds, fees, voluntary tips, gratuities or any other donations to a consumer agency or debt collector; or

(e) Compel or attempt to compel payment by a user of outstanding proceeds, fees, voluntary tips, gratuities or other donations to the provider through any of the following means:

- (1) A civil action against the user in any court of competent jurisdiction;
- (2) Use of a third party to pursue collection from the user on the provider's behalf; or
- (3) Sale or assignment of outstanding amounts to a third-party collector or debt buyer for collection from the user.

2. The limitations set forth in paragraph (e) of subsection 1 shall not preclude the use by a provider of any of the foregoing methods specified in paragraph (e) of subsection 1 to compel or attempt to compel payment of outstanding amounts or fees incurred by a user through fraudulent or other unlawful means, nor shall they preclude a provider from pursuing an employer for breach of its contractual obligations to the provider.

(Added to NRS by 2023, 2407, effective July 1, 2024)

REPORTS; EXAMINATIONS AND INVESTIGATIONS

NRS 604D.500 Licensee to submit annual report to Commissioner; unavailability of audited financial statements; confidentiality of documents and information; annual publication by Commissioner. [Effective July 1, 2024, and expires by limitation on December 31, 2029.]

1. On or before April 15 of each year, a licensee shall submit to the Commissioner a report containing, as applicable to the licensee:

(a) Except as otherwise provided in subsection 2, financial statements for the immediately preceding year that have been audited by an independent certified public accountant;

(b) A copy of each complaint that has been filed by a user who received earned wage access services in this State in the immediately preceding year against the licensee with the Better Business Bureau or the Consumer Financial Protection Bureau and a description of the resolution, if any, of each such complaint;

(c) The total amount of charges paid by users for earned wage access services in the preceding year in this State;

(d) The total number of users in this State who did not receive earned wage access services in the immediately preceding year but who paid a subscription fee or membership fee imposed by a provider for a bona fide group of services that include earned wage access services, including the total amount of subscription fees and membership fees paid by those users in the immediately preceding year;

(e) The total number of users in this State who participated in 12 or more earned wage access transfers provided by the licensee in the immediately preceding year; and

(f) Any other information required by the Commissioner pursuant to regulations adopted pursuant to this chapter.

2. If audited financial statements are not available to a licensee on or before April 15 in any year, the licensee may satisfy the requirements of paragraph (a) of subsection 1 by submitting to the Commissioner:

- (a) Unaudited financial statements on or before April 15; and
- (b) Audited financial statements when such statements become available to the licensee.

3. Except as otherwise provided in this section, all documents and other information filed with the Commissioner are confidential and may be disclosed only as the Commissioner and the licensee mutually deem necessary to administer the provisions of this section.

4. The Commissioner shall annually publish and make available to the public an aggregated and anonymized analysis of the information submitted as required pursuant to this section.

(Added to NRS by 2023, 2405, effective July 1, 2024)

NRS 604D.510 Annual examinations by Commissioner. [Effective July 1, 2024, and expires by limitation on December 31, 2029.] The Commissioner or his or her authorized representative may at least annually make an examination of the place of business of each licensee and of the transactions, books, accounts, papers and records of the person as they pertain to the business of a provider and its activities conducted pursuant to a license issued pursuant to this chapter.

(Added to NRS by 2023, 2403, effective July 1, 2024)

NRS 604D.520 Examination of books and records by Commissioner; reasonable access required; presumption of engagement in business of provider requiring license; exception. [Effective July 1, 2024, and expires by limitation on December 31, 2029.]

1. For the purpose of discovering violations of this chapter or securing information lawfully required under this chapter, the Commissioner or his or her duly authorized representative may, at any time, examine the books, accounts, papers and records that are used or created in connection with the activities covered by the license of:

- (a) Any licensee;
- (b) Any other person engaged in the business of a provider or participating in such business as a principal, agent, broker or otherwise; and
- (c) Any person who the Commissioner has reasonable cause to believe is violating or is about to violate any provision of this chapter, whether or not the person claims to be within the authority or beyond the scope of this chapter.

2. For the purposes of examination, the Commissioner or his or her authorized representative shall have and be given reasonable access to the offices and places of business, and the files, safes and vaults of such persons.

3. For the purposes of this section, any person who advertises for, solicits or holds himself or herself out as willing to provide earned wage access services is presumed to be engaged in the business of a provider and must obtain a license from the Commissioner.

4. This section does not entitle the Commissioner or his or her authorized representative to investigate the business or examine the books, accounts, papers or records of any attorney who is not a person described in subsection 1, other than examination of those books, accounts, papers and records maintained by such attorney in his or her capacity as a registered agent, and then only to the extent such books, accounts, papers and records are not subject to any privilege in NRS 49.035 to 49.115, inclusive.

(Added to NRS by 2023, 2402, effective July 1, 2024)

REVISER'S NOTE.

Ch. 400, Stats. 2023, the source of this section, contains the following provision not included in NRS:
 "Sec. 36.2. 1. Notwithstanding the amendatory provisions of this act, a person who, as of January 1, 2023, was engaged in the business of providing earned wage access services in this State may, until December 31, 2024, continue to engage in the business of providing earned wage access services in this State without obtaining a license pursuant to sections 2 to 33.5, inclusive, of this act [chapter 604D of NRS] if the person submits an application for such a license before January 1, 2024, and otherwise complies with this act.
 2. As used in this section, "earned wage access services" has the meaning ascribed to it in section 7 of this act [NRS 604D.060]."

NRS 604D.530 Investigations and hearings; required attendance and testimony of persons and production of documents. [Effective July 1, 2024, and expires by limitation on December 31, 2029.]

1. The Commissioner may conduct any necessary investigations and hearings to determine whether any licensee or other person has violated any of the provisions of this chapter or whether any licensee has conducted himself or herself in a manner which requires the suspension, revocation or denial of renewal of his or her license.

2. In conducting any investigation or hearing pursuant to this chapter, the Commissioner, or any person designated by the Commissioner, may require the attendance and testimony of any person and compel the production of all relevant books, records, accounts and other documents.

(Added to NRS by 2023, 2402, effective July 1, 2024)

NRS 604D.540 Authority of Commissioner to require attendance of witnesses and production of books and records. [Effective July 1, 2024, and expires by limitation on December 31, 2029.]

1. The Commissioner may require the attendance of any person and examine him or her under oath regarding:

- (a) Any licensee; or
- (b) The subject matter of any audit, examination, investigation or hearing.

2. The Commissioner may require the production of books, accounts, papers and records for any audit, examination, investigation or hearing.

(Added to NRS by 2023, 2403, effective July 1, 2024)

NRS 604D.550 Fee for supervision, audit, examination, investigation or hearing; employment of certified public accountant; deposit in State Treasury. [Effective July 1, 2024, and expires by limitation on December 31, 2029.]

1. The Commissioner shall charge and collect from each licensee a fee at the rate established and, if applicable, adjusted pursuant to NRS 658.101 for the cost of any supervision, audit, examination, investigation or hearing conducted pursuant to this chapter or any regulations adopted pursuant thereto.

2. The Commissioner shall employ a certified public accountant to review and conduct independent audits and examinations of licensed providers. The Commissioner shall levy an assessment upon each licensed provider to cover all the costs related to the employment of the certified public accountant and the performance of the audits and examinations.

3. All money collected by the Commissioner pursuant to subsections 1 and 2 must be deposited in the State Treasury pursuant to the provisions of NRS 658.091.

(Added to NRS by 2023, 2403, effective July 1, 2024)

NRS CROSS REFERENCES.

Examination and supervision, fee, NRS 658.101
 State Treasury, deposits, NRS 658.091

DISCIPLINARY ACTION

NRS 604D.600 Person may file complaint alleging violation; duties of Commissioner when complaint is filed; verified answer by licensee; certain records relating to complaint or investigation deemed confidential. [Effective July 1, 2024, and expires by limitation on December 31, 2029.]

1. A user, an attorney for a user or any other person who believes that any provision of this chapter has been violated may file a complaint with the Commissioner. Such a complaint must include:

- (a) The full name and address of the person filing the complaint;
- (b) A clear and concise statement of facts sufficient to establish that the alleged violation occurred, including, without limitation, the date, time and place of the alleged violation and the name of each person involved in the alleged violation; and
- (c) A certification by the person filing the complaint that the facts alleged in the complaint are true to the best knowledge and belief of the person.

2. Upon receipt of a complaint filed pursuant to subsection 1, the Commissioner shall send a copy of the complaint to the accused licensee. The licensee, or an authorized representative of the licensee, shall file a verified answer to the complaint within 10 business days after receipt of the complaint, unless for good cause shown, the Commissioner extends the time for a period of not more than 30 days. If the licensee, or an authorized representative of the licensee, fails to file a verified answer within the time required by this subsection, the licensee shall be deemed to have admitted to the allegations contained in the complaint.

3. The Commissioner may make investigations and conduct hearings concerning complaints filed with the Commissioner pursuant to this section.

4. Except as otherwise provided in this section, a complaint filed with the Commissioner pursuant to subsection 1, all documents and other information filed with the complaint and all documents, reports and other information resulting from the investigation of the complaint are confidential and may be disclosed only as the Commissioner deems necessary to administer the provisions of this chapter.

(Added to NRS by 2023, 2404, effective July 1, 2024)

NRS 604D.610 Temporary suspension of license; notice of hearing to revoke or suspend license. [Effective July 1, 2024, and expires by limitation on December 31, 2029.]

1. If the Commissioner finds that probable cause for revocation of a license of a licensee exists and that enforcement of this chapter requires immediate suspension of such a license pending investigation, he or she may, upon 5 days' written notice and a hearing, enter an order suspending the license for a period of not more than 20 days, pending a hearing about the revocation.

2. If the Commissioner has reason to believe that grounds for revocation or suspension of a license exists, he or she shall notify the licensee not later than 20 days before the date of the hearing. Such notice must state the contemplated action and, in general, the grounds thereof and set a date for a hearing.

(Added to NRS by 2023, 2403, effective July 1, 2024)

NRS 604D.620 Order to desist and refrain; action to enjoin violation; administrative fine. [Effective July 1, 2024, and expires by limitation on December 31, 2029.]

1. Whenever the Commissioner has reasonable cause to believe that any person is violating or is threatening to or intends to violate any provision of this chapter, the

Commissioner may, in addition to all actions provided for in this chapter and without prejudice thereto, enter an order requiring the person to desist or to refrain from such violation.

2. The Attorney General or the Commissioner may bring an action to enjoin a person from engaging in or continuing a violation or from doing any act or acts in furtherance thereof. In any such action, an order or judgment may be entered awarding a preliminary or final injunction as may be deemed proper.

3. In addition to any other remedy or penalty, the Commissioner may impose an administrative fine of not more than \$50,000 upon a person who conducts any business or activity without a license and for which a license is required pursuant to the provisions of this chapter.

(Added to NRS by 2023, 2404, effective July 1, 2024)

REVISER'S NOTE.

Ch. 400, Stats. 2023, the source of this section, contains the following provision not included in NRS:
"Sec. 36.2. 1. Notwithstanding the amendatory provisions of this act, a person who, as of January 1, 2023, was engaged in the business of providing earned wage access services in this State may, until December 31, 2024, continue to engage in the business of providing earned wage access services in this State without obtaining a license pursuant to sections 2 to 33.5, inclusive, of this act [chapter 604D of NRS] if the person submits an application for such a license before January 1, 2024, and otherwise complies with this act.
2. As used in this section, "earned wage access services" has the meaning ascribed to it in section 7 of this act [NRS 604D.060]."

MISCELLANEOUS PROVISIONS

NRS 604D.900 Applicability of chapters 604A and 675 of NRS. [Effective July 1, 2024, and expires by limitation on December 31, 2029.] The proceeds provided to a consumer by a provider in accordance with this chapter shall not be subject to the provisions of chapter 604A or 675 of NRS. A provider of the proceeds shall not be required to be licensed pursuant to chapters 604A and 675 of NRS unless the provider is conducting business pursuant to chapter 604A or 675 of NRS.

(Added to NRS by 2023, 2408, effective July 1, 2024)