

ADAM PAUL LAXALT
Attorney General



WESLEY K. DUNCAN
First Assistant Attorney General

NICHOLAS A. TRUTANICH
First Assistant Attorney General

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

100 North Carson Street
Carson City, Nevada 89701

January 27, 2017

OPINION NO. 2017-01

FINANCIAL INSTITUTIONS; CREDIT;
RETAILER; LICENSES: Chapter 675 is properly interpreted as having no application to a retailer who finances the retailer's own sales pursuant to the provisions of Chapter 97 of the NRS, but otherwise engages in no lending activity. Such retail financing activity is governed exclusively by the provisions of Chapter 97 of the NRS.

George E. Burns
Commissioner
Financial Institutions Division
2785 E. Desert Inn Rd., Suite 180
Las Vegas, Nevada 89121

Dear Mr. Burns:

On behalf of the Division of Financial Institutions (Division), you have requested a formal opinion from the Office of the Attorney General pursuant to NRS 228.150 regarding the scope of Chapter 675 of the NRS. Chapter 675 applies to "any person who . . . [m]akes installment loans that are not subject to regulation pursuant to Chapter 604A of NRS." Your question does not implicate Chapter 604A of the NRS, which governs persons who issue short-term, high interest loans, but rather Chapter 97 of the NRS, which governs retailers who finance their own sales of goods and services. You have asked whether such retailers are simultaneously subject to the provisions of Chapters 97 and 675 of the NRS.

The Division licenses and regulates lenders who are subject to the provisions of Chapter 675 of the NRS. The Division approves forms for use by retailers who are

subject to the provisions of Chapter 97, but it has not historically licensed or regulated such retailers pursuant to Chapter 675. You indicate that the Division has frequently granted Chapter 675 exemptions to retailers who are governed by Chapter 97.¹ Your position presupposes that these retailers would be subject to licensure and regulation under Chapter 675 but for the Division's issuance of exemptions.² In support of the Division's practice of issuing exemptions, you state that retailers who finance their own sales are engaged in the business of selling goods and services, such that their lending activity is merely incidental to their primary business purpose or activity.³ A person "who engages in the business of lending in this State" must secure a license from the Division.⁴ NRS 675.060. The issue here is whether a retailer governed by Chapter 97 of the NRS is also subject to the regulatory provisions of Chapter 675 of the NRS.

QUESTION

When a retailer finances the retailer's own sales pursuant to the provisions of Chapter 97 of the NRS, but otherwise engages in no lending activity, is that retailer subject to licensure and regulation under Chapter 675 of the NRS?

SUMMARY CONCLUSION

When a retailer finances the retailer's own sales pursuant to the provisions of Chapter 97 of the NRS, but otherwise engages in no lending activity, the retailer's business activity is governed exclusively by the provisions of Chapter 97 of the NRS. Under these circumstances, the retailer is not subject to licensure or regulation under Chapter 675 of the NRS.

¹ See NRS 675.055 (authorizing the Division to grant exemptions under specified circumstances).

² This presupposition is stated explicitly in the Division's advisory opinions dated May 20, 2010 ("[A] person engaged in the financing of a retail sales agreement under NRS Chapter 97 is in the business of lending under NRS Chapter 675 and is required to be licensed pursuant to NRS Chapter 675.") and May 28, 2010 ("[T]ransactions where the purchase of goods financed and secured through the goods being sold is subject to [the] provisions of NRS Chapter 675."). While both opinions are posted on the Division's web site, neither was formally enacted as a regulation pursuant to the Nevada Administrative Procedures Act, codified at chapter 233B of the NRS. Accordingly, these opinions do not have the force and effect of law. See NRS 233B.038.

³ Although we conclude below that such retailers are not subject to Chapter 675 of the NRS, we reject the reasoning that their lending activity is merely incidental to their primary business purpose or activity of selling goods or services.

⁴ See generally NRS 675.060(1) and (2).

ANALYSIS

Chapter 675 was originally enacted in 1959 to address the “demand for loans repayable in installments, which loans may or may not be made on substantial security,” and to “[b]ring under public supervision those engaged in the business of making loans.”⁵ Subsection 1 of NRS 675.060 provides:

No person may engage in the business of lending in this State without first having obtained a license from the Commissioner pursuant to this chapter for each office or other place of business at which the person engages in such business, except that if a person intends to engage in the business of lending in this State as a deferred deposit loan service, high-interest loan service or title loan service, as those terms are defined in chapter 604A of NRS, the person must obtain a license from the Commissioner pursuant to chapter 604A of NRS before the person may engage in any such business.

NRS 675.060(1). In summary, an entity that wishes to engage in the business of lending (other than lending covered under Chapter 604A),⁶ must first obtain a license under Chapter 675.

Chapter 97, enacted in 1965, regulates retail installment transactions. Chapter 97 was “plainly enacted to govern those sales made by retail merchants when deferred payments were contemplated.”⁷ In such transactions, a retail seller allows a retail buyer to purchase personal property or services in exchange for a promise that the retail buyer will make installment payments. The retail seller, in other words, is extending credit: giving a buyer the right to defer payment of debt or to incur debt and defer its payment.⁸ The installment payments are similar to loan payments; and, as with an installment loan, the transactions are subject to the disclosure requirements of the Truth in Lending Act (TILA).⁹ Though similar to traditional loans in these respects,¹⁰ retail installment

⁵ NRS 675.030.

⁶ Chapter 604A regulates short term lending comprised of deferred deposit loans, high-interest loans, and title loans.

⁷ Op. Nev. Att’y Gen. 1967-414 (June 6, 1967).

⁸ NRS 97.026.

⁹ NRS 97.175; NRS 97.185.

¹⁰ This similarity could actually result in a redundancy if RISCs were also subject to Chapter 675. *Bd. of County Commissioners of Clark County v. CMC of Nevada, Inc.*,

transactions have attributes that distinguish them from other types of loans. These differences include, for example, the existence of a two-party transaction between a retail seller and buyer, as opposed to a “financial institution” and borrower,¹¹ and the extension of credit, as opposed to a loan of money.

To the extent that both chapters are related to the same subject, it is clear that Chapter 97 governs retailers who finance their own sales. First, the plain language of these statutory provisions, read together, indicate that Chapter 97 is controlling. NRS 97.285 states, in relevant part, “the provisions of any other statute do not apply to retail installment transactions governed by this chapter.” The statute also states that in the event of a conflict with any other statutes, the provisions of Chapter 97 control.¹² It is presumed that the Legislature has knowledge of existing statutes relating to the same subject.¹³ Based on this presumption, one must conclude that the Legislature enacted NRS 97.285 with full knowledge that it was displacing Chapter 675. Therefore, insofar as it has supplanted the provisions of Chapter 675, the plain language of Chapter 97 makes it clear that business activity governed by Chapter 97 is not subject to Chapter 675.¹⁴

In addition, “whenever possible, a court will interpret a rule or statute in harmony with other rules or statutes.”¹⁵ When statutes are in conflict, the statute more recently enacted controls.¹⁶ Chapter 97 contains specific statutory provisions that govern transactions in which a “retail seller” extends retail credit, whereas Chapter 675 generally applies to lenders “engage[d] in the business of lending.”¹⁷ Chapter 97 excludes from the definition of “retail seller” a person “licensed pursuant to Chapter 675 of NRS.”¹⁸ This is further evidence that the Legislature intended the two chapters to be mutually exclusive

99 Nev. 739, 744, 670 P.2d 102, 105 (1983) (statutes should be interpreted to avoid rendering any language redundant or meaningless).

¹¹ If Chapter 97 financing was intended to be subject to Chapter 675, the term “retail seller” would have been defined to include a Chapter 675 licensee. NRS 97.125(2)(b).

¹² *Id.*

¹³ See *Western Realty Co. v. City of Reno*, 63 Nev. 330, 172 P.2d 158 (1946); *Ronnow v. City of Las Vegas*, 57 Nev. 332, 65 P.2d 133 (1937); *State ex rel. Nevada Tax Commission v. Boerlin*, 38 Nev. 39, 144 P. 738 (1914).

¹⁴ *Id.*

¹⁵ *Nev. Power Co. v. Haggerty*, 115 Nev. 353, 364, 989 P.2d 870, 877 (1999).

¹⁶ See *Marschall v. City of Carson*, 86 Nev. 107, 464 P.2d 494 (1970); *State ex rel. Nevada Douglass Gold Mines, Inc. v. District Court*, 51 Nev. 330, 275 P. 1 (1929); *Thorpe v. Schooling*, 7 Nev. 15 (1871).

¹⁷ NRS 675.060(2).

¹⁸ NRS 97.026.

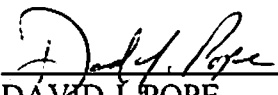
in their application, such that they do not coalesce or intersect at a point where Chapter 675 might otherwise apply to retail sellers. Furthermore, since Chapter 97 was enacted in 1965, while Chapter 675 was originally enacted in 1959, Chapter 97 prevails as the later enacted statute.¹⁹

CONCLUSION

Chapter 675 is properly interpreted as having no application to a retailer who finances the retailer's own sales pursuant to the provisions of Chapter 97 of the NRS, but otherwise engages in no lending activity. Such retail financing activity is governed exclusively by the provisions of Chapter 97 of the NRS.

Sincerely,

ADAM PAUL LAXALT
Attorney General

By: 

DAVID J. POPE
Senior Deputy Attorney General
Business and Taxation Division

DJP/DKT

¹⁹ *Dept. of Taxation v. American Home Shield of Nevada, Inc.*, 127 Nev. 382, 388, 254 P.3d 601, 605 (2011) (“A specific statute controls over a general statute”); *In re Resort at Summerlin Litigation*, 122 Nev. 177, 185, 127 P.3d 1076, 1081 (2006) (providing, “where a general statutory provision and a specific one cover the same subject matter, the specific provision controls.”); *Marschall v. City of Carson*, 86 Nev. 107, 115, 464 P.2d 494, 500 (1970) (explaining that the later enacted statute controls).