

ASSEMBLY BILL NO. 426—COMMITTEE
ON COMMERCE AND LABOR

MARCH 25, 2013

Referred to Concurrent Committees on Commerce and Labor
and Legislative Operations and Elections

SUMMARY—Revises provisions relating to mortgage lending.
(BDR 54-42)

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; requiring the Commissioner of Mortgage Lending to adopt regulations for the licensing of residential mortgage loan servicers; authorizing fees for such licensure; directing the Legislative Commission to appoint a committee to conduct an interim study concerning the laws of this State governing the mortgage lending industry; providing penalties; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, the Commissioner of Mortgage Lending is required to regulate the activities of escrow agents, mortgage brokers, mortgage agents, mortgage bankers and certain other professions relating to mortgage lending. Existing law sets forth the requirements for licensure of escrow agents, mortgage brokers, mortgage agents and mortgage bankers, and the Commissioner is required to adopt regulations for the licensure of persons who perform certain services for compensation, foreclosure consultants and loan modification consultants. (Chapters 645A, 645B and 645E of NRS and NRS 645F.390)

Section 1 of this bill defines a “residential mortgage loan servicer” as a person or institution that directly or indirectly services residential mortgage loans, and **section 4** of this bill requires the Commissioner to adopt regulations for the licensure of residential mortgage loan servicers. The regulations adopted by the Commissioner must include: (1) the method and form of application for a license; (2) the method and form of the issuance, denial or renewal of a license; (3) the grounds and procedures for the revocation, suspension or nonrenewal of a license; (4) the imposition of reasonable fees for application and licensure; and (5) any



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provisions necessary to comply with the provisions of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008.

Section 5 of this bill requires a residential mortgage loan servicer to take reasonable steps to ensure that all employees and independent contractors of the residential mortgage loan servicer comply with certain statutory provisions and regulations and further requires a residential mortgage loan servicer to take corrective action if the residential mortgage loan servicer determines that an employee or independent contractor is not in compliance with those statutes and regulations. **Section 5** also requires a residential mortgage loan servicer to record the number and nature of certain complaints made about its employees or independent contractors and, if the residential mortgage loan servicer engages in telemarketing activities, to perform random recording and testing of oral representations made by its sales and customer service representatives. **Section 6** of this bill prohibits a person who knows or reasonably should know that a residential mortgage loan servicer is in violation of certain statutes or regulations from providing substantial assistance or support to the residential mortgage loan servicer. Existing law authorizes the Commissioner to impose administrative penalties for any violation of chapter 645F of NRS or any regulations adopted pursuant thereto. (NRS 645F.410) The amendatory provisions of this bill effectively extend the Commissioner's authority to impose administrative fines for any such violations by a residential mortgage loan servicer or person who performs acts for which a license as a residential mortgage loan servicer is required.

Section 9 of this bill directs the Legislative Commission to appoint a committee to conduct an interim study concerning the laws of this State relating to the mortgage lending industry. The study must include: (1) consideration of proposals for the separate licensing and regulation by the Division of Mortgage Lending of the Department of Business and Industry of residential mortgage bankers and commercial mortgage bankers and for the licensing and regulation by the Division of private money lenders; (2) a survey of the laws of this State and other states and territories of the United States relating to the licensing and regulation of professions related to the mortgage lending industry; (3) an examination of methods by which other jurisdictions have regulated the mortgage lending industry in a manner consistent with federal law; (4) input from all interested parties; and (5) an examination of any other matter that the committee determines to be relevant to the study.

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 a new section to read as follows:

"Residential mortgage loan servicer" means a person who, in connection with a residential mortgage loan, directly or indirectly collects or remits, or has the right to collect or remit, for any lender, mortgage banker, note owner, note holder, or for the person's own account, six or more payments of principal, interest or an amount to be placed in escrow, including, without limitation, any amount for the payment of hazard insurance or taxes on a residential mortgage loan, in accordance with the terms of the residential mortgage loan, a mortgage servicing agreement or an agreement with the mortgagor.



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1 **Sec. 2.** NRS 645F.300 is hereby amended to read as follows:

2 645F.300 As used in NRS 645F.300 to 645F.450, inclusive,
3 *and section 1 of this act*, unless the context otherwise requires, the
4 words and terms defined in NRS 645F.310 to 645F.370, inclusive,
5 *and section 1 of this act* have the meanings ascribed to them in
6 those sections.

7 **Sec. 3.** NRS 645F.380 is hereby amended to read as follows:

8 645F.380 The provisions of NRS 645F.300 to 645F.450,
9 inclusive, *and section 1 of this act* do not apply to, and the terms
10 “foreclosure consultant” and “foreclosure purchaser” do not include:

11 1. An attorney at law rendering services in the performance of
12 his or her duties as an attorney at law, unless the attorney at law is
13 rendering those services in the course and scope of his or her
14 employment by or other affiliation with a person who is licensed or
15 required to be licensed pursuant to NRS 645F.390;

16 2. A provider of debt-management services registered pursuant
17 to chapter 676A of NRS while providing debt-management services
18 pursuant to chapter 676A of NRS;

19 3. A person or the authorized agent of a person acting under the
20 provisions of a program sponsored by the Federal Government, this
21 State or a local government, including, without limitation, the
22 Department of Housing and Urban Development, the Federal Home
23 Loan Mortgage Corporation, the Federal National Mortgage
24 Association or the Federal Home Loan Bank System;

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

30 5. Any person doing business under the laws of this State or of
31 the United States relating to banks, trust companies, savings and
32 loan associations, industrial loan and thrift companies, regulated
33 lenders, credit unions, insurance companies, or a mortgagee which
34 is a United States Department of Housing and Urban Development
35 approved mortgagee and any subsidiary or affiliate of those persons,
36 and any agent or employee of those persons while engaged in the
37 business of those persons;

38 6. A person, other than a person who is licensed pursuant to
39 NRS 645F.390, who is licensed pursuant to chapter 692A or any
40 chapter of title 54 of NRS while acting under the authority of the
41 license;

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



8. 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. 4. NRS 645F.390 is hereby amended to read as follows:

645F.390 1. The Commissioner shall adopt regulations for the licensing of:

(a) A person who performs any covered service for compensation;

(b) A foreclosure consultant; ~~and~~

(c) A loan modification consultant ~~H~~; and

(d) A residential mortgage loan servicer.

2. The regulations must prescribe, without limitation:

(a) The method and form of application for a license;

(b) The method and form of the issuance, denial or renewal of a license;

(c) The grounds and procedures for the revocation, suspension or nonrenewal of a license;

(d) The imposition of reasonable fees for application and licensure; and

(e) Any provisions necessary to comply with the provisions of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, Public Law 110-289, 12 U.S.C. §§ 5101 et seq., including registration with the Registry, and the Mortgage Assistance Relief Services Rule, 16 C.F.R. Part 322, as promulgated by the Federal Trade Commission.

3. An application for a license pursuant to this section must include a complete set of the fingerprints of the applicant or, if the applicant is not a natural person, a complete set of the fingerprints of each person who will have an interest in the person who performs any covered service as a principal, partner, officer, director or trustee, and written permission authorizing the Division to forward the fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report.

Sec. 5. NRS 645F.396 is hereby amended to read as follows:

645F.396 1. A person who performs any covered service for compensation, a foreclosure consultant and a loan modification consultant shall keep each of the following records for a period of not less than 24 months after the date the record is created:

(a) Each contract or other agreement between the person who performs any covered service for compensation, foreclosure consultant or loan modification consultant and a homeowner.



(b) A copy of each written communication between the person who performs any covered service for compensation, foreclosure consultant or loan modification consultant and a homeowner which occurred before the date on which the homeowner entered into a contract for covered services.

(c) A copy of every document or telephone recording created in connection with the requirements of subsection 2.

(d) The file of each homeowner, which must include, without limitation, the name of the homeowner, his or her telephone number, the amount of money paid by the homeowner and a description of the covered services purchased by the homeowner.

(e) For each covered service, a copy of every materially different sales script, training material, commercial communication or any other marketing material, including, without limitation, any material published on an Internet website.

(f) A copy of each disclosure provided to a homeowner pursuant to NRS 645F.398.

2. A person who performs any covered service for compensation, a foreclosure consultant , ~~for~~ a loan modification consultant *and a residential mortgage loan servicer* shall:

(a) Take reasonable steps to ensure that all employees and independent contractors of the person who performs any covered service for compensation, foreclosure consultant , ~~for~~ loan modification consultant *or residential mortgage loan servicer* comply with the provisions of NRS 645F.300 to 645F.450, inclusive, *and section 1 of this act* and any regulations adopted pursuant thereto.

(b) If the person who performs any covered service for compensation, foreclosure consultant , ~~for~~ loan modification consultant *or residential mortgage loan servicer* is engaged in the telemarketing of covered services, perform random, blind recording and testing of the oral representations made by persons engaged in sales or other customer service functions.

(c) Establish a procedure for receiving and responding to all complaints of homeowners.

(d) Record the number and nature of complaints of homeowners regarding transactions involving an employee or independent contractor of the person who performs any covered service for compensation, foreclosure consultant , ~~for~~ loan modification consultant ~~H~~ *or residential mortgage loan servicer*.

(e) Investigate promptly and fully each complaint received from a homeowner.

(f) Take corrective action with respect to any employee or independent contractor whom the person who performs any covered service for compensation, foreclosure consultant , ~~for~~ loan



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1 modification consultant *or residential mortgage loan servicer*
2 determines is not complying with the provisions of NRS 645F.300
3 to 645F.450, inclusive, *and section 1 of this act* and any regulations
4 adopted pursuant thereto.

5 (g) Maintain any information necessary to demonstrate
6 compliance with the requirements of this subsection.

7 3. All records kept pursuant to this section are subject to
8 inspection and audit by the Commissioner and authorized
9 representatives of the Commissioner.

10 **Sec. 6.** NRS 645F.445 is hereby amended to read as follows:

11 645F.445 A person who knows or reasonably should know that
12 another person who performs any covered service for compensation,
13 a foreclosure consultant , ~~for~~ a loan modification consultant *or a*
14 *residential mortgage loan servicer* is in violation of any provision
15 of NRS 645F.300 to 645F.450, inclusive, *and section 1 of this act*
16 and any regulations adopted pursuant thereto shall not provide
17 substantial assistance or support to the person who performs any
18 covered service for compensation, the foreclosure consultant , ~~for~~
19 the loan modification consultant ~~+~~ *or the residential mortgage*
20 *loan servicer.*

21 **Sec. 7.** NRS 645F.450 is hereby amended to read as follows:

22 645F.450 The rights, remedies and penalties provided pursuant
23 to the provisions of NRS 645F.300 to 645F.450, inclusive, *and*
24 *section 1 of this act* are cumulative and do not abrogate and are in
25 addition to any other rights, remedies and penalties that may exist at
26 law or in equity, including, without limitation, any criminal penalty
27 that may be imposed pursuant to NRS 645F.430.

28 **Sec. 8.** NRS 645F.265 is hereby repealed.

29 **Sec. 9.** 1. The Legislative Commission shall appoint a
30 committee to conduct an interim study concerning the laws of this
31 State relating to the mortgage lending industry.

32 2. The committee appointed by the Legislative Commission
33 pursuant to subsection 1 must be composed of six Legislators as
34 follows:

35 (a) Three members appointed by the Majority Leader of the
36 Senate; and

37 (b) Three members appointed by the Speaker of the Assembly.

38 3. The study must include, without limitation:

39 (a) Consideration of proposals for the separate licensing and
40 regulation by the Division of Mortgage Lending of the Department
41 of Business and Industry of residential mortgage bankers and
42 commercial mortgage bankers and for the licensing and regulation
43 by the Division of private money lenders.

44 (b) A survey of the laws of this State and other states and
45 territories of the United States relating to the licensing and



1 regulation of professions related to the mortgage lending industry,
2 including, without limitation, mortgage bankers as defined in NRS
3 645F.050, mortgage brokers as defined in NRS 645F.060, mortgage
4 agents as defined in NRS 645B.0125 and residential mortgage loan
5 servicers as defined in section 1 of this act.

6 (c) An examination of methods by which other jurisdictions
7 have regulated the mortgage lending industry in a manner consistent
8 with federal law.

9 (d) Insofar as is reasonably practicable, input from all parties
10 having an interest in mortgage lending and in the licensing and
11 regulation of professions related to the mortgage lending industry.

12 (e) An examination of any other matter that the committee
13 determines to be relevant to the study.

14 4. The committee shall submit a report of the results of the
15 study and any recommendations for legislation to the 78th Session
16 of the Nevada Legislature.

17 **Sec. 10.** This act becomes effective on July 1, 2013.

TEXT OF REPEALED SECTION

645F.265 Registration of certain persons and institutions engaged in business of servicing mortgage loans required. A person or institution engaged in the business of servicing mortgage loans that intends to conduct business in this State for the purpose of servicing mortgage loans secured by a lien on real property located in this State shall register with the Commissioner on a form prescribed by the Commissioner. The form must:

1. Identify the state in which the institution is domiciled;
2. Identify the principal place of business of the institution; and
3. Provide such other information as the Commissioner may require.

