

ASSEMBLY BILL NO. 477—COMMITTEE
ON COMMERCE AND LABOR

MARCH 25, 2019

Referred to Committee on Commerce and Labor

SUMMARY—Enacts provisions governing certain consumer form contracts and consumer debts. (BDR 8-935)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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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 consumer contracts; enacting the Consumer Protection from the Accrual of Predatory Interest After Default Act; prohibiting the use of certain form contracts; limiting prejudgment and postjudgment interest and attorney’s fees under certain circumstances; prohibiting choice of law, forum selection and other provisions in certain form contracts; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law contains various provisions governing retail installment sales.
2 (Chapter 97 of NRS) **Sections 2-19** of this bill enact the Consumer Protection from
3 the Accrual of Predatory Interest After Default Act, which contains provisions
4 governing the use of form contracts in certain consumer transactions. **Sections 5-8**
5 of this bill define “business,” “consumer,” “consumer debt” and “consumer form
6 contract.” **Section 9** of this bill prohibits the use of a consumer form contract by a
7 business that is not in compliance with the provisions of this bill. **Section 10** of this
8 bill exempts certain business organizations and other persons from the provisions of
9 this bill. **Section 11** of this bill prohibits the inclusion of a choice of law or forum
10 selection provision in a consumer form contract. **Section 12** of this bill requires any
11 consumer form contract involving financial services be signed by the consumer in
12 writing or electronically signed in full compliance with section 101(c) of the
13 Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001(c).
14 **Section 13** of this bill prohibits the inclusion of certain provisions in a consumer
15 form contract that would limit a consumer’s rights. **Section 14** of this bill declares
16 that any provision in a consumer form contract that violates the provisions of this
17 bill is void and unenforceable. **Section 15** of this bill provides that if a consumer
18 enters a consumer form contract with a person who is required to be licensed but is
19 not, the contract is void for all purposes. **Section 17** of this bill provides certain



20 limits on the amount of prejudgment interest and the rate of postjudgment interest
21 under certain circumstances. **Sections 18 and 19** of this bill provide certain
22 methods for calculating attorney’s fees for the prevailing party in any action to
23 collect a consumer debt.

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

1 **Section 1.** Title 8 of NRS is hereby amended by adding
2 thereto a new chapter to consist of the provisions set forth as
3 sections 2 to 19, inclusive, of this act.

4 **Sec. 2.** *This chapter may be cited as the Consumer*
5 *Protection from the Accrual of Predatory Interest After Default*
6 *Act.*

7 **Sec. 3. 1.** *The purpose of this chapter is to protect*
8 *consumers.*

9 **2.** *This chapter must be construed as a consumer protections*
10 *statute for all purposes.*

11 **3.** *This chapter must be liberally construed to effectuate its*
12 *purpose.*

13 **Sec. 4.** *As used in this chapter, unless the context otherwise*
14 *requires, the words and terms defined in sections 5 to 8, inclusive,*
15 *of this act, have the meanings ascribed to them in those sections.*

16 **Sec. 5.** *“Business” means a proprietorship, corporation,*
17 *partnership, association, trust, unincorporated organization or*
18 *other enterprise doing business in this State.*

19 **Sec. 6.** *“Consumer” means a natural person.*

20 **Sec. 7.** *“Consumer debt” means any obligation or alleged*
21 *obligation of a consumer to pay money arising out of a transaction*
22 *in which the money, property, insurance or services which are the*
23 *subject of the transaction are primarily personal, family or*
24 *household purposes, whether or not such obligation has been*
25 *reduced to judgment.*

26 **Sec. 8. 1.** *“Consumer form contract” means a retail charge*
27 *agreement or a retail installment contract involving a retail*
28 *installment transaction in writing between a retail seller and a*
29 *consumer buyer, or a lease in writing between a lessor and a*
30 *consumer lessee, involving the sale or lease of goods or services,*
31 *including, without limitation, credit or financial services,*
32 *primarily for personal, family or household purposes and which*
33 *has either been drafted by the business or by a third party for use*
34 *with more than one consumer, unless a second consumer is the*
35 *spouse of the first consumer.*

36 **2.** *As used in this section:*

37 **(a)** *“Buyer” has the meaning ascribed to it in NRS 97.085.*



1 (b) "Goods" has the meaning ascribed to it in NRS 97.035.

2 (c) "Retail charge agreement" has the meaning ascribed to it
3 in NRS 97.095.

4 (d) "Retail installment contract" has the meaning ascribed to
5 it in NRS 97.105.

6 (e) "Retail installment transaction" has the meaning ascribed
7 to it in NRS 97.115.

8 (f) "Retail seller" has the meaning ascribed to it in
9 NRS 97.125.

10 (g) "Services" has the meaning ascribed to it in NRS 97.135.

11 **Sec. 9. 1.** A business, including, without limitation, any
12 officer, agent, employee or representative, shall not individually or
13 in cooperation with another, solicit the execution of, receive or
14 rely upon a consumer form contract, including, without limitation,
15 reliance upon the consumer form contract as a basis of a suit or
16 claim, unless the business has complied with the provisions of this
17 chapter.

18 2. The provisions of this chapter apply to any person who
19 seeks to evade its application by any device, subterfuge or
20 pretense.

21 **Sec. 10.** The provisions of this chapter do not apply to:

22 1. A person doing business pursuant to the authority of any
23 law of this State or of the United States relating to banks, national
24 banking associations, savings banks, trust companies, savings and
25 loan associations, credit unions, mortgage brokers, mortgage
26 bankers, thrift companies or insurance companies, including,
27 without limitation, any affiliate or subsidiary of such a person
28 regardless of whether the affiliate or subsidiary is a bank.

29 2. Any business:

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

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

34 (c) Approved by the United States Department of Housing and
35 Urban Development and the Department of Veterans Affairs.

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

38 4. A seller of real property who offers credit secured by a
39 mortgage of the property sold.

40 5. A person who exclusively extends credit to any person who
41 is not a resident of this State for any business, commercial or
42 agricultural purpose that is located outside this State.

43 6. A person while performing any act authorized pursuant to
44 chapter 604A of NRS.



1 7. A motor vehicle manufacturer or distributor, or an affiliate
2 or captive financial institution of a motor vehicle manufacturer or
3 distributor.

4 **Sec. 11.** If a consumer form contract is signed by the
5 consumer or otherwise formed while the consumer resides in this
6 State with a person operating within this State:

7 1. A choice of law provision in a consumer form contract
8 which provides that the consumer form contract is to be governed
9 or interpreted pursuant to the laws of another state is void.
10 Enforcement and interpretation of such a contract must be
11 governed by the laws of this State if enforcement of the consumer
12 form contract is sought in a court of this State.

13 2. A forum selection provision in a consumer form contract
14 which provides that any claims or actions related to the consumer
15 form contract must be litigated in a forum outside this State is
16 void.

17 **Sec. 12.** 1. Any consumer form contract involving a loan,
18 extension of credit, deposit account or other financial services
19 must be signed by the consumer in writing or electronically in full
20 compliance with Section 101(c) of the Electronic Signatures in
21 Global and National Commerce Act, 15 U.S.C. § 7001(c).

22 2. Any change of terms to a consumer form contract must be
23 agreed to by the consumer by affirmative consent, signed in
24 writing or electronically in full compliance with Section 101(c) of
25 the Electronic Signatures in Global and National Commerce Act,
26 15 U.S.C. § 7001(c).

27 **Sec. 13.** A consumer form contract must not contain:

28 1. A provision that the consumer will hold the other party
29 harmless, or that otherwise relieves the other party of liability, for
30 any harm or damage caused to the consumer arising from the
31 consumer form contract.

32 2. A confession of judgment clause.

33 3. A waiver of the right to a jury trial, unless the consumer
34 agrees to an alternative dispute resolution such as binding
35 arbitration, in any action brought by or against the consumer.

36 4. Any assignment of or order for payment of wages or other
37 compensation for services.

38 5. A provision in which the consumer agrees not to assert any
39 claim or defense arising out of the consumer form contract or to
40 seek any remedies pursuant to any consumer protection law.

41 6. A waiver of any provision of this chapter or any other
42 consumer protection statute. Any such waiver shall be deemed
43 null, void and of no effect.

44 7. A provision requiring or having the practical effect of
45 requiring that any aspect of a resolution of a dispute between the



1 *parties to the agreement be kept confidential. This subsection does*
2 *not affect the right of the parties to agree that certain specified*
3 *information is a trade secret or otherwise confidential or to later*
4 *agree, after the dispute arises, to keep a resolution confidential.*

5 **Sec. 14.** *A provision in a consumer form contract that*
6 *violates this chapter shall be void and unenforceable. A court may*
7 *refuse to enforce other provisions of the consumer form contract*
8 *as equity may require.*

9 **Sec. 15.** *Any consumer form contract entered into by a*
10 *consumer with a person who is required to be licensed pursuant to*
11 *any provision of NRS or NAC in order to enter into the consumer*
12 *transaction, but is not so licensed, is void. Neither the obligee nor*
13 *any assignee of the obligation may collect, receive or retain any*
14 *principal, finance charge or other fees in connection with the*
15 *transaction.*

16 **Sec. 16.** (Deleted by amendment.)

17 **Sec. 17.** *If the plaintiff is the prevailing party in any action to*
18 *collect a consumer debt:*

19 *1. And a rate of interest is stated in the consumer form*
20 *contract, interest may be awarded by the court only as set forth in*
21 *this section.*

22 *2. Interest under the consumer form contract, prejudgment*
23 *interest and postjudgment interest awarded by the court must not*
24 *be compounded.*

25 *3. Any prejudgment interest the court awards the plaintiff*
26 *must be limited to the lesser of:*

27 *(a) The accrued interest at the rate stated in the consumer*
28 *form contract to the day the action to collect the debt is filed; or*

29 *(b) One hundred eighty days of interest at the rate stated in the*
30 *consumer form contract.*

31 *4. Any postjudgment interest the court awards the plaintiff*
32 *must be limited to the lesser of:*

33 *(a) The rate of interest in the consumer form contract; or*

34 *(b) A rate equal to the prime rate at the largest bank in Nevada*
35 *as ascertained by the Commissioner of Financial Institutions on*
36 *January 1 or July 1, as the case may be, immediately preceding*
37 *the date of judgment, plus 2 percent. The rate must remain fixed at*
38 *that rate until the judgment is satisfied.*

39 **Sec. 18.** *1. If the plaintiff is the prevailing party in any*
40 *action to collect a consumer debt, the plaintiff is entitled to collect*
41 *attorney's fees only if the consumer form contract or other*
42 *document evidencing the indebtedness sets forth an obligation of*
43 *the consumer to pay such attorney's fee and subject to the*
44 *following conditions:*



1 (a) *If a consumer form contract or other document evidencing*
2 *indebtedness provides for attorney's fees in some specific*
3 *percentage, such provision and obligation is valid and enforceable*
4 *for an amount not to exceed 15 percent of the amount of the debt,*
5 *excluding attorney's fees and collection costs.*

6 (b) *If a consumer form contract or other document evidencing*
7 *indebtedness provides for the payment of reasonable attorney's*
8 *fees by the debtor, without specifying any specific percentage,*
9 *such provision must be construed to mean the lesser of 15 percent*
10 *of the amount of the debt, excluding attorney's fees and collection*
11 *costs, or the amount of attorney's fees calculated by a reasonable*
12 *rate for such cases multiplied by the amount of time reasonably*
13 *expended to obtain the judgment.*

14 2. *The documentation setting forth a party's obligation to pay*
15 *attorney's fees must be provided to the court before a court may*
16 *enforce those provisions.*

17 **Sec. 19.** *If the debtor is the prevailing party in any action to*
18 *collect a consumer debt, the debtor is entitled to an award of*
19 *reasonable attorney's fees. The amount of the debt that the*
20 *creditor sought may not be a factor in determining the*
21 *reasonableness of the award.*

22 **Sec. 20.** The provisions of this act apply to contracts entered
23 into on or after October 1, 2019.



