

SENATE BILL NO. 361—SENATOR ROBERSON

MARCH 18, 2013

Referred to Committee on Commerce, Labor and Energy

SUMMARY—Revises provisions relating to unfair lending practices. (BDR 52-901)

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: No.

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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 unfair lending practices; providing that certain lending practices relating to consumers who are parties to legal actions constitute unfair lending practices; providing a penalty; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Existing law sets forth the activities that constitute unfair lending practices and provides for the imposition of civil and criminal penalties against persons who engage in unfair lending practices. (Chapter 598D of NRS) **Sections 8 and 9** of this bill: (1) prohibit a consumer lawsuit loan company from entering into a consumer lawsuit loan transaction with respect to a legal action in which the consumer is a party; and (2) provide that a violation of that provision constitutes an unfair lending practice. **Section 8** further provides that a consumer lawsuit loan contract entered into in violation of that section is void from the inception of the contract. **Section 9** further provides that consumers may seek any other remedies otherwise available, including, without limitation, an award for general, consequential or punitive damages.

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

**Section 1.** Chapter 598D of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 9, inclusive, of this act.

**Sec. 2.** *“Consumer” means a natural person who:*



\* S B 3 6 1 \*

- 1 *1. Resides or is domiciled in this State; or*
- 2 *2. Is a party to a legal action pending before a federal or state*
- 3 *court located in this State.*

4 **Sec. 3.** *“Consumer lawsuit loan” means the money provided*  
5 *directly or indirectly to a consumer by a consumer lawsuit loan*  
6 *company in a consumer lawsuit loan transaction.*

7 **Sec. 4.** 1. *“Consumer lawsuit loan company” means a*  
8 *person who enters into a consumer loan transaction with a*  
9 *consumer.*

10 2. *The term includes, without limitation:*

11 (a) *An affiliate or subsidiary of a consumer lawsuit loan*  
12 *company;*

13 (b) *A person who buys a whole or partial interest in a*  
14 *consumer lawsuit loan;*

15 (c) *A person who acts as an agent to provide a consumer*  
16 *lawsuit loan from a third party for a fee;*

17 (d) *A person who acts as an agent for a third party in*  
18 *providing a consumer lawsuit loan for a fee, regardless of whether*  
19 *approval or acceptance by the third party is necessary to create a*  
20 *legal obligation for the third party; and*

21 (e) *Any other person whom the Attorney General determines to*  
22 *be engaged in a transaction that is in substance:*

23 (1) *A disguised consumer lawsuit loan; or*

24 (2) *A subterfuge for the purpose of avoiding the provisions*  
25 *of sections 8 and 9 of this act.*

26 3. *The term does not include an attorney who provides*  
27 *professional services to the consumer on a contingency basis in*  
28 *relation to the consumer’s legal claim.*

29 **Sec. 5.** *“Consumer lawsuit loan contract” means a written or*  
30 *oral agreement between a consumer and a consumer lawsuit loan*  
31 *company that provides for a consumer lawsuit loan transaction.*

32 **Sec. 6.** *“Consumer lawsuit loan transaction” means a*  
33 *transaction in which:*

34 1. *A consumer lawsuit loan company provides a consumer*  
35 *lawsuit loan to a consumer; and*

36 2. *The consumer assigns, conveys or otherwise confers, to the*  
37 *consumer lawsuit loan company the right to receive the proceeds*  
38 *or part thereof, of the settlement, insurance payment, award of*  
39 *damages obtained in the consumer’s legal action or any other*  
40 *money expected as a result of the consumer’s legal action.*

41 **Sec. 7.** 1. *“Legal action” means:*

42 (a) *A bona fide civil action or statutory or regulatory claim for*  
43 *which damages may be awarded to the claiming party; or*



1       (b) A cause of action or legal claim upon which a civil action  
2       or statutory or regulatory claim described in paragraph (a) may be  
3       based.

4       2. The term includes, without limitation:

5       (a) Any settlement or negotiations toward settlement of a civil  
6       action or statutory or regulatory claim described in paragraph (a)  
7       of subsection 1; or

8       (b) Any agreement or negotiations toward an agreement  
9       pursuant to which a civil action or statutory or regulatory claim  
10      based upon a cause of action described in paragraph (b) of  
11      subsection 1 would not be initiated.

12      **Sec. 8. 1. A consumer lawsuit loan company shall not enter**  
13      **into a consumer lawsuit loan transaction with a consumer with**  
14      **respect to a legal action in which the consumer is a party.**

15      2. A consumer lawsuit loan contract entered into in violation  
16      of this section shall be deemed void from the inception of the  
17      contract.

18      **Sec. 9. 1. A violation of section 8 of this act constitutes an**  
19      **unfair lending practice.**

20      2. A consumer lawsuit loan company who willfully engages  
21      in an unfair lending practice is guilty of a misdemeanor.

22      3. If a consumer lawsuit loan company willfully engages in  
23      any unfair lending practice described in section 8 of this act, the  
24      consumer lawsuit loan company is liable to the consumer in an  
25      amount equal to the sum of:

26      (a) Three times the amount of any actual damages sustained  
27      by the consumer; and

28      (b) If the consumer brings an action and is successful in  
29      enforcing the liability imposed by paragraph (a) in the action, the  
30      costs of bringing the action and reasonable attorney's fees as  
31      determined by the court.

32      4. The rights and remedies provided pursuant to this section  
33      are in addition to and do not preclude any remedy otherwise  
34      available under law to a consumer claiming relief under any  
35      provision of law, including, without limitation, an award for  
36      general, consequential or punitive damages.

37      **Sec. 10. NRS 598D.010 is hereby amended to read as follows:**

38      598D.010 As used in this chapter, unless the context otherwise  
39      requires, the words and terms defined in NRS 598D.020 to  
40      598D.050, inclusive, **and sections 2 to 7, inclusive, of this act** have  
41      the meanings ascribed to them in those sections.

42      **Sec. 11. NRS 598D.110 is hereby amended to read as follows:**

43      598D.110 1. A lender who willfully engages in an unfair  
44      lending practice described in ~~this chapter~~ **NRS 598D.100 to**  
45      **598D.130, inclusive,** is guilty of a misdemeanor.



2. If a lender willfully engages in any unfair lending practice described in ~~this chapter~~ *NRS 598D.100 to 598D.130, inclusive*, in connection with a home loan, the lender is liable to the borrower in an amount equal to the sum of:

(a) Three times the amount of any actual damages sustained by the borrower; and

(b) If the borrower brings an action and is successful in enforcing the liability imposed by paragraph (a) in the action, the costs of bringing the action and reasonable attorney's fees as determined by the court.

3. The borrower has a defense against the unpaid obligation of the home loan to the extent of any amount awarded by a court pursuant to paragraph (a) of subsection 2, and the court, in addition to any other legal or equitable remedy, may cure any existing default of the home loan and cancel any pending foreclosure sale, trustee's sale or other sale to enforce the home loan.

**Sec. 12.** NRS 598D.120 is hereby amended to read as follows:

598D.120 1. If an action has been filed in a court of competent jurisdiction claiming an unfair lending practice in connection with a home loan, the lender who holds the home loan may sell the home loan and recover damages and costs as provided in this section if the lender did not:

(a) Originate the home loan; and

(b) Willfully engage in any unfair lending practice described in ~~this chapter~~ *NRS 598D.100 to 598D.130, inclusive*, in connection with the home loan.

2. The lender described in subsection 1 may require the person from whom the lender purchased the home loan described in subsection 1 to:

(a) Repurchase the home loan for the amount the lender paid for the home loan; and

(b) Pay to the lender all damages and reasonable costs incurred by the lender that are related to:

(1) The purchase of the home loan by the lender from the person;

(2) Any damages awarded in the action described in subsection 1;

(3) Any costs related to the action described in subsection 1;

(4) The repurchase of the home loan by the lender if the lender was required to repurchase the home loan from another lender pursuant to this section; and

(5) The repurchase of the home loan from the lender by the person pursuant to this section.

3. The person described in subsection 2:



(a) Shall repurchase the home loan and pay the damages and costs as described in subsection 2; and

(b) After repurchasing the home loan, may sell the home loan and recover damages and costs as provided in this section if he or she is a lender described in subsection 1.

**Sec. 13.** NRS 107.085 is hereby amended to read as follows:

107.085 1. With regard to a transfer in trust of an estate in real property to secure the performance of an obligation or the payment of a debt, the provisions of this section apply to the exercise of a power of sale pursuant to NRS 107.080 only if:

(a) The trust agreement becomes effective on or after October 1, 2003, and, on the date the trust agreement is made, the trust agreement is subject to the provisions of § 152 of the Home Ownership and Equity Protection Act of 1994, 15 U.S.C. § 1602(bb), 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; or

(b) The trust agreement concerns owner-occupied housing as defined in NRS 107.086.

2. The trustee shall not exercise a power of sale pursuant to NRS 107.080 unless:

(a) In the manner required by subsection 3, not later than 60 days before the date of the sale, the trustee causes to be served upon the grantor or the person who holds the title of record a notice in the form described in subsection 3; and

(b) If an action is filed in a court of competent jurisdiction claiming an unfair lending practice in connection with the trust agreement, the date of the sale is not less than 30 days after the date the most recent such action is filed.

3. The notice described in subsection 2 must be:

(a) Served upon the grantor or the person who holds the title of record:

(1) Except as otherwise provided in subparagraph (2), by personal service or, if personal service cannot be timely effected, in such other manner as a court determines is reasonably calculated to afford notice to the grantor or the person who holds the title of record; or

(2) If the trust agreement concerns owner-occupied housing as defined in NRS 107.086:

(I) By personal service;

(II) If the grantor or the person who holds the title of record is absent from his or her place of residence or from his or her usual place of business, by leaving a copy with a person of suitable age and discretion at either place and mailing a copy to the grantor



1 or the person who holds the title of record at his or her place of  
2 residence or place of business; or

3 (III) If the place of residence or business cannot be  
4 ascertained, or a person of suitable age or discretion cannot be found  
5 there, by posting a copy in a conspicuous place on the trust  
6 property, delivering a copy to a person there residing if the person  
7 can be found and mailing a copy to the grantor or the person who  
8 holds the title of record at the place where the trust property is  
9 situated; and

10 (b) In substantially the following form, with the applicable  
11 telephone numbers and mailing addresses provided on the notice  
12 and, except as otherwise provided in subsection 4, a copy of the  
13 promissory note attached to the notice:

14  
15 NOTICE  
16 YOU ARE IN DANGER OF LOSING YOUR HOME!

17  
18 YOU MAY HAVE A RIGHT TO PARTICIPATE IN THE  
19 STATE OF NEVADA FORECLOSURE MEDIATION  
20 PROGRAM IF THE TIME TO REQUEST MEDIATION  
21 HAS NOT EXPIRED!

22  
23 Your home loan is being foreclosed. In not less than 60 days  
24 your home may be sold and you may be forced to move. For  
25 help, call:

26  
27 State of Nevada Foreclosure Mediation Program

28  
29 Consumer Credit Counseling \_\_\_\_\_

30 The Attorney General \_\_\_\_\_

31 The Division of Mortgage Lending \_\_\_\_\_

32 The Division of Financial Institutions \_\_\_\_\_

33 Legal Services \_\_\_\_\_

34 Your Lender \_\_\_\_\_

35 Nevada Fair Housing Center \_\_\_\_\_

36  
37 4. The trustee shall cause all social security numbers to be  
38 redacted from the copy of the promissory note before it is attached  
39 to the notice pursuant to paragraph (b) of subsection 3.

40 5. This section does not prohibit a judicial foreclosure.

41 6. As used in this section, "unfair lending practice" means an  
42 unfair lending practice described in NRS ~~598D.010 to 598D.150,~~  
43 **598D.100 to 598D.130**, inclusive.



1     **Sec. 14.** This act becomes effective upon passage and  
2 approval.

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