

Amendment No. 1064

Senate Amendment to Assembly Bill No. 440 Second Reprint (BDR 52-879)

Proposed by: Senate Committee on Commerce and Labor**Amends:** Summary: Yes Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold* is newly added transitory language.

RRY



Date: 5/31/2007

A.B. No. 440—Makes various changes concerning loans secured by a mortgage or other lien on residential real property. (BDR 52-879)



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.~~ **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:

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 **revises this provision to remove the requirement that the lender based the home loan solely on the borrower's equity. Section 2 also** clarifies that the provision applies to a low-document, no-document or stated-document home loan **, other than a reverse mortgage,** if the loan is made ~~[based solely on the borrower's equity in the property or]~~ without determining **, using any commercially reasonable means or mechanism,** the borrower's ability to repay the loan.

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 ~~(commits)~~ is convicted of mortgage lending fraud, the borrower in the transaction involving the mortgage lending fraud may rescind the transaction within ~~(2 years)~~ 6 months after the ~~(transaction has been completed.)~~ 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 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* ~~is~~

~~(1) Based solely upon the equity of the borrower in the home property
 [and without] is or~~

~~(2) Without~~ *, without* determining *, using any commercially reasonable
 means or mechanism,* that the borrower has the ability to repay the home loan *.*
~~[from other assets, including, without limitation, income.]~~

(c) 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.

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

2. As used in this section:

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

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

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

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

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

(d) "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.

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

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

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

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

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

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

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

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

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

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

(a) Garnish or threaten to garnish any wages or salary ~~paid to a customer for active service in the military,~~ of the customer or his spouse; or

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

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

4. As used in this section, "military" means the Armed Forces of the United States, a reserve component thereof or the National Guard.

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

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

(a) Actual and consequential damages;

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

(c) Reasonable attorney's fees and costs; and

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

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

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

(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; ~~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) An action on an open account for goods, wares and merchandise sold and delivered.

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

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

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

3. Within 3 years:

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

(b) An action for waste or trespass of real property, but when the waste or trespass is committed by means of underground works upon any mining claim, the

1 cause of action shall be deemed to accrue upon the discovery by the aggrieved party
2 of the facts constituting the waste or trespass.

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

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

15 (e) An action pursuant to NRS 40.750 for damages sustained by a financial
16 institution or other lender because of its reliance on certain fraudulent conduct of a
17 borrower, but the cause of action in such a case shall be deemed to accrue upon the
18 discovery by the financial institution or other lender of the facts constituting the
19 concealment or false statement.

20 4. Within 2 years:

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

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

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

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

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

36 5. Within 1 year:

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

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

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

47 40.750 1. As used in this section, "financial institution" means a bank,
48 mortgage broker, mortgage banker, credit union, thrift company or savings and loan
49 association, or any subsidiary or affiliate of a bank, mortgage broker, mortgage
50 banker, credit union, thrift company or savings and loan association, which is
51 authorized to transact business in this State and which makes or acquires, in whole
52 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) 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~~ 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,

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

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

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

4. Except as otherwise provided in this subsection, if a lender or any agent of the lender ~~commits~~ is convicted of the offense of mortgage lending fraud in violation of this section, the mortgage lending transaction ~~is voidable by the borrower and the transaction~~ with regard to which the fraud was committed may be rescinded by the borrower within ~~2 years~~ 6 months after the date ~~the transaction is completed~~ of the conviction if the borrower gives written notice to the lender and records that notice with the recorder of the county in which the mortgage was recorded. A mortgage lending transaction ~~is not voidable~~ may not be rescinded pursuant to this subsection if the lender has transferred the mortgage to a bona fide purchaser.

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

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.

1 **Sec. 4.** (Deleted by amendment.)

2 **Sec. 5.** (Deleted by amendment.)

3 **Sec. 5.3.** NRS 645B.020 is hereby amended to read as follows:

4 645B.020 1. A person who wishes to be licensed as a mortgage broker must
5 file a written application for a license with the Office of the Commissioner and pay
6 the fee required pursuant to NRS 645B.050. An application for a license as a
7 mortgage broker must:

8 (a) ~~Be verified.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

49 (4) Has not had a license that was issued pursuant to the provisions of this
50 chapter or chapter 645E of NRS suspended or revoked within the 10 years
51 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.

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

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

6 3. Contacting a creditor on behalf of a homeowner.

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

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

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

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

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

23 1. Prevent or postpone a foreclosure sale;

24 2. Obtain any forbearance from any mortgagee or beneficiary of a deed of
25 trust;

26 3. Assist the homeowner to exercise the right of reinstatement provided in
27 the legal documents;

28 4. Obtain any extension of the period within which the homeowner may
29 reinstate the homeowner's obligation;

30 5. Obtain any waiver of an acceleration clause contained in any promissory
31 note or contract secured by a mortgage on a residence in foreclosure or included
32 in the mortgage or deed of trust;

33 6. Assist the homeowner in foreclosure or loan default to obtain a loan or
34 advance of money;

35 7. Avoid or ameliorate the impairment of the homeowner's credit resulting
36 from the recording of a notice of default or the conduct of a foreclosure sale;

37 8. Save the homeowner's residence from foreclosure; or

38 9. Assist the homeowner to obtain a foreclosure reconveyance.

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

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

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

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

48 (2) The creation of a mortgage or other lien during the foreclosure
49 process that allows the acquirer to obtain title to the residence in foreclosure by
50 redeeming the property as a junior lien holder; and

51 (b) The subsequent conveyance, or promise of a subsequent conveyance, of
52 an interest in the residence to the former homeowner by the acquirer, or a person
53 acting in concert with the acquirer, that allows the former homeowner to remain

1 *in possession of the residence following the completion of the foreclosure*
2 *proceeding.*

3 2. *As used in this section, "interest in the residence" includes, without*
4 *limitation, an interest in a contract for a deed, a purchase agreement, and an*
5 *option to purchase or lease.*

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

9 Sec. 13. *"Homeowner" means the record owner of a residence in*
10 *foreclosure at the time the notice of the pendency of an action for foreclosure is*
11 *recorded pursuant to NRS 14.010 or the notice of default and election to sell is*
12 *recorded pursuant to NRS 107.080.*

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

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

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

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

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

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

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

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

45 7. *A person licensed as an escrow agent, title agent, mortgage agent,*
46 *mortgage broker or mortgage banker pursuant to chapter 645A, 692A, 645B or*
47 *645E of NRS, while acting under the authority of his license;*

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

51 9. *A judgment creditor of the homeowner whose claim accrued before the*
52 *recording of the notice of the pendency of an action for foreclosure against the*

1 *homeowner pursuant to NRS 14.010 or the recording of the notice of default and*
2 *election to sell pursuant to NRS 107.080.*

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

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

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

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

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

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

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

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

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

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

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

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

35 4. *The Commissioner may appoint one or more hearing officers or panels*
36 *and may delegate to those hearing officers or panels the power of the*
37 *Commissioner to conduct hearings, determine violations and impose the penalties*
38 *authorized by this section.*

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

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

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

51 **Sec. 19.** *A foreclosure purchaser who engages in any conduct that operates*
52 *as a fraud or deceit upon a homeowner in connection with a transaction that is*
53 *subject to the provisions of sections 7 to 20, inclusive, of this act, including,*

1 without limitation, a foreclosure reconveyance, is guilty of a gross misdemeanor
2 and shall be punished by imprisonment in the county jail for not more than 1
3 year, or by a fine of not more than \$50,000, or by both fine and imprisonment.

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

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

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

20 (b) A description of the property.

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

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

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

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

34 5. A transaction ~~is not voidable~~ may not be rescinded pursuant to this
35 section if the foreclosure purchaser has transferred the property to a bona fide
36 purchaser.

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

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

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

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

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

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

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

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

7 2. If a borrower is a member of the military, a licensee shall not:

8 (a) Garnish or threaten to garnish any wages or salary of the borrower or his
9 spouse; or

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

12 3. If a borrower is a member of the military and is deployed to a combat or
13 combat supporting position, a licensee shall not engage in any collection activity
14 against the borrower or his spouse.

15 4. As used in this section, "military" means the Armed Forces of the United
16 States, a reserve component thereof or the National Guard.