

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

MARCH 19, 2007

Referred to Committee on Commerce and Labor

SUMMARY—Makes various changes concerning financial transactions. (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; revising consumer credit protections for members of the military; revising provisions governing civil actions brought against certain borrowers who engage in fraudulent conduct; 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:

1 Under existing law, it is an unfair lending practice for a lender to knowingly or
2 intentionally make a home loan to a borrower based solely on the borrower's equity
3 in the home property and without determining that the borrower has the ability to
4 repay the home loan from income or other assets. (NRS 598D.100) **Section 2** of
5 this bill revises this provision to remove the requirement that the lender based the
6 home loan solely on the borrower's equity. **Section 2** also clarifies that the
7 provision applies to a low-document, no-document or stated-document home loan,
8 other than a reverse mortgage, if the loan is made without determining, using any
9 commercially reasonable means or mechanism, the borrower's ability to repay the
10 loan.



* A B 4 4 0 R 3 *

Existing federal law imposes limitations on the terms of consumer credit that is extended to members of the Armed Forces of the United States who are on active duty and their dependents, including, without limitation, a prohibition against a lender imposing an interest rate greater than 36 percent. The federal law preempts any state law that is inconsistent with the federal law. (Section 670 of the John Warner National Defense Authorization Act for Fiscal Year 2007, Public Law 109-364) **Section 2.2** of this bill provides that any violation of the federal law shall be deemed to be a violation of chapter 604A of NRS, thereby making violators subject to the remedies and penalties set forth in that chapter, including the imposition of an administrative fine of not more than \$10,000 for each violation, the revocation or suspension of a license issued pursuant to that chapter and civil actions for damages. (NRS 604A.820, 604A.930) **Section 22** of this bill provides that any violation of the federal law shall be deemed to be a violation of chapter 675 of NRS, thereby making violators subject to the remedies and penalties set forth in that chapter, including the imposition of an administrative fine of not more than \$10,000 for each violation and the revocation or suspension of a license issued pursuant to that chapter. (NRS 675.440)

Existing law authorizes parties to agree to any rate of interest on money due pursuant to a contract. (NRS 99.050) **Section 2.9** of this bill provides an exception to this provision for agreements which are subject to the federal law discussed above which limits the interest rate on such agreements to 36 percent.

Existing law provides certain practices that must be followed by a person licensed to operate a check-cashing service, deferred deposit loan service, short-term loan service or title loan service pursuant to chapter 604A of NRS when dealing with a customer who is called to active duty in the military. (NRS 604A.420) **Section 2.4** of this bill revises this list of practices and provides that the provision applies to any customer who is a member of the military. **Section 23** of this bill sets forth a new provision which is identical to **section 2.4** for persons who are licensed pursuant to chapter 675 of NRS to make loans.

Existing law provides remedies for a financial institution that relied on certain fraudulent conduct of a borrower who engaged in the conduct to obtain certain loans secured by a lien on real property. (NRS 40.750) **Section 2.8** of this bill provides that these remedies are available to other lenders as well. Existing law authorizes a financial institution to commence an action against a borrower who engaged in such fraudulent conduct within 3 years after discovering the fraudulent conduct. (NRS 11.190) **Section 2.7** of this bill provides that this period of limitation applies to other lenders as well.

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 is convicted of mortgage lending fraud, the borrower in the transaction involving the mortgage lending fraud may rescind the transaction within 6 months after the date of the conviction. 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



* A B 4 4 0 R 3 *

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.

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

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

(a) 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.

(b) Knowingly or intentionally make a home loan, *other than a reverse mortgage*, to a borrower ~~[based]~~ *, including, without limitation, a low-document home loan, no-document home loan or stated-document home loan [solely upon the equity of the borrower in the home property and without]*, *without* determining, *using any commercially reasonable means or mechanism*, that the borrower



1 has the ability to repay the home loan . ~~{from other assets, including,~~
2 ~~without limitation, income.}~~

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

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

8 2. As used in this section:

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

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

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

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

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

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

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

30 **Sec. 2.2.** Chapter 604A of NRS is hereby amended by adding
31 thereto a new section to read as follows:

32 *Notwithstanding any other provision of law, a violation of any*
33 *provision of section 670 of the John Warner National Defense*
34 *Authorization Act for Fiscal Year 2007, Public Law 109-364, or*
35 *any regulation adopted pursuant thereto shall be deemed to be a*
36 *violation of this chapter.*

37 **Sec. 2.4.** NRS 604A.420 is hereby amended to read as
38 follows:

39 604A.420 *Notwithstanding any other provision of law:*

40 1. If a customer is ~~{called to active duty in}~~ *a member of* the
41 military, a licensee shall:

42 (a) ~~{Defer for the duration of the active duty all collection~~
43 ~~activity against the customer and his property, including, without~~
44 ~~limitation, any community property in which the customer has an~~
45 ~~interest; and~~



* A B 4 4 0 R 3 *

1 ~~—(b)~~ Honor the terms of any repayment plan between the
2 licensee and customer, including, without limitation, any repayment
3 plan negotiated through military counselors or third-party credit
4 counselors.

5 *(b) Honor any proclamation by a base commander that a*
6 *certain branch location of the licensee is off-limits to members of*
7 *the military and their spouses.*

8 2. ~~[When collecting any defaulted loan.]~~ *If a customer is a*
9 *member of the military,* a licensee shall not:

10 (a) Garnish or threaten to garnish any wages or salary ~~[paid to a~~
11 ~~customer for active service in the military;]~~ *of the customer or his*
12 *spouse;* or

13 (b) Contact or threaten to contact the military chain of command
14 of a customer in an effort to collect the ~~[defaulted]~~ loan.

15 3. *If a customer is a member of the military and is deployed to*
16 *a combat or combat supporting position, a licensee shall not*
17 *engage in any collection activity against the customer or his*
18 *spouse.*

19 4. As used in this section, “military” means the Armed Forces
20 of the United States, a reserve component thereof or the National
21 Guard.

22 **Sec. 2.6.** NRS 604A.930 is hereby amended to read as
23 follows:

24 604A.930 1. Subject to the affirmative defense set forth in
25 subsection 3, in addition to any other remedy or penalty, if a person
26 violates any provision of NRS 604A.400, 604A.410 to 604A.500,
27 inclusive, 604A.610, 604A.615, 604A.650 or 604A.655 *or section*
28 *2.2 of this act* or any regulation adopted pursuant thereto, the
29 customer may bring a civil action against the person for : ~~[any or all~~
30 ~~of the following relief:]~~

31 (a) Actual and consequential damages;

32 (b) Punitive damages, which are subject to the provisions of
33 NRS 42.005;

34 (c) Reasonable attorney’s fees and costs; and

35 (d) Any other legal or equitable relief that the court deems
36 appropriate.

37 2. Subject to the affirmative defense set forth in subsection 3,
38 in addition to any other remedy or penalty, the customer may bring a
39 civil action against a person pursuant to subsection 1 to recover an
40 additional amount, as statutory damages, which is equal to \$1,000
41 for each violation if the person knowingly:

42 (a) Operates a check-cashing service, deferred deposit loan
43 service, short-term loan service or title loan service without a
44 license, in violation of NRS 604A.400;



* A B 4 4 0 R 3 *

(b) Fails to include in a loan agreement a disclosure of the right of the customer to rescind the loan, in violation of NRS 604A.410;

(c) Violates any provision of NRS 604A.420;

(d) Accepts collateral or security for a deferred deposit loan, in violation of NRS 604A.435, except that a check or written authorization for an electronic transfer of money shall not be deemed to be collateral or security for a deferred deposit loan;

(e) Uses or threatens to use the criminal process in this State or any other state to collect on a loan made to the customer, in violation of NRS 604A.440;

(f) Includes in any written agreement a promise by the customer to hold the person harmless, a confession of judgment by the customer or an assignment or order for the payment of wages or other compensation due the customer, in violation of NRS 604A.440;

(g) Violates any provision of NRS 604A.485; ~~for~~

(h) Violates any provision of NRS 604A.490 ~~for~~; or

(i) Violates any provision of section 2.2 of this act.

3. A person may not be held liable in any civil action brought pursuant to this section if the person proves, by a preponderance of evidence, that the violation:

(a) Was not intentional;

(b) Was technical in nature; and

(c) Resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

4. For the purposes of subsection 3, a bona fide error includes, without limitation, clerical errors, calculation errors, computer malfunction and programming errors and printing errors, except that an error of legal judgment with respect to the person's obligations under this chapter is not a bona fide error.

Sec. 2.7. NRS 11.190 is hereby amended to read as follows:

11.190 Except as otherwise provided in NRS 125B.050 and 217.007, actions other than those for the recovery of real property, unless further limited by specific statute, may only be commenced as follows:

1. Within 6 years:

(a) An action upon a judgment or decree of any court of the United States, or of any state or territory within the United States, or the renewal thereof.

(b) An action upon a contract, obligation or liability founded upon an instrument in writing, except those mentioned in the preceding sections of this chapter.

2. Within 4 years:



* A B 4 4 0 R 3 *

1 (a) An action on an open account for goods, wares and
2 merchandise sold and delivered.

3 (b) An action for any article charged on an account in a store.

4 (c) An action upon a contract, obligation or liability not founded
5 upon an instrument in writing.

6 (d) An action against a person alleged to have committed a
7 deceptive trade practice in violation of NRS 598.0903 to 598.0999,
8 inclusive, but the cause of action shall be deemed to accrue when
9 the aggrieved party discovers, or by the exercise of due diligence
10 should have discovered, the facts constituting the deceptive trade
11 practice.

12 3. Within 3 years:

13 (a) An action upon a liability created by statute, other than a
14 penalty or forfeiture.

15 (b) An action for waste or trespass of real property, but when the
16 waste or trespass is committed by means of underground works
17 upon any mining claim, the cause of action shall be deemed to
18 accrue upon the discovery by the aggrieved party of the facts
19 constituting the waste or trespass.

20 (c) An action for taking, detaining or injuring personal property,
21 including actions for specific recovery thereof, but in all cases
22 where the subject of the action is a domestic animal usually included
23 in the term "livestock," which has a recorded mark or brand upon it
24 at the time of its loss, and which strays or is stolen from the true
25 owner without his fault, the statute does not begin to run against an
26 action for the recovery of the animal until the owner has actual
27 knowledge of such facts as would put a reasonable person upon
28 inquiry as to the possession thereof by the defendant.

29 (d) Except as otherwise provided in NRS 112.230 and 166.170,
30 an action for relief on the ground of fraud or mistake, but the cause
31 of action in such a case shall be deemed to accrue upon the
32 discovery by the aggrieved party of the facts constituting the fraud
33 or mistake.

34 (e) An action pursuant to NRS 40.750 for damages sustained by
35 a financial institution *or other lender* because of its reliance on
36 certain fraudulent conduct of a borrower, but the cause of action in
37 such a case shall be deemed to accrue upon the discovery by the
38 financial institution *or other lender* of the facts constituting the
39 concealment or false statement.

40 4. Within 2 years:

41 (a) An action against a sheriff, coroner or constable upon
42 liability incurred by acting in his official capacity and in virtue of
43 his office, or by the omission of an official duty, including the
44 nonpayment of money collected upon an execution.



* A B 4 4 0 R 3 *

(b) An action upon a statute for a penalty or forfeiture, where the action is given to a person or the State, or both, except when the statute imposing it prescribes a different limitation.

(c) An action for libel, slander, assault, battery, false imprisonment or seduction.

(d) An action against a sheriff or other officer for the escape of a prisoner arrested or imprisoned on civil process.

(e) Except as otherwise provided in NRS 11.215, an action to recover damages for injuries to a person or for the death of a person caused by the wrongful act or neglect of another. The provisions of this paragraph relating to an action to recover damages for injuries to a person apply only to causes of action which accrue after March 20, 1951.

5. Within 1 year:

(a) An action against an officer, or officer de facto to recover goods, wares, merchandise or other property seized by the officer in his official capacity, as tax collector, or to recover the price or value of goods, wares, merchandise or other personal property so seized, or for damages for the seizure, detention or sale of, or injury to, goods, wares, merchandise or other personal property seized, or for damages done to any person or property in making the seizure.

(b) An action against an officer, or officer de facto for money paid to the officer under protest, or seized by the officer in his official capacity, as a collector of taxes, and which, it is claimed, ought to be refunded.

Sec. 2.8. NRS 40.750 is hereby amended to read as follows:

40.750 1. As used in this section, "financial institution" means a bank, mortgage broker, mortgage banker, credit union, thrift company or savings and loan association, or any subsidiary or affiliate of a bank, mortgage broker, mortgage banker, credit union, thrift company or savings and loan association, which is authorized to transact business in this State and which makes or acquires, in whole or in part, any loan of the kind described in subsection 2.

2. Except as otherwise provided in subsection 5, a person who, for the purpose of obtaining a loan secured by a lien on real property, knowingly conceals a material fact, or makes a false statement concerning a material fact knowing that the statement is false, is liable to any financial institution *or other lender* which relied upon the absence of that concealed fact or on that false statement for any damages it sustains because of the fraud.

3. In addition to its actual damages, a financial institution *or other lender* may recover exemplary or punitive damages in an amount not to exceed 50 percent of the actual damages awarded.

4. The cause of action provided by this section:



* A B 4 4 0 R 3 *

(a) Is not, for the purposes of NRS 40.430, an action for the recovery of any debt or an action for the enforcement of any right secured by mortgage or lien upon real estate.

(b) Is in addition to and not in substitution for any right of foreclosure existing in favor of the financial institution ~~[-]~~ *or other lender*. Any recovery pursuant to this section does not limit the amount of a judgment awarded pursuant to NRS 40.459, but the financial institution *or other lender* is not entitled to recover actual damages more than once for the same loss.

5. The provisions of this section do not apply to any loan which is secured by a lien on real property used for residential purposes if:

(a) The residence is a single-family dwelling occupied by the person obtaining the loan, as represented by him in connection with his application for the loan; and

(b) The loan is for the principal amount of \$150,000 or less.

Sec. 2.9. NRS 99.050 is hereby amended to read as follows:

99.050 ~~[-Parties]~~ *Except as otherwise provided in section 670 of the John Warner National Defense Authorization Act for Fiscal Year 2007, Public Law 109-364, or any regulation adopted pursuant thereto, parties* may agree for the payment of any rate of interest on money due or to become due on any contract, for the compounding of interest if they choose, and for any other charges or fees. The parties shall specify in writing the rate upon which they agree, that interest is to be compounded if so agreed, and any other charges or fees to which they have agreed.

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

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

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

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

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

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

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



* A B 4 4 0 R 3 *

1 ↪ commits the offense of mortgage lending fraud which is a
2 category C felony and, upon conviction, shall be punished by
3 imprisonment in the state prison for a minimum term of not less
4 than 1 year and a maximum term of not more than 10 years, or by
5 a fine of not more than \$10,000, or by both fine and
6 imprisonment.

7 2. A person who engages in a pattern of mortgage lending
8 fraud or conspires or attempts to engage in a pattern of mortgage
9 lending fraud is guilty of a category B felony and, upon
10 conviction, shall be punished by imprisonment in the state prison
11 for a minimum term of not less than 3 years and a maximum term
12 of not more than 20 years, or by a fine of not more than \$50,000,
13 or by both fine and imprisonment.

14 3. Each mortgage lending transaction in which a person
15 violates any provision of subsection 1 constitutes a separate
16 violation.

17 4. Except as otherwise provided in this subsection, if a lender
18 or any agent of the lender is convicted of the offense of mortgage
19 lending fraud in violation of this section, the mortgage lending
20 transaction with regard to which the fraud was committed may be
21 rescinded by the borrower within 6 months after the date of the
22 conviction if the borrower gives written notice to the lender and
23 records that notice with the recorder of the county in which the
24 mortgage was recorded. A mortgage lending transaction may not
25 be rescinded pursuant to this subsection if the lender has
26 transferred the mortgage to a bona fide purchaser.

27 5. The Attorney General may investigate and prosecute a
28 violation of this section.

29 6. As used in this section:

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

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

- 41 (1) The solicitation of a person to make or obtain the loan;
42 (2) The representation or offer to represent another person
43 to make or obtain the loan;
44 (3) The negotiation of the terms of the loan;



* A B 4 4 0 R 3 *

(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:

(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.



* A B 4 4 0 R 3 *

~~((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.



* A B 4 4 0 R 3 *

(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;

~~(e)}~~ (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.

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;



* A B 4 4 0 R 3 *

(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.

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:*



* A B 4 4 0 R 3 *

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

20 **Sec. 10.** "Foreclosure purchaser" means a person who, in

21 the course of his business, vocation or occupation, acquires or

22 attempts to acquire title to a residence in foreclosure from a

23 homeowner.

24 **Sec. 11.** 1. "Foreclosure reconveyance" means a

25 transaction that involves:

26 (a) The transfer of title to a residence in foreclosure by a

27 homeowner during a foreclosure proceeding by:

28 (1) The transfer of an interest in the residence in

29 foreclosure from the homeowner; or

30 (2) The creation of a mortgage or other lien during the

31 foreclosure process that allows the acquirer to obtain title to the

32 residence in foreclosure by redeeming the property as a junior lien

33 holder; and

34 (b) The subsequent conveyance, or promise of a subsequent

35 conveyance, of an interest in the residence to the former

36 homeowner by the acquirer, or a person acting in concert with the

37 acquirer, that allows the former homeowner to remain in

38 possession of the residence following the completion of the

39 foreclosure proceeding.

40 2. As used in this section, "interest in the residence" includes,

41 without limitation, an interest in a contract for a deed, a purchase

42 agreement, and an option to purchase or lease.

43 **Sec. 12.** "Foreclosure sale" means the sale of real property

44 to enforce an obligation secured by a mortgage or lien on the



* A B 4 4 0 R 3 *

1 *property, including the exercise of a trustee's power of sale*
2 *pursuant to NRS 107.080.*

3 **Sec. 13.** *"Homeowner" means the record owner of a*
4 *residence in foreclosure at the time the notice of the pendency of*
5 *an action for foreclosure is recorded pursuant to NRS 14.010 or*
6 *the notice of default and election to sell is recorded pursuant to*
7 *NRS 107.080.*

8 **Sec. 14.** *"Residence in foreclosure" means residential real*
9 *property consisting of not more than four family dwelling units,*
10 *one of which the homeowner occupies as his principal place of*
11 *residence, and against which there is an outstanding notice of the*
12 *pendency of an action for foreclosure recorded pursuant to NRS*
13 *14.010 or notice of default and election to sell recorded pursuant*
14 *to NRS 107.080.*

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

18 1. *An attorney at law rendering services in the performance*
19 *of his duties as an attorney at law;*

20 2. *A person, firm, company or corporation licensed to engage*
21 *in the business of debt adjustment pursuant to chapter 676 of NRS*
22 *while engaging in that business;*

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

26 4. *A person or the authorized agent of a person acting under*
27 *the provisions of a program sponsored by the Federal*
28 *Government, this State or a local government, including, without*
29 *limitation, the Department of Housing and Urban Development,*
30 *the Federal Home Loan Mortgage Corporation, the Federal*
31 *National Mortgage Association or the Federal Home Loan Bank;*

32 5. *A person who holds or is owed an obligation secured by a*
33 *mortgage or other lien on a residence in foreclosure if the person*
34 *performs services in connection with this obligation or lien and*
35 *the obligation or lien did not arise as the result of or as part of a*
36 *proposed foreclosure reconveyance;*

37 6. *Any person doing business under the laws of this State or*
38 *of the United States relating to banks, trust companies, savings*
39 *and loan associations, industrial loan and thrift companies,*
40 *regulated lenders, credit unions, insurance companies, or a*
41 *mortgagee which is a United States Department of Housing and*
42 *Urban Development approved mortgagee and any subsidiary or*
43 *affiliate of those persons, and any agent or employee of those*
44 *persons while engaged in the business of those persons;*



* A B 4 4 0 R 3 *

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

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

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

Sec. 16. A foreclosure consultant shall not:

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

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

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

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

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

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

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

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

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

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



* A B 4 4 0 R 3 *

1 ***(b) The administrative penalty is imposed in a hearing***
2 ***conducted by a hearing officer or panel appointed by the***
3 ***Commissioner.***

4 ***4. The Commissioner may appoint one or more hearing***
5 ***officers or panels and may delegate to those hearing officers or***
6 ***panels the power of the Commissioner to conduct hearings,***
7 ***determine violations and impose the penalties authorized by this***
8 ***section.***

9 ***5. If money collected from an administrative penalty is***
10 ***deposited in the State General Fund, the Commissioner may***
11 ***present a claim to the State Board of Examiners for***
12 ***recommendation to the Interim Finance Committee if money is***
13 ***needed to pay attorney's fees or the costs of an investigation, or***
14 ***both.***

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

20 ***2. If the homeowner prevails in the action, the court may***
21 ***award such punitive damages as may be determined by a jury, or***
22 ***by a court sitting without a jury, but in no case may the punitive***
23 ***damages be less than 1 1/2 times the amount awarded to the***
24 ***homeowner as actual damages.***

25 ***Sec. 19. A foreclosure purchaser who engages in any***
26 ***conduct that operates as a fraud or deceit upon a homeowner in***
27 ***connection with a transaction that is subject to the provisions of***
28 ***sections 7 to 20, inclusive, of this act, including, without***
29 ***limitation, a foreclosure reconveyance, is guilty of a gross***
30 ***misdemeanor and shall be punished by imprisonment in the***
31 ***county jail for not more than 1 year, or by a fine of not more than***
32 ***\$50,000, or by both fine and imprisonment.***

33 ***Sec. 19.5. 1. In addition to the penalty provided in section***
34 ***19 of this act and except as otherwise provided in subsection 5, if***
35 ***a foreclosure purchaser engages in any conduct that operates as a***
36 ***fraud or deceit upon a homeowner in connection with a***
37 ***transaction that is subject to the provisions of sections 7 to 20,***
38 ***inclusive, of this act, including, without limitation, a foreclosure***
39 ***reconveyance, the transaction in which the foreclosure purchaser***
40 ***acquired title to the residence in foreclosure may be rescinded by***
41 ***the homeowner within 2 years after the date of the recording of***
42 ***the conveyance.***

43 ***2. To rescind a transaction pursuant to subsection 1, the***
44 ***homeowner must give written notice to the foreclosure purchaser***
45 ***and a successor in interest to the foreclosure purchaser, if the***



* A B 4 4 0 R 3 *

1 *successor in interest is not a bona fide purchaser, and record that*
2 *notice with the recorder of the county in which the property is*
3 *located. The notice of rescission must contain:*

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

6 *(b) A description of the property.*

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

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

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

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

23 *5. A transaction may not be rescinded pursuant to this section*
24 *if the foreclosure purchaser has transferred the property to a bona*
25 *fide purchaser.*

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

32 **Sec. 20.** *The rights, remedies and penalties provided*
33 *pursuant to the provisions of sections 7 to 20, inclusive, of this act*
34 *are cumulative and do not abrogate and are in addition to any*
35 *other rights, remedies and penalties that may exist at law or in*
36 *equity, including, without limitation, any criminal penalty that*
37 *may be imposed pursuant to section 19 of this act.*

38 **Sec. 21.** *Chapter 675 of NRS is hereby amended by adding*
39 *thereto the provisions set forth as sections 22 and 23 of this act.*

40 **Sec. 22.** *Notwithstanding any other provision of law, a*
41 *violation of any provision of section 670 of the John Warner*
42 *National Defense Authorization Act for Fiscal Year 2007, Public*
43 *Law 109-364, or any regulation adopted pursuant thereto shall be*
44 *deemed to be a violation of this chapter.*

45 **Sec. 23.** *Notwithstanding any other provision of law:*



* A B 4 4 0 R 3 *

1 1. *If a borrower is a member of the military, a licensee*
2 *shall:*

3 (a) *Honor the terms of any repayment plan between the*
4 *licensee and borrower, including, without limitation, any*
5 *repayment plan negotiated through military counselors or third-*
6 *party credit counselors.*

7 (b) *Honor any proclamation by a base commander that a*
8 *certain branch location of the licensee is off-limits to members of*
9 *the military and their spouses.*

10 2. *If a borrower is a member of the military, a licensee*
11 *shall not:*

12 (a) *Garnish or threaten to garnish any wages or salary of the*
13 *borrower or his spouse; or*

14 (b) *Contact or threaten to contact the military chain of*
15 *command of a borrower in an effort to collect the loan.*

16 3. *If a borrower is a member of the military and is deployed*
17 *to a combat or combat supporting position, a licensee shall not*
18 *engage in any collection activity against the borrower or his*
19 *spouse.*

20 4. *As used in this section, “military” means the Armed*
21 *Forces of the United States, a reserve component thereof or the*
22 *National Guard.*

