

(REPRINTED WITH ADOPTED AMENDMENTS)
THIRD REPRINT

EXEMPT

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 consumer credit transaction that:*
21 1. *Is secured by a mortgage loan which involves real property located*
22 *within this state; and*



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2. Constitutes a mortgage under § 152 of the Home Ownership and Equity Protection Act of 1994, 15 U.S.C. § 1602(aa), and the regulations adopted by the Board of Governors of the Federal Reserve System pursuant thereto, including, without limitation, 12 C.F.R. § 226.32.

Secs. 7 and 8. (Deleted by amendment.)

Sec. 9. "Lender" means a mortgagee, beneficiary of a deed of trust or other creditor who holds a mortgage, deed of trust or other instrument that encumbers home property as security for the repayment of a home loan.

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

Sec. 11. It is an unfair lending practice for a lender to:

1. Require a borrower, as a condition of obtaining or maintaining a home loan secured by home property, to provide property insurance on improvements to home property in an amount that exceeds the reasonable replacement value of the improvements.

2. Knowingly or intentionally make a home loan to a borrower based solely upon the equity of the borrower in the home property and without determining that the borrower has the ability to repay the home loan from other assets, including, without limitation, income.

3. Finance a prepayment fee or penalty in connection with the refinancing by the original borrower of a home loan owned by the lender or an affiliate of the lender.

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

INSURANCE NOTICE TO BORROWERS

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

YOU HAVE THE RIGHT TO CANCEL THIS INSURANCE AFTER PURCHASE.

THE COST OF THIS INSURANCE IS

YOUR REGULAR MORTGAGE PAYMENT WITHOUT THIS INSURANCE WOULD BE \$ EACH MONTH, AS COMPARED TO A MONTHLY MORTGAGE PAYMENT OF \$ WHEN THE INSURANCE IS ADDED TO THE 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
7 *(Signature of Borrower)*

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

11 *2. If, on or after October 1, 2001, a lender willfully engages in any*
12 *unfair lending practice described in this chapter in connection with a*
13 *home loan, the lender is liable to the borrower in an amount equal to the*
14 *sum of:*

15 *(a) Three times the amount of actual damages sustained by the*
16 *borrower; and*

17 *(b) If an action brought by the borrower is successful in enforcing the*
18 *liability imposed by paragraph (a), the costs of bringing the action and*
19 *reasonable attorney's fees as determined by the court.*

20 *3. The borrower has a defense against the unpaid obligation of the*
21 *home loan to the extent of any amount awarded by a court pursuant to*
22 *paragraph (a) of subsection 2, and the court, in addition to any other*
23 *legal or equitable remedy, may cure any existing default of the home*
24 *loan and cancel any pending foreclosure sale, trustee's sale or other sale*
25 *to enforce the home loan.*

26 **Sec. 13.** *A person who willfully engages in an unfair lending*
27 *practice described in this chapter is, in addition to the penalty that may*
28 *be imposed for a misdemeanor, civilly liable at the suit of the attorney*
29 *general in an amount not to exceed \$5,000.*

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

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

35 **Secs. 15 and 16.** (Deleted by amendment.)

36 **Sec. 17** NRS 690A.100 is hereby amended to read as follows:
37 690A.100 ~~The~~ *Except as otherwise provided in subsection 4 of section*
38 *11 of this act, the* premium or other identifiable charge for credit insurance
39 may be collected from the insured or included in the principal of any loan
40 or other transaction at the time the transaction is completed.

41 **Sec. 18.** NRS 690A.110 is hereby amended to read as follows:
42 690A.110 690A.110 The premium or cost of credit insurance when
43 issued through any creditor is not subject to NRS 688B.180 and 689B.060
44 and shall not be deemed interest or charges, or consideration, or an amount
45 in excess of permitted charges in connection with the loan or other credit
46 transaction, and , *except as otherwise provided in sections 2 to 15,*
47 *inclusive, of this act,* any gain or advantage to the creditor arising out of
48 the premium or commission or dividend from the issuance of such



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1 insurance shall not be deemed a violation of any other law, general or
2 special, civil or criminal, of this state.

3 **Sec. 18.5.** The provisions of this act apply only to home loans entered
4 into on or after October 1, 2001.

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

