

FORTY-NINTH LEGISLATURE  
FIRST SESSION, 2009

SB 342/a

February 9, 2009

Madam President:

Your **JUDICIARY COMMITTEE**, to whom has been referred

**SENATE BILL 342**

has had it under consideration and reports same with recommendation that it **DO PASS**, amended as follows:

1. On page 8, lines 3 through 5, strike Paragraph (3) in its entirety and insert in lieu thereof:

"(3) an individual who offers or negotiates terms of a real property sale financed in whole or in part by the seller and secured by the seller's real property; or".

2. On page 11, line 15, after "court" insert ", not including a juvenile court".

3. On page 32, line 23, strike "or exclusive agent".

4. On page 38, line 7, strike the second comma and insert in lieu thereof "and" and strike "and customers".

5. On page 40, line 18, strike "subject to" and insert in lieu thereof "who is the subject of an".

6. On page 43, strike Section 21 in its entirety and insert in lieu thereof the following new section:

"Section 21. [NEW MATERIAL] PRIVATE RIGHT OF ACTION--DAMAGES--ENFORCEMENT BY ATTORNEY GENERAL.--

A. Any person who has suffered injury by reason of any method, act or practice in violation of the New Mexico Mortgage Loan Originator Licensing Act may sue in district court. Upon a showing that that act is being or has been violated and a showing that the plaintiff has suffered actual injury, the court may award damages,

**FORTY-NINTH LEGISLATURE  
FIRST SESSION, 2009**

SJC/SB 342

Page 2

punitive damages and injunctive relief and shall award the cost of the suit, including reasonable attorney fees.

B. Whenever the attorney general has reasonable belief that a person is using, has used or is about to use any method, act or practice in violation of the New Mexico Mortgage Loan Originator Licensing Act and enforcement proceedings would be in the public interest, the attorney general may bring an action in the name of the state alleging violations of that act. An enforcement action by the attorney general may be brought in the district court of the county in which the person that allegedly is using, has used or is about to use a method, act or practice in violation of the New Mexico Mortgage Loan Originator Licensing Act resides or has its principal place of business, or in the district court in any county in which the person allegedly is using, has used or is about to use a method, act or practice in violation of the New Mexico Mortgage Loan Originator Licensing Act. In any action filed by the attorney general pursuant to the New Mexico Mortgage Loan Originator Licensing Act, the attorney general may petition the district court for temporary or permanent injunctive relief and restitution. The attorney general acting on behalf of the state shall not be required to post bond when seeking a temporary or permanent injunction in an action brought pursuant to this section.

C. The relief provided in this section is in addition to remedies otherwise available pursuant to common law or other New Mexico statutes."

7. On page 57, line 21, before "assists", insert "knowingly".
8. On page 61, line 17, strike "also".
9. On page 72, line 8, after "cease" insert "and desist".
10. On page 75, line 21, after "loan" insert ", in a manner that can be understood by a reasonable borrower,".

**FORTY-NINTH LEGISLATURE  
FIRST SESSION, 2009**

SJC/SB 342

Page 3

11. On page 86, line 2, after the period, insert "The provisions of this subsection shall not apply to a home loan originated pursuant to a government streamline program or a streamline program administered by a government-sponsored entity, to a reverse mortgage insured as part of a government program or to loss mitigation activities of a home loan servicer or lender with which the borrower has a current relationship."

12. On page 89, line 8, after "borrower's", insert "collateral rather than on the borrower's ability to repay the home loan according to its terms;" and strike line 9 in its entirety.

13. On page 101, lines 6 through 11, strike Section 60 in its entirety and renumber the succeeding sections accordingly.

14. On page 101, line 16, strike "of Sections 1 through 58 and 61".,

and thence referred to the **CORPORATIONS AND TRANSPORTATION COMMITTEE.**

FORTY-NINTH LEGISLATURE  
FIRST SESSION, 2009

SJC/SB 342

Page 4

Respectfully submitted,

\_\_\_\_\_  
Cisco McSorley, Chairman

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 9 For 0 Against

Yes: 9

No: 0

Excused: McSorley, Sanchez, M.

Absent: None

SB0342JU1

.176603.1  
.176289.5/a