

ASSEMBLY BILL NO. 447—ASSEMBLYWOMAN BUCKLEY

MARCH 19, 2001

Referred to Committee on Commerce and Labor

SUMMARY—Prohibits unfair lending practices for home loans. (BDR 52-440)

FISCAL NOTE: Effect on Local Government: Yes.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to lending practices; prohibiting certain acts by lenders of home loans as unfair lending practices; providing for enforcement by the attorney general; revising related provisions governing credit insurance; providing a penalty; and providing other matters properly relating thereto.

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

- 1 **Section 1.** Title 52 of NRS is hereby amended by adding thereto a
2 new chapter to consist of the provisions set forth as sections 2 to 15,
3 inclusive, of this act.
4 **Sec. 2.** *As used in this chapter, unless the context otherwise*
5 *requires, the words and terms defined in sections 3 to 10, inclusive, of*
6 *this chapter have the meanings ascribed to them in those sections.*
7 **Sec. 3.** *“Borrower” means a natural person who is a mortgagor,*
8 *grantor of a deed of trust or other debtor of a home loan.*
9 **Sec. 4.** *“Credit insurance” has the meaning ascribed to it in NRS*
10 *690A.015.*
11 **Sec. 5.** *“Home” means a dwelling or dwellings for not more than*
12 *four families, the principal use of which is for residential purposes. The*
13 *term includes, without limitation:*
14 1. *A dwelling on a farm.*
15 2. *A dwelling unit of a cooperative housing corporation.*
16 3. *A mobile home, as defined in NRS 489.120, with the wheels*
17 *removed and skirting added, when set on a foundation located on land*
18 *that the owner of the home owns or occupies pursuant to a tenancy with*
19 *a term of 40 years or more.*
20 **Sec. 6.** *“Home loan” means a real estate loan secured by home*
21 *property.*
22 **Sec. 7.** *“Home property” means real estate on which, pursuant to a*
23 *home loan, there is located or will be located a home.*



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1 **Sec. 8.** *“Improvement to home property” means a fixture, building*
2 *or other structure attached to home property and intended as a*
3 *permanent addition to the property.*

4 **Sec. 9.** *“Lender” means a mortgagee, beneficiary of a deed of trust*
5 *or other creditor who holds a mortgage, deed of trust or other instrument*
6 *that encumbers home property as security for the repayment of a home*
7 *loan.*

8 **Sec. 10.** *“Prepayment fee or penalty” means any fee or penalty*
9 *imposed by a lender if a borrower repays the balance of a loan or*
10 *otherwise makes a payment on a loan before the regularly scheduled time*
11 *for repayment.*

12 **Sec. 11.** 1. *It is an unfair lending practice for a lender to require a*
13 *borrower, as a condition of obtaining or maintaining a home loan*
14 *secured by home property, to provide property insurance on*
15 *improvements to home property in an amount that exceeds the*
16 *reasonable replacement value of the improvements.*

17 2. *Except as otherwise provided in this subsection, it is an unfair*
18 *lending practice for a lender to finance, directly or indirectly in*
19 *connection with a home loan, any credit insurance, life insurance,*
20 *disability insurance, health insurance, involuntary unemployment*
21 *insurance or any other similar form of insurance premiums. The*
22 *provisions of this subsection do not apply to insurance premiums that are*
23 *calculated and paid on a monthly basis.*

24 3. *It is an unfair lending practice for a lender to knowingly or*
25 *intentionally make a home loan to a borrower that refinances an existing*
26 *home loan if the acquisition of the new home loan by the borrower does*
27 *not have a reasonable and tangible net benefit to the borrower in light of*
28 *all the circumstances, including, without limitation, the:*

- 29 (a) *Terms and conditions of the existing loan and the new loan;*
30 (b) *Total costs of the new loan; and*
31 (c) *Situation of the borrower.*

32 4. *Except as otherwise provided in this subsection, it is an unfair*
33 *lending practice for a lender to impose a prepayment fee or penalty in*
34 *connection with a home loan if:*

- 35 (a) *The principal amount borrowed is \$150,000 or less; and*
36 (b) *The home loan is acquired by the borrower primarily for personal,*
37 *family or household purposes.*

38 *The limitations on prepayment fees and penalties prescribed in this*
39 *subsection do not apply to the extent that federal law or regulation*
40 *preempts those limitations.*

41 **Sec. 12.** *A person who engages in an unfair lending practice*
42 *prohibited by this chapter is guilty of a misdemeanor.*

43 **Sec. 13.** *A person who engages in an unfair lending practice*
44 *prohibited by this chapter is, in addition to the penalty that may be*
45 *imposed for a misdemeanor, civilly liable at the suit of the attorney*
46 *general, in an amount not to exceed 5 percent of the gross income*
47 *realized from all the home loans provided by that person in this state in*
48 *each year in which the unfair lending activity occurs.*



1 **Sec. 14.** *1. The attorney general has primary jurisdiction to*
2 *investigate and prosecute violations of this chapter.*
3 *2. When acting pursuant to this section, the attorney general may*
4 *commence his investigation and file a criminal action without leave of*
5 *court, and he has exclusive charge of the conduct of the prosecution.*
6 **Sec. 15.** *1. The attorney general may conduct an investigation to*
7 *determine whether a person, either directly or indirectly, has violated, is*
8 *violating or is about to violate any of the provisions of this chapter.*
9 *2. If the attorney general has reason to believe that any person,*
10 *either directly or indirectly, has violated, is violating or is about to violate*
11 *any of the provisions of this chapter, the attorney general may:*
12 *(a) Issue a subpoena to require the testimony of any person;*
13 *(b) Issue a subpoena to require the production of any documents; or*
14 *(c) Administer an oath or affirmation to any person providing*
15 *testimony pursuant to a subpoena.*
16 *3. A subpoena issued pursuant to subsection 2 must be served in the*
17 *manner provided in the Nevada Rules of Civil Procedure.*
18 *4. If any person fails to cooperate with an investigation conducted by*
19 *the attorney general or to obey a subpoena, the attorney general may*
20 *apply to any district court for equitable relief. The court may:*
21 *(a) Order the person to testify or to produce the requested documents*
22 *pursuant to the subpoena; and*
23 *(b) Grant other relief necessary to compel compliance by the person.*
24 **Sec. 16.** NRS 690A.100 is hereby amended to read as follows:
25 690A.100 ~~The~~ *Except for an unfair lending practice that is*
26 *prohibited by subsection 2 of section 11 of this act, the* premium or other
27 identifiable charge for credit insurance may be collected from the insured
28 or included in the principal of any loan or other transaction at the time the
29 transaction is completed.
30 **Sec. 17.** NRS 690A.110 is hereby amended to read as follows:
31 690A.110 ~~The~~ *Except for an unfair lending practice that is*
32 *prohibited by subsection 2 of section 11 of this act, the* premium or cost of
33 credit insurance when issued through any creditor is not subject to NRS
34 688B.180 and 689B.060 and shall not be deemed interest or charges, or
35 consideration, or an amount in excess of permitted charges in connection
36 with the loan or other credit transaction, and any gain or advantage to the
37 creditor arising out of the premium or commission or dividend from the
38 issuance of such insurance shall not be deemed a violation of any other
39 law, general or special, civil or criminal, of this state.
40 **Sec. 18.** The provisions of this act do not apply to offenses committed
41 before October 1, 2001.

