

Amendment No. 650

Senate Amendment to Assembly Bill No. 141 (BDR 54-229)

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

Adoption of this amendment will ADD a 2/3s majority vote requirement for final passage of A.B. 141 (§ 4).

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	☐	Lost	☐	_____	Adopted	☐	Lost	☐	_____
Concurred In	☐	Not	☐	_____	Concurred In	☐	Not	☐	_____
Receded	☐	Not	☐	_____	Receded	☐	Not	☐	_____

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 dashed underlining*** is newly added transitory language.

DY/WLK



Date: 5/11/2009

A.B. No. 141—Establishes a recovery fund for persons defrauded by mortgage brokers, mortgage agents or mortgage bankers. (BDR 54-229)



ASSEMBLY BILL NO. 141—COMMITTEE ON COMMERCE AND LABOR

(ON BEHALF OF THE LEGISLATIVE COMMISSION'S SUBCOMMITTEE
TO STUDY MORTGAGE LENDING AND HOUSING ISSUES)

FEBRUARY 6, 2009

Referred to Committee on Commerce and Labor

SUMMARY—Establishes a recovery fund for persons defrauded by mortgage brokers, mortgage agents or mortgage bankers. (BDR 54-229)

FISCAL NOTE: Effect on Local Government: No.
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 mortgage lending; establishing a recovery fund for persons defrauded by mortgage brokers, mortgage agents or mortgage bankers; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

This bill establishes the Mortgage Education, Research and Recovery Fund for persons defrauded by mortgage brokers, mortgage agents or mortgage bankers. The provisions of this bill are patterned closely after the provisions in chapter 645 of NRS which establish a recovery fund for persons defrauded by real estate brokers. (NRS 645.841-645.8494)

Section 3 of this bill creates the Fund. **Section 4** of this bill provides for money for the Fund. **Sections 5-7 and 9-11** of this bill provide for administration of the Fund and payment of claims against the Fund. **Section 8** of this bill requires the license of a licensee to be automatically suspended until he repays to the Fund any amount paid from the Fund to settle a claim against that licensee. **Section 12** of this bill clarifies that this bill does not limit the authority of the Division of Mortgage Lending of the Department of Business and Industry to take disciplinary action against a licensee. **Section 13** of this bill authorizes the Commissioner of Mortgage Lending to adopt regulations as needed for chapter 645F of NRS.

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

Section 1. Chapter 645F of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 12, inclusive, of this act.

Sec. 2. *As used in sections 2 to 12, inclusive, of this act, unless the context otherwise requires, "Fund" means the Mortgage Education, Research and Recovery Fund created by section 3 of this act.*

Sec. 3. 1. *The Mortgage Education, Research and Recovery Fund is hereby created as a special revenue fund.*

2. A balance of not less than \$300,000 must be maintained in the Fund, to be used for satisfying claims against persons licensed under chapters 645B and 645E of NRS as provided in sections 2 to 12, inclusive, of this act. Any balance over \$300,000 remaining in the Fund at the end of any fiscal year must be set aside and used by the Commissioner for education and research relating to mortgages.

3. The interest and income earned on the money in the Fund, after deducting any applicable charges, must be credited to the Fund.

Sec. 4. The Commissioner shall adopt regulations prescribing a ~~percentage of fee~~, in addition to the fees collected for the issuance or renewal of a license pursuant to chapters 645B and 645E of NRS, to be assessed at the time of issuance or renewal of a license and to be used for mortgage education, research and recovery. The ~~amount~~ additional fee must be deposited in the State Treasury for credit to the Fund, and must be used solely for the purposes provided in sections 2 to 12, inclusive, of this act.

Sec. 5. 1. Except as otherwise provided in subsection 2, when any person obtains a final judgment in any court of competent jurisdiction against any licensee or licensees pursuant to chapter 645B or 645E of NRS, upon grounds of fraud, misrepresentation or deceit with reference to any transaction for which a license is required pursuant to chapter 645B or 645E of NRS, that person, upon termination of all proceedings, including appeals in connection with any judgment, may file a verified petition in the court in which the judgment was entered for an order directing payment out of the Fund in the amount of the unpaid actual damages included in the judgment, but not more than \$25,000 per judgment. The liability of the Fund does not exceed \$100,000 for any person licensed pursuant to chapter 645B or 645E of NRS, whether he is licensed as a limited-liability company, partnership, association or corporation or as a natural person, or both. The petition must state the grounds which entitle the person to recover from the Fund.

2. A person who is licensed pursuant to chapter 645B or 645E of NRS may not recover from the Fund for damages which are related to a transaction in which he acted in his capacity as a licensee.

3. A copy of the:

- (a) Petition;
- (b) Judgment;
- (c) Complaint upon which the judgment was entered; and
- (d) Writ of execution which was returned unsatisfied,

↪ must be served upon the Commissioner and the judgment debtor and affidavits of service must be filed with the court.

4. Upon the hearing on the petition, the petitioner must show that:

(a) He is not the spouse of the debtor, or the personal representative of that spouse.

(b) He has complied with all the requirements of sections 2 to 12, inclusive, of this act.

(c) He has obtained a judgment of the kind described in subsection 1, stating the amount thereof, the amount owing thereon at the date of the petition, and that the action in which the judgment was obtained was based on fraud, misrepresentation or deceit of the licensee in a transaction for which a license is required pursuant to chapter 645B or 645E of NRS.

(d) A writ of execution has been issued upon the judgment and that no assets of the judgment debtor liable to be levied upon in satisfaction of the judgment could be found, or that the amount realized on the sale of assets was insufficient

1 to satisfy the judgment, stating the amount so realized and the balance remaining
2 due.

3 (e) He has made reasonable searches and inquiries to ascertain whether the
4 judgment debtor possesses real or personal property or other assets, liable to be
5 sold or applied in satisfaction of the judgment, and after reasonable efforts that
6 no property or assets could be found or levied upon in satisfaction of the
7 judgment.

8 (f) He has made reasonable efforts to recover damages from each and every
9 judgment debtor.

10 (g) The petition has been filed not more than 1 year after the termination of
11 all proceedings, including reviews and appeals, in connection with the judgment.

12 Sec. 6. 1. Whenever the court proceeds upon a petition as provided in
13 section 5 of this act, the Commissioner may answer and defend any such action
14 against the Fund on behalf of the Fund and may use any appropriate method of
15 review on behalf of the Fund. The judgment debtor may answer and defend any
16 such action on his own behalf.

17 2. Unless the judgment was entered by default, consent or stipulation or the
18 case was uncontested, the judgment set forth in the petition is prima facie
19 evidence but the findings of fact therein are not conclusive for the purposes of
20 sections 2 to 12, inclusive, of this act.

21 3. The Commissioner may, subject to court approval, compromise a claim
22 based upon the application of a petitioner. He shall not be bound by any prior
23 compromise of the judgment debtor.

24 Sec. 7. 1. If the court finds after the hearing that the claim should be
25 levied against the portion of the Fund allocated for the purpose of carrying out
26 the provisions of sections 2 to 12, inclusive, of this act, the court shall enter an
27 order directed to the Commissioner requiring payment from the Fund of
28 whatever sum it finds to be payable upon the claim pursuant to the provisions
29 of and in accordance with the limitations contained in sections 2 to 12, inclusive,
30 of this act.

31 2. If a petitioner has recovered a portion of his claim from sources other
32 than the Fund, the Commissioner shall deduct the amount recovered from the
33 other sources from the amount payable upon the claim.

34 Sec. 8. If the Commissioner pays from the Fund any amount in settlement
35 of a claim or toward satisfaction of a judgment against a licensee, his license
36 issued pursuant to chapter 645B or 645E of NRS must be automatically
37 suspended upon the effective date of an order by the court authorizing payment
38 from the Fund. The license may not be reinstated and no other license may be
39 granted to him pursuant to chapter 645B or 645E of NRS until he has repaid in
40 full, plus interest at a rate equal to the prime rate at the largest bank in Nevada,
41 as ascertained by the Commissioner of Financial Institutions, on January 1 or
42 July 1, as the case may be, immediately preceding the date of judgment, plus 2
43 percent, the amount paid from the Fund on his account. Interest is computed
44 from the date payment from the Fund was made by the Commissioner, and the
45 rate must be adjusted accordingly on each January 1 and July 1 thereafter until
46 the judgment is satisfied.

47 Sec. 9. 1. Whenever claims are filed against the Fund which total more
48 than the maximum liability for the acts of one licensee, the maximum liability of
49 the Fund for each licensee must be distributed among the claimants in a ratio
50 that their respective claims bear to the total of all claims, or in any other manner
51 that the court may find equitable.

52 2. The distribution must be made without regard to the order of priority in
53 which claims were filed or judgments entered.

1 3. Upon petition of the Commissioner, the court may require all claimants
2 and prospective claimants to be joined in one action so that the respective rights
3 of all claimants may be equitably determined.

4 4. If, at any time, the money deposited in the Fund and allotted for
5 satisfying claims against licensees is insufficient to satisfy any authorized claim
6 or portion thereof, the Commissioner shall, when sufficient money has been
7 deposited in the Fund, satisfy the unpaid claims or portions thereof, in the order
8 that the claims or portions thereof were originally filed, plus accumulated interest
9 at the rate of 6 percent per annum. Any sums received by the Division pursuant to
10 sections 8 and 10 of this act must be deposited in the State Treasury for credit to
11 the account for education and research in the Fund.

12 Sec. 10. When the Commissioner has paid from the Fund any money to the
13 judgment creditor, the Commissioner is subrogated to all other rights of the
14 judgment creditor to the extent of the amount paid and any amount and interest
15 so recovered by the Commissioner on the judgment must be deposited in the State
16 Treasury for credit to the Fund.

17 Sec. 11. The failure of a person to comply with any of the provisions of
18 sections 2 to 12, inclusive, of this act shall constitute a waiver of any rights
19 hereunder.

20 Sec. 12. Nothing contained in sections 2 to 12, inclusive, of this act limits
21 the authority of the Division to take disciplinary action against a licensee for a
22 violation of any of the provisions of chapter 645B or 645E of NRS, or of the rules
23 and regulations of the Division, nor shall the repayment in full of all obligations
24 to the Fund by any licensee nullify or modify the effect of any other disciplinary
25 proceeding brought pursuant to the provisions of chapter 645B or 645E or the
26 rules and regulations promulgated thereunder.

27 Sec. 13. NRS 645F.250 is hereby amended to read as follows:

28 645F.250 1. The Commissioner and the Division shall administer the
29 provisions of this chapter and chapters 645A, 645B and 645E of NRS, subject to
30 administrative supervision by the Director of the Department of Business and
31 Industry.

32 2. The Commissioner shall adopt any regulations that are necessary to
33 carry out the provisions of this chapter.