

ASSEMBLY BILL NO. 440—ASSEMBLYMEN
CONKLIN, BUCKLEY AND OCEGUERA

MARCH 19, 2007

Referred to Committee on Commerce and Labor

SUMMARY—Makes various changes concerning loans secured by a mortgage or other lien on residential real property. (BDR 52-879)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility.
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 financial transactions; prohibiting a person from engaging in certain conduct with the intent to defraud a participant in a mortgage lending transaction; prohibiting certain conduct by a foreclosure consultant; providing an administrative penalty for certain conduct by a foreclosure consultant; providing a civil cause of action against a foreclosure consultant under certain circumstances; prohibiting a foreclosure purchaser from engaging in certain fraudulent conduct; providing penalties; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, it is an unfair lending practice for a lender to knowingly or intentionally make a home loan to a borrower based solely on the borrower's equity in the home property and without determining that the borrower has the ability to repay the home loan from income or other assets. (NRS 598D.100) **Section 2** of this bill clarifies that the provision applies to a low-document, no-document or stated-document home loan if the loan is made based solely on the borrower's equity in the property or without determining the borrower's ability to repay the loan.

Section 3 of this bill establishes the crime of mortgage lending fraud, which is a category C felony. **Section 3** also provides that a person who engages in a pattern of mortgage lending fraud is guilty of a category B felony. Furthermore, under **section 3**, if a lender commits mortgage lending fraud, the borrower may rescind



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the transaction within 2 years after the transaction has been completed. Chapters 645B and 645E of NRS govern mortgage brokers and mortgage agents and mortgage bankers, respectively.

Sections 7-20 of this bill establish specific rights and duties concerning foreclosure consultants and foreclosure purchasers. **Section 9** defines a foreclosure consultant as a person who promises to perform, for compensation, various services for a homeowner whose residence is in foreclosure that the foreclosure consultant represents will assist the homeowner to, for example, postpone or prevent a foreclosure sale, obtain an extension of time to repay his mortgage loan, obtain an alternative loan or mortgage, file documents with a bankruptcy court or repair the homeowner's credit after foreclosure. **Section 16** prohibits a foreclosure consultant from claiming or receiving any compensation from a homeowner until after the consultant has fully performed all the services he promised to perform and prohibits other conduct relating to his compensation. **Section 16** also prohibits a foreclosure consultant from acquiring any interest in the residence of the homeowner. **Section 17** authorizes the Commissioner of Mortgage Lending to impose an administrative penalty of not more than \$10,000 on a foreclosure consultant who violates any provision of **section 16**. **Section 18** creates a civil cause of action against a foreclosure consultant for a homeowner who is injured as a result of a foreclosure consultant's violation of any provision of **section 16**. If the homeowner prevails in his action against the foreclosure consultant, the court may award him his actual damages, punitive damages of at least 1 1/2 times his actual damages, his attorney's fees and costs of bringing the action.

Section 10 of this bill defines a foreclosure purchaser as a person who engages in the business of acquiring residences that are in foreclosure from their owners. **Section 19** of this bill provides that a foreclosure purchaser who engages in conduct that defrauds or deceives a homeowner whose residence is in foreclosure is guilty of a gross misdemeanor. **Section 19.5** of this bill provides that if a foreclosure purchaser engages in conduct that defrauds or deceives a homeowner whose residence is in foreclosure, the homeowner may rescind the transaction in which the foreclosure purchaser acquired the residence of the homeowner. **Section 19.5** further provides the procedures a homeowner must follow to rescind the transaction and prevents a homeowner from rescinding a transaction if the foreclosure purchaser has transferred an interest in the property to a bona fide purchaser.

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

Section 1. NRS 598D.040 is hereby amended to read as follows:

598D.040 "Home loan" means a consumer credit transaction that ~~is~~:

~~1. Is~~ *is* secured by a mortgage loan which involves real property located within this State ~~and~~

~~2. Constitutes~~ *and includes, without limitation, a consumer credit transaction that 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.



1 **Sec. 2.** NRS 598D.100 is hereby amended to read as follows:

2 598D.100 1. It is an unfair lending practice for a lender to:

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

7 (b) Knowingly or intentionally make a home loan to a borrower
8 ~~based~~, *including, without limitation, a low-document home loan,*
9 *no-document home loan or stated-document home loan:*

10 (1) *Based* solely upon the equity of the borrower in the home
11 property ~~and without~~; *or*

12 (2) *Without* determining that the borrower has the ability to
13 repay the home loan from other assets, including, without limitation,
14 income.

15 (c) Finance a prepayment fee or penalty in connection with the
16 refinancing by the original borrower of a home loan owned by the
17 lender or an affiliate of the lender.

18 (d) Finance, directly or indirectly in connection with a home
19 loan, any credit insurance.

20 2. As used in this section:

21 (a) "Credit insurance" has the meaning ascribed to it in
22 NRS 690A.015.

23 (b) *"Low-document home loan" means a home loan:*

24 (1) *Whose terms allow a borrower to establish his ability to*
25 *repay the home loan by providing only limited verification of his*
26 *income and other assets; or*

27 (2) *Which is evidenced only by a deed transferring some or*
28 *all of the interest of the borrower in the home property to the*
29 *creditor.*

30 (c) *"No-document home loan" means a home loan whose*
31 *terms allow a borrower to establish his ability to repay the home*
32 *loan without providing any verification of his income and other*
33 *assets.*

34 (d) "Prepayment fee or penalty" means any fee or penalty
35 imposed by a lender if a borrower repays the balance of a loan or
36 otherwise makes a payment on a loan before the regularly scheduled
37 time for repayment.

38 (e) *"Stated-document home loan" means a home loan whose*
39 *terms allow a borrower to establish his ability to repay the home*
40 *loan by providing only his own statement of verification of his*
41 *income and other assets.*

42 **Sec. 3.** Chapter 205 of NRS is hereby amended by adding
43 thereto a new section to read as follows:

44 1. *A person who, with the intent to defraud a participant in a*
45 *mortgage lending transaction:*



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1 (a) Knowingly makes a false statement or misrepresentation
2 concerning a material fact or deliberately conceals or fails to
3 disclose a material fact;

4 (b) Knowingly uses or facilitates the use of a false statement or
5 misrepresentation made by another person concerning a material
6 fact or deliberately uses or facilitates the use of another person's
7 concealment or failure to disclose a material fact;

8 (c) Receives any proceeds or any other money in connection
9 with a mortgage lending transaction that the person knows
10 resulted from a violation of paragraph (a) or (b);

11 (d) Conspires with another person to violate any of the
12 provisions of paragraph (a), (b) or (c); or

13 (e) Files or causes to be filed with a county recorder any
14 document that the person knows to include a misstatement,
15 misrepresentation or omission concerning a material fact,

16 ➡ commits the offense of mortgage lending fraud which is a
17 category C felony and, upon conviction, shall be punished by
18 imprisonment in the state prison for a minimum term of not less
19 than 1 year and a maximum term of not more than 10 years, or by
20 a fine of not more than \$10,000, or by both fine and
21 imprisonment.

22 2. A person who engages in a pattern of mortgage lending
23 fraud or conspires or attempts to engage in a pattern of mortgage
24 lending fraud is guilty of a category B felony and, upon
25 conviction, shall be punished by imprisonment in the state prison
26 for a minimum term of not less than 3 years and a maximum term
27 of not more than 20 years, or by a fine of not more than \$50,000,
28 or by both fine and imprisonment.

29 3. Each mortgage lending transaction in which a person
30 violates any provision of subsection 1 constitutes a separate
31 violation.

32 4. Except as otherwise provided in this subsection, if a lender
33 or any agent of the lender commits the offense of mortgage
34 lending fraud in violation of this section, the mortgage lending
35 transaction is voidable by the borrower and the transaction may be
36 rescinded by the borrower within 2 years after the date the
37 transaction is completed if the borrower gives written notice to the
38 lender and records that notice with the recorder of the county in
39 which the mortgage was recorded. A mortgage lending transaction
40 is not voidable pursuant to this subsection if the lender has
41 transferred the mortgage to a bona fide purchaser.

42 5. The Attorney General may investigate and prosecute a
43 violation of this section.

44 6. As used in this section:



(a) *“Bona fide purchaser” means any person who purchases a mortgage in good faith and for valuable consideration and who does not know or have reasonable cause to believe that the lender or any agent of the lender engaged in mortgage lending fraud in violation of this section.*

(b) *“Mortgage lending transaction” means any transaction between two or more persons for the purpose of making or obtaining, attempting to make or obtain, or assisting another person to make or obtain a loan that is secured by a mortgage or other lien on residential real property. The term includes, without limitation:*

(1) The solicitation of a person to make or obtain the loan;

(2) The representation or offer to represent another person to make or obtain the loan;

(3) The negotiation of the terms of the loan;

(4) The provision of services in connection with the loan;
and

(5) The execution of any document in connection with making or obtaining the loan.

(c) *“Participant in a mortgage lending transaction” includes, without limitation:*

(1) A borrower as defined in NRS 598D.020;

(2) An escrow agent as defined in NRS 645A.010;

(3) A foreclosure consultant as defined in section 9 of this act;

(4) A foreclosure purchaser as defined in section 10 of this act;

(5) An investor as defined in NRS 645B.0121;

(6) A lender as defined in NRS 598D.050;

(7) A mortgage agent as defined in NRS 645B.0125;

(8) A mortgage banker as defined in NRS 645E.100; and

(9) A mortgage broker as defined in NRS 645B.0127.

(d) *“Pattern of mortgage lending fraud” means one or more violations of a provision of subsection 1 committed in two or more mortgage lending transactions which have the same or similar intents, results, accomplices, victims or methods of commission, or are otherwise interrelated by distinguishing characteristics.*

Sec. 4. (Deleted by amendment.)

Sec. 5. (Deleted by amendment.)

Sec. 5.3. NRS 645B.020 is hereby amended to read as follows:
645B.020 1. A person who wishes to be licensed as a mortgage broker must file a written application for a license with the Office of the Commissioner and pay the fee required pursuant to NRS 645B.050. An application for a license as a mortgage broker must:



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(a) ~~Be verified.~~
~~(b)~~ State the name, residence address and business address of the applicant and the location of each principal office and branch office at which the mortgage broker will conduct business within this State.

~~(c)~~ (b) State the name under which the applicant will conduct business as a mortgage broker.

~~(d)~~ (c) List the name, residence address and business address of each person who will:

(1) If the applicant is not a natural person, have an interest in the mortgage broker as a principal, partner, officer, director or trustee, specifying the capacity and title of each such person.

(2) Be associated with or employed by the mortgage broker as a mortgage agent.

~~(e)~~ (d) Include a general business plan and a description of the policies and procedures that the mortgage broker and his mortgage agents will follow to arrange and service loans and to conduct business pursuant to this chapter.

~~(f)~~ (e) State the length of time the applicant has been engaged in the business of a broker.

~~(g)~~ (f) Include a financial statement of the applicant and, if applicable, satisfactory proof that the applicant will be able to maintain continuously the net worth required pursuant to NRS 645B.115.

~~(h)~~ (g) Include all information required to complete the application.

~~(i)~~ (h) Include any other information required pursuant to the regulations adopted by the Commissioner or an order of the Commissioner.

2. If a mortgage broker will conduct business at one or more branch offices within this State, the mortgage broker must apply for a license for each such branch office.

3. Except as otherwise provided in this chapter, the Commissioner shall issue a license to an applicant as a mortgage broker if:

(a) The application *is verified by the Commissioner and* complies with the requirements of this chapter; and

(b) The applicant and each general partner, officer or director of the applicant, if the applicant is a partnership, corporation or unincorporated association:

(1) Has a good reputation for honesty, trustworthiness and integrity and displays competence to transact the business of a mortgage broker in a manner which safeguards the interests of the general public. The applicant must submit satisfactory proof of these qualifications to the Commissioner.



(2) Has not been convicted of, or entered a plea of nolo contendere to, a felony relating to the practice of mortgage brokers or any crime involving fraud, misrepresentation or moral turpitude.

(3) Has not made a false statement of material fact on his application.

(4) Has not had a license that was issued pursuant to the provisions of this chapter or chapter 645E of NRS suspended or revoked within the 10 years immediately preceding the date of his application.

(5) Has not had a license that was issued in any other state, district or territory of the United States or any foreign country suspended or revoked within the 10 years immediately preceding the date of his application.

(6) Has not violated any provision of this chapter or chapter 645E of NRS, a regulation adopted pursuant thereto or an order of the Commissioner.

Sec. 5.5. NRS 645B.410 is hereby amended to read as follows:

645B.410 1. To obtain a license as a mortgage agent, a person must:

(a) Be a natural person;

(b) File a written application for a license as a mortgage agent with the Office of the Commissioner;

(c) Comply with the applicable requirements of this chapter; and

(d) Pay an application fee set by the Commissioner of not more than \$185.

2. An application for a license as a mortgage agent must:

(a) ~~Be verified;~~

~~(b)~~ State the name and residence address of the applicant;

~~(c)~~ (b) Include a provision by which the applicant gives his written consent to an investigation of his credit history, criminal history and background;

~~(d)~~ (c) Include a complete set of fingerprints which the Division may forward to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report;

~~(e)~~ (d) Include a verified statement from the mortgage broker with whom the applicant will be associated that expresses the intent of that mortgage broker to associate the applicant with the mortgage broker and to be responsible for the activities of the applicant as a mortgage agent; and

~~(f)~~ (e) Include any other information or supporting materials required pursuant to the regulations adopted by the Commissioner or by an order of the Commissioner. Such information or supporting materials may include, without limitation, other forms of identification of the person.



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3. Except as otherwise provided in this chapter, the Commissioner shall issue a license as a mortgage agent to an applicant if:

(a) The application *is verified by the Commissioner and* complies with the applicable requirements of this chapter; and

(b) The applicant:

(1) Has not been convicted of, or entered a plea of nolo contendere to, a felony relating to the practice of mortgage agents or any crime involving fraud, misrepresentation or moral turpitude;

(2) Has not had a financial services license suspended or revoked within the immediately preceding 10 years;

(3) Has not made a false statement of material fact on his application;

(4) Has not violated any provision of this chapter or chapter 645E of NRS, a regulation adopted pursuant thereto or an order of the Commissioner; and

(5) Has a good reputation for honesty, trustworthiness and integrity and displays competence to transact the business of a mortgage agent in a manner which safeguards the interests of the general public. The applicant must submit satisfactory proof of these qualifications to the Commissioner.

4. Money received by the Commissioner pursuant to this section must be deposited in the Fund for Mortgage Lending created by NRS 645F.270.

Sec. 6. Chapter 645F of NRS is hereby amended by adding thereto the provisions set forth as sections 7 to 20, inclusive, of this act.

Sec. 7. *As used in sections 7 to 20, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 8 to 14, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 8. *“Covered service” includes, without limitation:*

1. Financial counseling, including, without limitation, debt counseling and budget counseling.

2. Receiving money for the purpose of distributing it to creditors in payment or partial payment of any obligation secured by a mortgage or other lien on a residence in foreclosure.

3. Contacting a creditor on behalf of a homeowner.

4. Arranging or attempting to arrange for an extension of the period within which a homeowner may cure his default and reinstate his obligation pursuant to a note, mortgage or deed of trust.

5. Arranging or attempting to arrange for any delay or postponement of the time of a foreclosure sale.



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6. Advising the filing of any document or assisting in any manner in the preparation of any document for filing with a bankruptcy court.

7. Giving any advice, explanation or instruction to a homeowner which in any manner relates to the cure of a default in or the reinstatement of an obligation secured by a mortgage or other lien on the residence in foreclosure, the full satisfaction of the obligation, or the postponement or avoidance of a foreclosure sale.

Sec. 9. "Foreclosure consultant" means a person who, directly or indirectly, makes any solicitation, representation or offer to a homeowner to perform for compensation, or who, for compensation, performs any covered service that the person represents will do any of the following:

1. Prevent or postpone a foreclosure sale;
2. Obtain any forbearance from any mortgagee or beneficiary of a deed of trust;
3. Assist the homeowner to exercise the right of reinstatement provided in the legal documents;
4. Obtain any extension of the period within which the homeowner may reinstate the homeowner's obligation;
5. Obtain any waiver of an acceleration clause contained in any promissory note or contract secured by a mortgage on a residence in foreclosure or included in the mortgage or deed of trust;
6. Assist the homeowner in foreclosure or loan default to obtain a loan or advance of money;
7. Avoid or ameliorate the impairment of the homeowner's credit resulting from the recording of a notice of default or the conduct of a foreclosure sale;
8. Save the homeowner's residence from foreclosure; or
9. Assist the homeowner to obtain a foreclosure reconveyance.

Sec. 10. "Foreclosure purchaser" means a person who, in the course of his business, vocation or occupation, acquires or attempts to acquire title to a residence in foreclosure from a homeowner.

Sec. 11. 1. "Foreclosure reconveyance" means a transaction that involves:

(a) The transfer of title to a residence in foreclosure by a homeowner during a foreclosure proceeding by:

(1) The transfer of an interest in the residence in foreclosure from the homeowner; or

(2) The creation of a mortgage or other lien during the foreclosure process that allows the acquirer to obtain title to the



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1 *residence in foreclosure by redeeming the property as a junior lien*
2 *holder; and*

3 *(b) The subsequent conveyance, or promise of a subsequent*
4 *conveyance, of an interest in the residence to the former*
5 *homeowner by the acquirer, or a person acting in concert with the*
6 *acquirer, that allows the former homeowner to remain in*
7 *possession of the residence following the completion of the*
8 *foreclosure proceeding.*

9 2. As used in this section, "interest in the residence" includes,
10 without limitation, an interest in a contract for a deed, a purchase
11 agreement, and an option to purchase or lease.

12 **Sec. 12.** "Foreclosure sale" means the sale of real property
13 to enforce an obligation secured by a mortgage or lien on the
14 property, including the exercise of a trustee's power of sale
15 pursuant to NRS 107.080.

16 **Sec. 13.** "Homeowner" means the record owner of a
17 residence in foreclosure at the time the notice of the pendency of
18 an action for foreclosure is recorded pursuant to NRS 14.010 or
19 the notice of default and election to sell is recorded pursuant to
20 NRS 107.080.

21 **Sec. 14.** "Residence in foreclosure" means residential real
22 property consisting of not more than four family dwelling units,
23 one of which the homeowner occupies as his principal place of
24 residence, and against which there is an outstanding notice of the
25 pendency of an action for foreclosure recorded pursuant to NRS
26 14.010 or notice of default and election to sell recorded pursuant
27 to NRS 107.080.

28 **Sec. 15.** The provisions of sections 7 to 20, inclusive, of this
29 act do not apply to, and the terms "foreclosure consultant" and
30 "foreclosure purchaser" do not include:

31 1. An attorney at law rendering services in the performance
32 of his duties as an attorney at law;

33 2. A person, firm, company or corporation licensed to engage
34 in the business of debt adjustment pursuant to chapter 676 of NRS
35 while engaging in that business;

36 3. A person licensed as a real estate broker, broker-salesman
37 or salesman pursuant to chapter 645 of NRS while acting under
38 the authority of that license;

39 4. A person or the authorized agent of a person acting under
40 the provisions of a program sponsored by the Federal
41 Government, this State or a local government, including, without
42 limitation, the Department of Housing and Urban Development,
43 the Federal Home Loan Mortgage Corporation, the Federal
44 National Mortgage Association or the Federal Home Loan Bank;



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1 5. A person who holds or is owed an obligation secured by a
2 mortgage or other lien on a residence in foreclosure if the person
3 performs services in connection with this obligation or lien and
4 the obligation or lien did not arise as the result of or as part of a
5 proposed foreclosure reconveyance;

6 6. Any person doing business under the laws of this State or
7 of the United States relating to banks, trust companies, savings
8 and loan associations, industrial loan and thrift companies,
9 regulated lenders, credit unions, insurance companies, or a
10 mortgagee which is a United States Department of Housing and
11 Urban Development approved mortgagee and any subsidiary or
12 affiliate of those persons, and any agent or employee of those
13 persons while engaged in the business of those persons;

14 7. A person licensed as an escrow agent, title agent, mortgage
15 agent, mortgage broker or mortgage banker pursuant to chapter
16 645A, 692A, 645B or 645E of NRS, while acting under the
17 authority of his license;

18 8. A nonprofit agency or organization that offers credit
19 counseling or advice to a homeowner of a residence in foreclosure
20 or a person in default on a loan; or

21 9. A judgment creditor of the homeowner whose claim
22 accrued before the recording of the notice of the pendency of an
23 action for foreclosure against the homeowner pursuant to NRS
24 14.010 or the recording of the notice of default and election to sell
25 pursuant to NRS 107.080.

26 **Sec. 16. A foreclosure consultant shall not:**

27 1. Claim, demand, charge, collect or receive any
28 compensation until after the foreclosure consultant has fully
29 performed each covered service that he contracted to perform or
30 represented he would perform.

31 2. Claim, demand, charge, collect or receive any fee, interest
32 or other compensation for any reason which is not fully disclosed
33 to the homeowner.

34 3. Take any wage assignment, lien on real or personal
35 property, assignment of a homeowner's equity or other interest in
36 a residence in foreclosure or other security for the payment of
37 compensation. Any such security is void and unenforceable.

38 4. Receive any consideration from any third party in
39 connection with a covered service provided to a homeowner unless
40 the consideration is first fully disclosed to the homeowner.

41 5. Acquire, directly or indirectly, any interest in the residence
42 in foreclosure of a homeowner with whom the foreclosure
43 consultant has contracted to perform a covered service.

44 6. Accept a power of attorney from a homeowner for any
45 purpose, other than to inspect documents as provided by law.



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1 **Sec. 17. 1.** *In addition to any other remedy or penalty, the*
2 *Commissioner may, after giving notice and opportunity to be*
3 *heard, impose an administrative penalty of not more than \$10,000*
4 *on a foreclosure consultant who violates any provision of section*
5 *16 of this act.*

6 2. *Except as otherwise provided in this section, all money*
7 *collected from administrative penalties imposed pursuant to this*
8 *section must be deposited in the State General Fund.*

9 3. *The money collected from an administrative penalty may*
10 *be deposited with the State Treasurer for credit to the Fund for*
11 *Mortgage Lending created by NRS 645F.270 if:*

12 (a) *The person pays the administrative penalty without*
13 *exercising his right to a hearing to contest the penalty; or*

14 (b) *The administrative penalty is imposed in a hearing*
15 *conducted by a hearing officer or panel appointed by the*
16 *Commissioner.*

17 4. *The Commissioner may appoint one or more hearing*
18 *officers or panels and may delegate to those hearing officers or*
19 *panels the power of the Commissioner to conduct hearings,*
20 *determine violations and impose the penalties authorized by this*
21 *section.*

22 5. *If money collected from an administrative penalty is*
23 *deposited in the State General Fund, the Commissioner may*
24 *present a claim to the State Board of Examiners for*
25 *recommendation to the Interim Finance Committee if money is*
26 *needed to pay attorney's fees or the costs of an investigation, or*
27 *both.*

28 **Sec. 18. 1.** *A homeowner who is injured as a result of a*
29 *foreclosure consultant's violation of a provision of section 16 of*
30 *this act may bring an action against the foreclosure consultant to*
31 *recover damages caused by the violation, together with reasonable*
32 *attorney's fees and costs.*

33 2. *If the homeowner prevails in the action, the court may*
34 *award such punitive damages as may be determined by a jury, or*
35 *by a court sitting without a jury, but in no case may the punitive*
36 *damages be less than 1 1/2 times the amount awarded to the*
37 *homeowner as actual damages.*

38 **Sec. 19.** *A foreclosure purchaser who engages in any*
39 *conduct that operates as a fraud or deceit upon a homeowner in*
40 *connection with a transaction that is subject to the provisions of*
41 *sections 7 to 20, inclusive, of this act, including, without*
42 *limitation, a foreclosure reconveyance, is guilty of a gross*
43 *misdemeanor and shall be punished by imprisonment in the*
44 *county jail for not more than 1 year, or by a fine of not more than*
45 *\$50,000, or by both fine and imprisonment.*



Sec. 19.5. 1. *In addition to the penalty provided in section 19 of this act and except as otherwise provided in subsection 5, if a foreclosure purchaser engages in any conduct that operates as a fraud or deceit upon a homeowner in connection with a transaction that is subject to the provisions of sections 7 to 20, inclusive, of this act, including, without limitation, a foreclosure reconveyance, the transaction in which the foreclosure purchaser acquired title to the residence in foreclosure is voidable by the homeowner and the transaction may be rescinded by the homeowner within 2 years after the date of the recording of the conveyance.*

2. To rescind a transaction pursuant to subsection 1, the homeowner must give written notice to the foreclosure purchaser and a successor in interest to the foreclosure purchaser, if the successor in interest is not a bona fide purchaser, and record that notice with the recorder of the county in which the property is located. The notice of rescission must contain:

(a) The name of the homeowner, the foreclosure purchaser and any successor in interest who holds title to the property; and

(b) A description of the property.

3. Within 20 days after receiving notice pursuant to subsection 2:

(a) The foreclosure purchaser and the successor in interest, if the successor in interest is not a bona fide purchaser, shall reconvey to the homeowner title to the property free and clear of encumbrances which were created subsequent to the rescinded transaction and which are due to the actions of the foreclosure purchaser; and

(b) The homeowner shall return to the foreclosure purchaser any consideration received from the foreclosure purchaser in exchange for the property.

4. If the foreclosure purchaser has not reconveyed to the homeowner title to the property within the period described in subsection 3, the homeowner may bring an action to enforce the rescission in the district court of the county in which the property is located.

5. A transaction is not voidable pursuant to this section if the foreclosure purchaser has transferred the property to a bona fide purchaser.

6. As used in this section, "bona fide purchaser" means any person who purchases an interest in a residence in foreclosure from a foreclosure purchaser in good faith and for valuable consideration and who does not know or have reasonable cause to believe that the foreclosure purchaser engaged in conduct which violates subsection 1.



1 **Sec. 20.** *The rights, remedies and penalties provided*
2 *pursuant to the provisions of sections 7 to 20, inclusive, of this act*
3 *are cumulative and do not abrogate and are in addition to any*
4 *other rights, remedies and penalties that may exist at law or in*
5 *equity, including, without limitation, any criminal penalty that*
6 *may be imposed pursuant to section 19 of this act.*

