

SENATE BILL NO. 259—SENATOR AMODEI

MARCH 12, 2007

Referred to Committee on Commerce and Labor

SUMMARY—Makes persons who violate certain provisions of federal law subject to remedies and penalties set forth in state law. (BDR 52-332)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

~

EXPLANATION – Matter in *bolded italics* is new; matter between brackets [omitted-material] is material to be omitted.

AN ACT relating to financial services; making persons who violate certain provisions of federal law subject to remedies and penalties set forth in state law; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Existing federal law imposes limitations on the terms of consumer credit that
2 are extended to members of the Armed Forces of the United States who are on
3 active duty and their dependents, including, without limitation, a prohibition against
4 a lender imposing an interest rate greater than 36 percent. The federal law preempts
5 any state law that is inconsistent with the federal law. (Section 670 of the John
6 Warner National Defense Authorization Act for Fiscal Year 2007, Public Law 109-
7 364) This bill provides that any violation of the federal law shall be deemed to be a
8 violation of chapter 604A of NRS, thereby making violators subject to the remedies
9 and penalties set forth in that chapter, including the imposition of an administrative
10 fine of not more than \$10,000 for each violation, the revocation or suspension of a
11 license issued pursuant to that chapter and civil actions for damages. (NRS
12 604A.820, 604A.930)

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

1 **Section 1.** Chapter 604A of NRS is hereby amended by
2 adding thereto a new section to read as follows:

3 *A violation of any provision of section 670 of the John Warner*
4 *National Defense Authorization Act for Fiscal Year 2007, Public*



* S B 2 5 9 *

1 *Law 109-364, or any regulation adopted pursuant thereto shall be*
2 *deemed to be a violation of this chapter.*

3 **Sec. 2.** NRS 604A.930 is hereby amended to read as follows:

4 604A.930 1. Subject to the affirmative defense set forth in
5 subsection 3, in addition to any other remedy or penalty, if a person
6 violates any provision of NRS 604A.400, 604A.410 to 604A.500,
7 inclusive, 604A.610, 604A.615, 604A.650 or 604A.655 *or section 1*
8 *of this act*, or any regulation adopted pursuant thereto, the customer
9 may bring a civil action against the person for : ~~any or all of the~~
10 ~~following relief:~~

11 (a) Actual and consequential damages;

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

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

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

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

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

25 (b) Fails to include in a loan agreement a disclosure of the right
26 of the customer to rescind the loan, in violation of NRS 604A.410;

27 (c) Violates any provision of NRS 604A.420;

28 (d) Accepts collateral or security for a deferred deposit loan, in
29 violation of NRS 604A.435, except that a check or written
30 authorization for an electronic transfer of money shall not be
31 deemed to be collateral or security for a deferred deposit loan;

32 (e) Uses or threatens to use the criminal process in this State or
33 any other state to collect on a loan made to the customer, in
34 violation of NRS 604A.440;

35 (f) Includes in any written agreement a promise by the customer
36 to hold the person harmless, a confession of judgment by the
37 customer or an assignment or order for the payment of wages or
38 other compensation due the customer, in violation of
39 NRS 604A.440;

40 (g) Violates any provision of NRS 604A.485; ~~or~~

41 (h) Violates any provision of NRS 604A.490 ~~or~~; *or*

42 *(i) Violates any provision of section 1 of this act.*

43 3. A person may not be held liable in any civil action brought
44 pursuant to this section if the person proves, by a preponderance of
45 evidence, that the violation:



- 1 (a) Was not intentional;
- 2 (b) Was technical in nature; and
- 3 (c) Resulted from a bona fide error, notwithstanding the
- 4 maintenance of procedures reasonably adapted to avoid any such
- 5 error.

6 4. For the purposes of subsection 3, a bona fide error includes,
7 without limitation, clerical errors, calculation errors, computer
8 malfunction and programming errors and printing errors, except that
9 an error of legal judgment with respect to the person's obligations
10 under this chapter is not a bona fide error.

11 **Sec. 3.** NRS 99.050 is hereby amended to read as follows:

12 99.050 ~~[Parties]~~ *Except as otherwise provided in section 670*
13 *of the John Warner National Defense Authorization Act for Fiscal*
14 *Year 2007, Public Law 109-364, or any regulation adopted*
15 *pursuant thereto, parties* may agree for the payment of any rate of
16 interest on money due or to become due on any contract, for the
17 compounding of interest if they choose, and for any other charges or
18 fees. The parties shall specify in writing the rate upon which they
19 agree, that interest is to be compounded if so agreed, and any other
20 charges or fees to which they have agreed.

21 **Sec. 4.** The amendatory provisions of this act do not apply to
22 loans entered into before October 1, 2007.

