

(REPRINTED WITH ADOPTED AMENDMENTS)
FIRST REPRINT A.B. 447

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.*



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.** *It is an unfair lending practice for a lender to:*

13 1. *Require a borrower, as a condition of obtaining or maintaining a*
14 *home loan 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. *Knowingly or intentionally make a home loan to a borrower based*
18 *solely upon the equity of the borrower in the home property and without*
19 *determining that the borrower has the ability to repay the home loan*
20 *from other assets.*

21 3. *Finance a prepayment fee or penalty in connection with the*
22 *refinancing of an existing home loan.*

23 4. *Finance, directly or indirectly in connection with a home loan,*
24 *any credit insurance, life insurance, disability insurance, health*
25 *insurance, involuntary unemployment insurance or any other similar*
26 *form of insurance premiums, unless, before the borrower executes the*
27 *financing documents, the lender completes and executes, and the*
28 *borrower executes, a notice in substantially the following form:*

29
30 **INSURANCE NOTICE TO BORROWERS**

31
32 *You have indicated that you are electing to purchase insurance in*
33 *conjunction with this loan. THE COST OF THIS INSURANCE is being*
34 *PREPAID AND FINANCED AT THE INTEREST RATE PROVIDED*
35 *FOR THIS LOAN. THE INSURANCE IS NOT REQUIRED as a*
36 *condition of closing this loan, but has been included with the loan at*
37 *your request.*

38 ***YOU HAVE THE RIGHT TO CANCEL THIS INSURANCE AFTER***
39 ***PURCHASE.***

40 ***THE COST OF THIS INSURANCE WITHOUT FINANCING***
41 ***IS***

42 ***THE COST OF THIS INSURANCE WITH FINANCING***
43 ***IS***

44 ***YOUR REGULAR MORTGAGE PAYMENT WITHOUT THIS***
45 ***INSURANCE WOULD BE \$EACH MONTH, AS***
46 ***COMPARED TO A MONTHLY MORTGAGE PAYMENT***
47 ***OF \$ WHEN THE INSURANCE IS ADDED TO THE***
48 ***AMOUNT YOU ARE BORROWING AND FINANCED AS A PART OF***



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1 *YOUR MORTGAGE, A DIFFERENCE OF \$ EACH*
2 *MONTH.*

3
4 (Signature of Lender)

5
6 (Signature of Borrower)

7
8
9 **Sec. 12.** 1. *A person who engages in an unfair lending practice*
10 *described in this chapter is guilty of a misdemeanor.*

11 2. *If, on or after October 1, 2001, a lender engages in any unfair*
12 *lending practice described in this chapter in connection with a home*
13 *loan, the home property for which the mortgage, deed of trust or other*
14 *instrument was given as security for the repayment of the home loan*
15 *shall be deemed to be exempt from:*

16 (a) *Any foreclosure sale, trustee's sale or other sale to enforce the*
17 *home loan; and*

18 (b) *Any execution issued upon a judgment to enforce the home loan.*

19 **Sec. 13.** *A person who engages in an unfair lending practice*
20 *described in this chapter is, in addition to the penalty that may be*
21 *imposed for a misdemeanor, civilly liable at the suit of the attorney*
22 *general, in an amount not to exceed 5 percent of the gross income*
23 *realized from all the home loans provided by that person in this state in*
24 *each year in which the unfair lending activity occurs.*

25 **Sec. 14.** 1. *The attorney general has primary jurisdiction to*
26 *investigate and prosecute violations of this chapter.*

27 2. *When acting pursuant to this section, the attorney general may*
28 *commence his investigation and file a criminal action without leave of*
29 *court, and he has exclusive charge of the conduct of the prosecution.*

30 **Sec. 15.** 1. *The attorney general may conduct an investigation to*
31 *determine whether a person, either directly or indirectly, has violated, is*
32 *violating or is about to violate any of the provisions of this chapter.*

33 2. *If the attorney general has reason to believe that any person,*
34 *either directly or indirectly, has violated, is violating or is about to violate*
35 *any of the provisions of this chapter, the attorney general may:*

36 (a) *Issue a subpoena to require the testimony of any person;*

37 (b) *Issue a subpoena to require the production of any documents; or*

38 (c) *Administer an oath or affirmation to any person providing*
39 *testimony pursuant to a subpoena.*

40 3. *A subpoena issued pursuant to subsection 2 must be served in the*
41 *manner provided in the Nevada Rules of Civil Procedure.*

42 4. *If any person fails to cooperate with an investigation conducted by*
43 *the attorney general or to obey a subpoena, the attorney general may*
44 *apply to any district court for equitable relief. The court may:*

45 (a) *Order the person to testify or to produce the requested documents*
46 *pursuant to the subpoena; and*

47 (b) *Grant other relief necessary to compel compliance by the person.*



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1 **Sec. 16.** NRS 21.090 is hereby amended to read as follows:
2 21.090 1. The following property is exempt from execution, except
3 as otherwise specifically provided in this section:
4 (a) Private libraries not to exceed \$1,500 in value, and all family
5 pictures and keepsakes.
6 (b) Necessary household goods, as defined in 16 C.F.R. § 444.1(i) as
7 that section existed on January 1, 1987, and yard equipment, not to exceed
8 \$3,000 in value, belonging to the judgment debtor to be selected by him.
9 (c) Farm trucks, farm stock, farm tools, farm equipment, supplies and
10 seed not to exceed \$4,500 in value, belonging to the judgment debtor to be
11 selected by him.
12 (d) Professional libraries, office equipment, office supplies and the
13 tools, instruments and materials used to carry on the trade of the judgment
14 debtor for the support of himself and his family not to exceed \$4,500 in
15 value.
16 (e) The cabin or dwelling of a miner or prospector, his cars, implements
17 and appliances necessary for carrying on any mining operations and his
18 mining claim actually worked by him, not exceeding \$4,500 in total value.
19 (f) Except as otherwise provided in paragraph (o), one vehicle if the
20 judgment debtor's equity does not exceed \$4,500 or the creditor is paid an
21 amount equal to any excess above that equity.
22 (g) For any pay period, 75 percent of the disposable earnings of a
23 judgment debtor during that period, or for each week of the period 30 times
24 the minimum hourly wage prescribed by section 6(a)(1) of the federal Fair
25 Labor Standards Act of 1938 , **29 U.S.C. § 206(a)(1)**, and in effect at the
26 time the earnings are payable, whichever is greater. Except as otherwise
27 provided in paragraphs (n), (r) and (s), the exemption provided in this
28 paragraph does not apply in the case of any order of a court of competent
29 jurisdiction for the support of any person, any order of a court of
30 bankruptcy or of any debt due for any state or federal tax. As used in this
31 paragraph, "disposable earnings" means that part of the earnings of a
32 judgment debtor remaining after the deduction from those earnings of any
33 amounts required by law, to be withheld.
34 (h) All fire engines, hooks and ladders, with the carts, trucks and
35 carriages, hose, buckets, implements and apparatus thereunto appertaining,
36 and all furniture and uniforms of any fire company or department
37 organized under the laws of this state.
38 (i) All arms, uniforms and accouterments required by law to be kept by
39 any person, and also one gun, to be selected by the debtor.
40 (j) All courthouses, jails, public offices and buildings, lots, grounds and
41 personal property, the fixtures, furniture, books, papers and appurtenances
42 belonging and pertaining to the courthouse, jail and public offices
43 belonging to any county of this state, all cemeteries, public squares, parks
44 and places, public buildings, town halls, markets, buildings for the use of
45 fire departments and military organizations, and the lots and grounds
46 thereto belonging and appertaining, owned or held by any town or
47 incorporated city, or dedicated by the town or city to health, ornament or
48 public use, or for the use of any fire or military company organized under



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1 the laws of this state and all lots, buildings and other school property
2 owned by a school district and devoted to public school purposes.

3 (k) All money, benefits, privileges or immunities accruing or in any
4 manner growing out of any life insurance, if the annual premium paid does
5 not exceed \$1,000. If the premium exceeds that amount, a similar
6 exemption exists which bears the same proportion to the money, benefits,
7 privileges and immunities so accruing or growing out of the insurance that
8 the \$1,000 bears to the whole annual premium paid.

9 (l) The homestead as provided for by law, including a homestead for
10 which allodial title has been established and not relinquished and for which
11 a waiver executed pursuant to NRS 115.010 is not applicable.

12 (m) The dwelling of the judgment debtor occupied as a home for
13 himself and family, where the amount of equity held by the judgment
14 debtor in the home does not exceed \$125,000 in value and the dwelling is
15 situate upon lands not owned by him.

16 (n) All property in this state of the judgment debtor where the judgment
17 is in favor of any state for failure to pay that state's income tax on benefits
18 received from a pension or other retirement plan.

19 (o) Any vehicle owned by the judgment debtor for use by him or his
20 dependent that is equipped or modified to provide mobility for a person
21 with a permanent disability.

22 (p) Any prosthesis or equipment prescribed by a physician or dentist for
23 the judgment debtor or a dependent of the debtor.

24 (q) Money, not to exceed \$500,000 in present value, held in:

25 (1) An individual retirement arrangement which conforms with the
26 applicable limitations and requirements of 26 U.S.C. § 408;

27 (2) A written simplified employee pension plan which conforms with
28 the applicable limitations and requirements of 26 U.S.C. § 408;

29 (3) A cash or deferred arrangement which is a qualified plan pursuant
30 to the Internal Revenue Code; and

31 (4) A trust forming part of a stock bonus, pension or profit-sharing
32 plan which is a qualified plan pursuant to sections 401 et seq. of the
33 Internal Revenue Code, ~~§~~ 26 U.S.C. §§ 401 et seq. ~~§~~

34 (r) All money and other benefits paid pursuant to the order of a court of
35 competent jurisdiction for the support, education and maintenance of a
36 child, whether collected by the judgment debtor or the state.

37 (s) All money and other benefits paid pursuant to the order of a court of
38 competent jurisdiction for the support and maintenance of a former spouse,
39 including the amount of any arrearages in the payment of such support and
40 maintenance to which the former spouse may be entitled.

41 2. Except as otherwise provided in NRS 115.010 ~~§~~ *and section 12 of*
42 *this act*, no article or species of property mentioned in this section is
43 exempt from execution issued upon a judgment to recover for its price, or
44 upon a judgment of foreclosure of a mortgage or other lien thereon.

45 3. Any exemptions specified in subsection (d) of section 522 of the
46 Bankruptcy Act of 1978 ~~[(92 Stat. 2586)]~~, *11 U.S.C. § 522(d)*, do not
47 apply to property owned by a resident of this state unless conferred also by
48 subsection 1, as limited by subsection 2, of this section.”



1 **Sec. 17** NRS 690A.100 is hereby amended to read as follows:
2 690A.100 ~~[The]~~ *Except as otherwise provided in subsection 4 of section*
3 *11 of this act, the* premium or other identifiable charge for credit insurance
4 may be collected from the insured or included in the principal of any loan
5 or other transaction at the time the transaction is completed.

6 **Sec. 18.** NRS 690A.110 is hereby amended to read as follows:
7 690A.110 690A.110 The premium or cost of credit insurance when
8 issued through any creditor is not subject to NRS 688B.180 and 689B.060
9 and shall not be deemed interest or charges, or consideration, or an amount
10 in excess of permitted charges in connection with the loan or other credit
11 transaction, and , *except as otherwise provided in sections 2 to 15,*
12 *inclusive, of this act,* any gain or advantage to the creditor arising out of
13 the premium or commission or dividend from the issuance of such
14 insurance shall not be deemed a violation of any other law, general or
15 special, civil or criminal, of this state.

16 **Sec. 19.** The provisions of this act do not apply to offenses committed
17 before October 1, 2001.

