

ASSEMBLY BILL NO. 284—ASSEMBLYMEN BUCKLEY, PARKS, GIBBONS, LESLIE, HORNE, ANDERSON, BEERS, BROWN, CARPENTER, CLABORN, COLLINS, CONKLIN, GEDDES, GIUNCHIGLIANI, GOICOECHEA, GOLDWATER, GRIFFIN, HARDY, HETTRICK, KOIVISTO, MABEY, MANENDO, MCCLAIN, OCEGUERA, OHRENSCHALL, PERKINS AND SHERER

MARCH 11, 2003

Referred to Committee on Commerce and Labor

SUMMARY—Prohibits unfair lending practices for home loans and revises provisions governing sale of real property by trustee. (BDR 52-20)

FISCAL NOTE: Effect on Local Government: Yes.
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 property; prohibiting certain acts by lenders of home loans as unfair lending practices; providing for enforcement by the Attorney General; prohibiting the sale of real property by a trustee under certain circumstances; providing a penalty; and providing other matters properly relating thereto.

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

1 **Section 1.** Title 52 of NRS is hereby amended by adding
2 thereto a new chapter to consist of the provisions set forth as
3 sections 2 to 9, inclusive, of this act.

4 **Sec. 2.** *As used in this chapter, unless the context otherwise*
5 *requires, the words and terms defined in sections 3 to 6, inclusive,*
6 *of this act have the meanings ascribed to them in those sections.*

7 **Sec. 3.** *“Borrower” means a natural person who is a*
8 *mortgagor, grantor of a deed of trust or other debtor of a home*
9 *loan.*



1 **Sec. 4.** *“Home” means a dwelling or dwellings for not more*
2 *than four families, the principal use of which is for residential*
3 *purposes. The term includes, without limitation:*

4 1. *A dwelling on a farm.*

5 2. *A dwelling unit of a cooperative housing corporation.*

6 3. *A mobile home, as defined in NRS 489.120, with the*
7 *wheels removed and skirting added, when set on a foundation*
8 *located on land that the owner of the mobile home owns or*
9 *occupies pursuant to a tenancy with a term of 40 years or more.*

10 **Sec. 5.** *“Home loan” means a consumer credit transaction*
11 *that:*

12 1. *Is secured by a mortgage loan which involves real property*
13 *located within this state; and*

14 2. *Constitutes a mortgage under § 152 of the Home*
15 *Ownership and Equity Protection Act of 1994, 15 U.S.C. §*
16 *1602(aa), and the regulations adopted by the Board of Governors*
17 *of the Federal Reserve System pursuant thereto, including,*
18 *without limitation, 12 C.F.R. § 226.32.*

19 **Sec. 6.** *“Lender” means a mortgagee, beneficiary of a deed*
20 *of trust or other creditor who holds a mortgage, deed of trust or*
21 *other instrument that encumbers home property as security for the*
22 *repayment of a home loan.*

23 **Sec. 7.** 1. *It is an unfair lending practice for a lender to:*

24 (a) *Require a borrower, as a condition of obtaining or*
25 *maintaining a home loan secured by home property, to provide*
26 *property insurance on improvements to home property in an*
27 *amount that exceeds the reasonable replacement value of the*
28 *improvements.*

29 (b) *Knowingly or intentionally make a home loan to a*
30 *borrower based solely upon the equity of the borrower in the home*
31 *property and without determining that the borrower has the ability*
32 *to repay the home loan from other assets, including, without*
33 *limitation, income.*

34 (c) *Finance a prepayment fee or penalty in connection with the*
35 *refinancing by the original borrower of a home loan owned by the*
36 *lender or an affiliate of the lender.*

37 (d) *Finance, directly or indirectly in connection with a home*
38 *loan, any credit insurance, life insurance, disability insurance,*
39 *health insurance, involuntary unemployment insurance or any*
40 *other similar form of insurance premiums, unless, before the*
41 *borrower executes the financing documents, the lender completes*
42 *and executes, and the borrower executes, a notice in substantially*
43 *the following form:*



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INSURANCE NOTICE TO BORROWERS

You have indicated that you are electing to purchase insurance in conjunction with this loan. THE COST OF THIS INSURANCE is being PREPAID AND FINANCED AT THE INTEREST RATE PROVIDED FOR THIS LOAN. THE INSURANCE IS NOT REQUIRED as a condition of closing this loan, but has been included with the loan at your request.

YOU HAVE THE RIGHT TO CANCEL THIS INSURANCE AFTER PURCHASE.

**THE COST OF THIS INSURANCE IS
YOUR REGULAR MORTGAGE PAYMENT WITHOUT THIS INSURANCE WOULD BE \$..... EACH MONTH, AS COMPARED TO A MONTHLY MORTGAGE PAYMENT OF \$..... WHEN THE INSURANCE IS ADDED TO THE AMOUNT YOU ARE BORROWING AND FINANCED AS A PART OF YOUR MORTGAGE. THE DIFFERENCE BETWEEN THOSE TWO AMOUNTS IS \$..... EACH MONTH.**

.....
(Signature of Lender)

.....
(Signature of Borrower)

2. As used in this section:

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

(b) "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.

Sec. 8. 1. A person who willfully engages in an unfair lending practice described in this chapter is guilty of a misdemeanor.

2. If a lender willfully engages in any unfair lending practice described in this chapter 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.



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

8 **Sec. 9. 1.** *The Attorney General has primary jurisdiction to*
9 *investigate and prosecute violations of this chapter.*

10 2. *When acting pursuant to this section, the Attorney General*
11 *may commence his investigation and file a criminal action without*
12 *leave of court, and he has exclusive charge of the conduct of the*
13 *prosecution.*

14 **Sec. 10.** Chapter 107 of NRS is hereby amended by adding
15 thereto a new section to read as follows:

16 1. *With regard to a transfer in trust of an estate in real*
17 *property to secure the performance of an obligation or the*
18 *payment of a debt, the trustee may not exercise a power of sale*
19 *pursuant to NRS 107.080 if:*

20 (a) *The trust agreement comes into force on or after October 1,*
21 *2003; and*

22 (b) *On the date the trust agreement is made, the grantor has a*
23 *debt-to-income ratio greater than 50 percent.*

24 2. *This section does not prohibit a judicial foreclosure.*

25 3. *As used in this section, "debt-to-income ratio" means the*
26 *ratio determined as set forth in 38 C.F.R. 36.4337, as that section*
27 *existed on March 1, 2003.*

28 **Sec. 11.** NRS 107.080 is hereby amended to read as follows:

29 107.080 1. ~~[Where]~~ *Except as otherwise provided in section*
30 *10 of this act, if any transfer in trust of any estate in real property is*
31 *made after March 29, 1927, to secure the performance of an*
32 *obligation or the payment of any debt, a power of sale is hereby*
33 *conferred upon the trustee to be exercised after a breach of the*
34 *obligation for which the transfer is security.*

35 2. The power of sale must not be exercised, however, until:

36 (a) In the case of any trust agreement coming into force:

37 (1) On or after July 1, 1949, and before July 1, 1957, the
38 grantor, or his successor in interest, a beneficiary under a
39 subordinate deed of trust or any other person who has a subordinate
40 lien or encumbrance of record on the property, has for a period of 15
41 days, computed as prescribed in subsection 3, failed to make good
42 the deficiency in performance or payment; or

43 (2) On or after July 1, 1957, the grantor, or his successor in
44 interest, a beneficiary under a subordinate deed of trust or any other
45 person who has a subordinate lien or encumbrance of record on the



1 property, has for a period of 35 days, computed as prescribed in
2 subsection 3, failed to make good the deficiency in performance or
3 payment;

4 (b) The beneficiary, the successor in interest of the beneficiary
5 or the trustee first executes and causes to be recorded in the office of
6 the recorder of the county wherein the trust property, or some part
7 thereof, is situated a notice of the breach and of his election to sell
8 or cause to be sold the property to satisfy the obligation; and

9 (c) Not less than 3 months have elapsed after the recording of
10 the notice.

11 3. The 15- or 35-day period provided in paragraph (a) of
12 subsection 2 commences on the first day following the day upon
13 which the notice of default and election to sell is recorded in the
14 office of the county recorder of the county in which the property is
15 located and a copy of the notice of default and election to sell is
16 mailed by registered or certified mail, return receipt requested and
17 with postage prepaid to the grantor, and to the person who holds the
18 title of record on the date the notice of default and election to sell is
19 recorded, at their respective addresses, if known, otherwise to the
20 address of the trust property. The notice of default and election to
21 sell must describe the deficiency in performance or payment and
22 may contain a notice of intent to declare the entire unpaid balance
23 due if acceleration is permitted by the obligation secured by the
24 deed of trust, but acceleration must not occur if the deficiency in
25 performance or payment is made good and any costs, fees and
26 expenses incident to the preparation or recordation of the notice and
27 incident to the making good of the deficiency in performance or
28 payment are paid within the time specified in subsection 2.

29 4. The trustee, or other person authorized to make the sale
30 under the terms of the trust deed or transfer in trust, shall, after
31 expiration of the 3-month period following the recording of the
32 notice of breach and election to sell, and before the making of the
33 sale, give notice of the time and place thereof in the manner and for
34 a time not less than that required by law for the sale or sales of real
35 property upon execution. The sale itself may be made at the office
36 of the trustee, if the notice so provides, whether the property so
37 conveyed in trust is located within the same county as the office of
38 the trustee or not.

39 5. Every sale made under the provisions of this section and
40 other sections of this chapter vests in the purchaser the title of the
41 grantor and his successors in interest without equity or right of
42 redemption. The sale of a lease of a dwelling unit of a cooperative
43 housing corporation vests in the purchaser title to the shares in the
44 corporation which accompany the lease.



1 **Sec. 12.** NRS 690A.100 is hereby amended to read as follows:
2 690A.100 ~~{The}~~ *Except as otherwise provided in paragraph*
3 *(d) of subsection 1 of section 7 of this act, the* premium or other
4 identifiable charge for credit insurance may be collected from the
5 insured or included in the principal of any loan or other transaction
6 at the time the transaction is completed.

7 **Sec. 13.** NRS 690A.110 is hereby amended to read as follows:
8 690A.110 The premium or cost of credit insurance when issued
9 through any creditor is not subject to NRS 688B.180 and 689B.060
10 and shall not be deemed interest or charges, or consideration, or an
11 amount in excess of permitted charges in connection with the loan
12 or other credit transaction, and *, except as otherwise provided in*
13 *sections 2 to 9, inclusive, of this act,* any gain or advantage to the
14 creditor arising out of the premium or commission or dividend from
15 the issuance of ~~{such}~~ *the* insurance shall not be deemed a violation
16 of any other law, general or special, civil or criminal, of this state.

17 **Sec. 14.** The amendatory provisions of sections 1 to 9,
18 inclusive, 12 and 13 of this act do not apply to a loan that is entered
19 into before October 1, 2003.

