REQUIRES TWO-THIRDS MAJORITY VOTE (§ 17)

A.B. 278

ASSEMBLY BILL NO. 278–ASSEMBLYMAN COLLINS

FEBRUARY 18, 1999

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions relating to mortgage companies and loans secured by liens on real property. (BDR 54-40)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: 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 real property; revising the provisions relating to the licensure and the operation of mortgage companies; removing the exemption from licensure for certain mortgage companies; requiring mortgage companies to maintain a minimum net worth and a surety bond; requiring mortgage companies to provide certain information to prospective debtors; making mortgage companies liable in a civil action for certain damages; prohibiting various acts by mortgage companies; providing for administrative sanctions and criminal penalties against certain persons; and providing other matters properly relating thereto.

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

Section 1. Chapter 645B of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 15, inclusive, of this act.

Sec. 2. ***1. Except as otherwise provided in this section, a mortgage company shall not engage in any activity that is authorized pursuant to this chapter, unless the mortgage company maintains continuously a net worth of at least $10,000.***

2. If a mortgage company cannot maintain continuously the net worth required pursuant to subsection 1, the commissioner may allow the mortgage company to engage in activities that are authorized pursuant to this chapter if the mortgage company remedies the deficiency in its net worth by depositing with the commissioner a corporate surety bond or a substitute form of security that conforms with section 3 or 4 of this act, or any combination thereof, in an aggregate amount that is equal to or exceeds the deficiency in the net worth of the mortgage company. If a mortgage company deposits with the commissioner a corporate surety

bond or substitute form of security pursuant to this subsection, that deposit must be in addition to the corporate surety bond or substitute form of security that the mortgage company deposits with the commissioner pursuant to section 3 or 4 of this act.

3. If requested by the commissioner, a mortgage company shall submit to the commissioner or allow the commissioner to examine any documentation or other evidence that is related to determining the net worth of the mortgage company.

4. The commissioner:

(a) Shall adopt regulations prescribing standards for determining the net worth of a mortgage company; and

(b) May adopt any other regulations that are necessary to carry out the provisions of this section.

Sec. 3. ***1. Except as otherwise provided in section 4 of this act, a mortgage company shall deposit with the commissioner a corporate surety bond payable to the State of Nevada, in the amount of $10,000, which is executed by a corporate surety satisfactory to the commissioner and which names the mortgage company as principal.***

2. The bond must be in substantially the following form:

Know All Men by These Presents, that ...., as principal, and ...., as surety, are held and firmly bound unto the State of Nevada for the use and benefit of any person who suffers damages because of a violation of any of the provisions of chapter 645B of NRS, in the sum of ...., lawful money of the United States, to be paid to the State of Nevada for such use and benefit, for which payment well and truly to be made, and that we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

The condition of that obligation is such that: Whereas, the commissioner of financial institutions of the department of business and industry of the State of Nevada has issued the principal a license as a mortgage company, and the principal is required to furnish a bond, in the amount of $10,000, which is conditioned as set forth in this bond:

Now, therefore, if the principal, his agents and employees, strictly, honestly and faithfully comply with the provisions of chapter 645B of NRS, and pay all damages suffered by any person because of a violation of any of the provisions of chapter 645B of NRS, or by reason of any fraud, dishonesty, misrepresentation or concealment of material facts growing out of any transaction governed by the provisions of chapter 645B of NRS, then this obligation is void; otherwise it remains in full force.

This bond becomes effective on the ....(day) of ....(month), ...(year), and remains in force until the surety is released from liability by the commissioner of financial institutions or until this bond is canceled by the surety. The surety may cancel this bond and be relieved of further liability hereunder by giving 60 days' written notice to the principal and to the commissioner of financial institutions of the department of business and industry of the State of Nevada.

In Witness Whereof, the seal and signature of the principal hereto is affixed, and the corporate seal and the name of the surety hereto is affixed and attested by its authorized officers at ...., Nevada, this ....(day) of ....(month), ...(year)

(Seal)
Principal
(Seal)
Surety
By
Attorney in fact

Licensed resident agent

Sec. 4. *1. As a substitute for the surety bond required by section 3 of this act, a mortgage company may, in accordance with the provisions of this section, deposit with any bank or trust company authorized to do business in this state, in a form approved by the commissioner:*

(a) An obligation of a bank, savings and loan association, thrift company or credit union licensed to do business in this state;

(b) Bills, bonds, notes, debentures or other obligations of the United States or any agency or instrumentality thereof, or guaranteed by the United States; or

(c) Any obligation of this state or any city, county, town, township, school district or other instrumentality of this state, or guaranteed by this state.

2. The obligations of a bank, savings and loan association, thrift company or credit union must be held to secure the same obligation as would the surety bond. With the approval of the commissioner, the depositor may substitute other suitable obligations for those deposited which must be assigned to the State of Nevada and are negotiable only upon approval by the commissioner.

3. Any interest or dividends earned on the deposit accrue to the account of the depositor.

4. The deposit must be in an amount at least equal to the required surety bond and must state that the amount may not be withdrawn except by direct and sole order of the commissioner. The value of any item deposited pursuant to this section must be based upon principal amount or market value, whichever is lower.

Sec. 5. *1. The surety may cancel a bond upon giving 60 days' notice to the commissioner by certified mail. Upon receipt by the commissioner of such a notice, the commissioner immediately shall notify the mortgage company that is the principal on the bond of the effective date of cancellation of the bond, and that his license will be revoked unless he furnishes an equivalent bond or a substitute form of security authorized by section 4 of this act before the effective date of the cancellation. The notice must be sent to the mortgage company by certified mail to his last address of record filed in the office of the division.*

2. If the mortgage company does not comply with the requirements set out in the notice from the commissioner, his license must be revoked on the date the bond is canceled.

Sec. 6. *1. Any person claiming against a bond may bring an action in a court of competent jurisdiction on the bond for damages to the extent covered by the bond. A person who brings an action on a bond shall notify the commissioner in writing upon filing the action. An action may not be commenced after the expiration of 3 years following the commission of the act on which the action is based.*

2. Upon receiving a request from a person for whose benefit a bond is required, the commissioner shall notify him:

(a) That a bond is in effect and the amount of the bond; and

(b) If there is an action against the bond, the title, court and case number of the action and the amount sought by the plaintiff.

3. If a surety wishes to make payment without awaiting action by a court, the amount of the bond must be reduced to the extent of any payment made by the surety in good faith under the bond. Any payment must be based on written claims received by the surety before any action is taken by a court.

4. The surety may bring an action for interpleader against all claimants upon the bond. If it does so, it shall publish notice of the action at least once each week for 2 weeks in every issue of a newspaper of general circulation in the county where the mortgage company has its principal place of business. The surety may deduct its costs of the action, including attorney's fees and publication, from its liability under the bond.

5. Claims against a bond have equal priority, and if the bond is insufficient to pay all claims in full, they must be paid on a pro rata basis. Partial payment of claims is not full payment, and any claimant may bring an action against the mortgage company for the unpaid balance.

Sec. 7. ***1. If a prospective debtor submits an application to a mortgage company for a loan secured by a lien on real property that is or will be used for a single-family residence occupied by the prospective debtor or a relative of the prospective debtor, the mortgage company shall give the prospective debtor, in accordance with the regulations adopted pursuant to subsection 2:***

(a) A special information booklet;

(b) A good faith estimate; and

(c) A settlement statement.

2. The commissioner shall adopt regulations prescribing:

(a) The information that must be included in a special information booklet, a good faith estimate and a settlement statement. Such information must include, to the extent reasonably practicable, the information that must be included in a special information booklet, a good faith estimate and a HUD-1 or HUD-1A settlement statement pursuant to RESPA and Regulation X.

(b) The period within which a mortgage company must give a special information booklet, a good faith estimate and a settlement statement to a prospective debtor. The period must be, to the extent reasonably practicable, the same period required pursuant to RESPA and Regulation X.

(c) Any other regulations that are necessary to carry out the provisions of this section.

3. As used in this section:

(a) "Regulation X" means the regulations adopted pursuant to RESPA and codified in 24 C.F.R. Part 3500.

(b) "Relative" means a spouse, any other person who is related within the second degree by blood or marriage. The term includes a former spouse.

(c) "RESPA" means the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. §§ 2601 et seq.

Sec. 8. ***1. If a person who is required to be licensed pursuant to this chapter or a partner, officer, director, trustee, agent or employee of such a person engages in any act or transaction that violates any provision of this chapter, a regulation adopted pursuant to this chapter or an order of the commissioner and a person, other than the person who is required to be licensed pursuant to this chapter or a partner, officer, director, trustee, agent or employee of such a person, suffers damages as***

a proximate result of that act or transaction, the person who suffers damages may bring an action to recover for his actual damages and punitive damages against the following persons, who are jointly and severally liable:

(a) The person who engaged in the act or transaction;

(b) The person who is required to be licensed pursuant to this chapter, whether or not he encouraged, facilitated, aided, participated in or ratified the act or transaction before or after it occurred; and

(c) If the person who is required to be licensed pursuant to this chapter is a partnership, corporation or unincorporated association, each general partner, officer or director who knowingly encouraged, facilitated, aided, participated in or ratified the act or transaction before or after it occurred.

2. If a person prevails in an action brought pursuant to this section, the court shall award him costs and reasonable attorney's fees.

3. The cause of action provided for in this section:

(a) Is not a cause of action upon a contract or other agreement underlying the act or transaction.

(b) Is in addition to and not in substitution for any other cause of action provided for by another statute or the common law, except that a person may not recover his actual damages or punitive damages more than once for the same loss.

4. The provisions of NRS 41.745 do not apply to the cause of action provided for in this section.

Sec. 9. ***1. There is hereby created, within the division, the bureau for the regulation of mortgage companies.***

2. The commissioner shall appoint, within the limits of legislative appropriations, one or more deputy commissioners, investigators or examiners to the bureau for the regulation of mortgage companies.

3. The duties of a deputy commissioner, investigator or examiner who is appointed to the bureau for the regulation of mortgage companies are to:

(a) Act as an investigator in the enforcement of the provisions of this chapter; and

(b) Perform any other duties assigned to him by the commissioner.

Sec. 10. ***1. A person may, in accordance with the regulations adopted pursuant to subsection 2, file a complaint with the commissioner alleging that another person has violated a provision of this chapter, a regulation adopted pursuant to this chapter or an order of the commissioner.***

2. The commissioner shall adopt regulations prescribing:

(a) The form that such a complaint must take;

(b) The information that must be included in such a complaint; and

(c) The procedures that a person must follow to file such a complaint.

Sec. 11. ***1. If a person properly files a complaint with the commissioner pursuant to section 10 of this act, the commissioner shall investigate each violation alleged in the complaint, unless the commissioner has previously investigated the alleged violation.***

2. Except as otherwise provided in NRS 645B.090, if the commissioner does not conduct an investigation of an alleged violation pursuant to subsection 1 because he has previously investigated the alleged violation, the commissioner shall provide to the person who filed the complaint a written summary of the previous investigation and the nature of any disciplinary action that was taken as a result of the previous investigation.

3. If the commissioner conducts an investigation of an alleged violation pursuant to subsection 1, the commissioner shall determine from the investigation whether there is reasonable cause to believe that the person committed the alleged violation.

4. If, upon investigation, the commissioner determines that there is not reasonable cause to believe that the person committed the alleged violation, the commissioner shall provide the reasons for his determination, in writing, to the person who filed the complaint and to the person alleged to have committed the violation.

5. If, upon investigation, the commissioner determines that there is reasonable cause to believe that the person committed the alleged violation, the commissioner shall:

(a) Schedule a hearing concerning the alleged violation;

(b) Mail to the last known address of the person who filed the complaint written notice that must include, without limitation:

(1) The date, time and place of the hearing; and

(2) A statement of each alleged violation that will be considered at the hearing; and

(c) By personal service in accordance with the Nevada Rules of Civil Procedure and any applicable provision of NRS, serve written notice of the hearing to the person alleged to have committed the violation. The written notice that is served pursuant to this paragraph must include, without limitation:

(1) The date, time and place of the hearing;

(2) A copy of the complaint and a statement of each alleged violation that will be considered at the hearing; and

(3) A statement informing the person that, pursuant to section 13 of this act, if he fails to appear, without reasonable cause, at the hearing:

(I) He is guilty of a misdemeanor;

(II) A warrant will be issued for his arrest; and

(III) The commissioner is authorized to conduct the hearing in his absence, draw any conclusions that the commissioner deems appropriate from his failure to appear and render a decision concerning each alleged violation.

6. The commissioner may investigate and conduct a hearing concerning any alleged violation, whether or not a complaint has been filed.

7. The commissioner may hear and consider more than one alleged violation against a person at the same hearing.

8. Except as otherwise provided by specific statute, if the commissioner conducts a hearing concerning an alleged violation without a complaint having been filed, the commissioner shall serve written notice of the hearing, pursuant to paragraph (c) of subsection 5, to the person alleged to have committed the violation.

Sec. 12. ***Before conducting a hearing, the commissioner may, to the fullest extent permitted by the Constitution of the United States and the constitution of this state:***

1. Order a summary suspension of a license pursuant to subsection 3 of NRS 233B.127; and

2. Take any other action against a licensee or other person that is necessary to protect the health, safety or welfare of the public.

Sec. 13. ***If a person is alleged to have engaged in any conduct or committed any violation that is described in NRS 645B.100, 645B.120 or 645B.150 or is alleged to have committed a violation of any other provision of this chapter, a regulation adopted pursuant to this chapter or an order of the commissioner, and the person fails to appear, without reasonable cause, at a hearing before the commissioner concerning the alleged conduct or violation:***

1. The commissioner shall notify the attorney general that the person failed to appear;

2. The attorney general shall request from the appropriate court a warrant for the arrest of the person;

3. The court shall issue a warrant for the arrest of the person if there is probable cause to believe that the person failed to appear without reasonable cause;

4. The person is guilty of a misdemeanor; and

5. The commissioner may conduct the hearing in the person's absence, draw any conclusions that the commissioner deems appropriate from his failure to appear and render a decision concerning the alleged conduct or violation.

Sec. 14. ***1. The attorney general has primary jurisdiction for the enforcement of this chapter. The attorney general shall investigate and, if appropriate, prosecute a person who violates:***

(a) Any provision of this chapter, a regulation adopted pursuant to this chapter or an order of the commissioner, including, without limitation, a violation of any provision of NRS 645B.100 or NRS 645B.120; or

(b) Any other law or regulation if the person commits the violation in the course of offering or providing any services of a mortgage company or while otherwise engaging in, carrying on or holding himself out as engaging in or carrying on the business of a mortgage company.

2. The attorney general shall investigate and, if appropriate, prosecute a person who is alleged to have committed a violation described in subsection 1 whether or not:

(a) The commissioner notifies the attorney general of the alleged violation;

(b) The commissioner takes any disciplinary action against the person alleged to have committed the violation;

(c) Any other person files a complaint against the person alleged to have committed the violation; or

(d) A civil action is commenced against the person alleged to have committed the violation.

3. When acting pursuant to this section, the attorney general may commence his investigation and file a criminal action without leave of court, and the attorney general has exclusive charge of the conduct of the prosecution.

4. Except as otherwise provided by the Constitution of the United States, the constitution of this state or a specific statute, a person shall, if requested, provide the attorney general with information that would assist in the prosecution of any other person who is alleged to have committed a violation described in subsection 1. If a person fails, without reasonable cause, to provide the attorney general with such information upon request, the person is guilty of a misdemeanor.

Sec. 15. ***1. The attorney general may bring any appropriate civil action against a person to enforce any provision of this chapter, a regulation adopted pursuant to this chapter or an order of the commissioner, including, without limitation, an order of the commissioner:***

(a) Imposing an administrative fine; or

(b) Suspending, revoking or placing conditions upon a license.

2. Whether or not the attorney general brings a civil action against a person pursuant to this chapter, the attorney general may prosecute the person for a criminal violation pursuant to this chapter.

Sec. 16. NRS 645B.010 is hereby amended to read as follows:

645B.010 As used in this chapter, unless the context otherwise requires:

1. "Commissioner" means the commissioner of financial institutions.

2. "Division" means the division of financial institutions of the department of business and industry.

3. "Depository financial institution" means a bank, savings and loan association, thrift company or credit union.

4. "Mortgage company" means any person who, directly or indirectly:

(a) Holds himself out for hire to serve as an agent for any person in an attempt to obtain a loan which will be secured by a lien on real property;

(b) Holds himself out for hire to serve as an agent for any person who has money to lend, if the loan is or will be secured by a lien on real property;

(c) Holds himself out as being able to make loans secured by liens on real property, unless the loans are made pursuant to subsection ~~[8 or 10]~~ ***4 or 6*** of NRS 645B.015;

(d) Holds himself out as being able to buy or sell notes secured by liens on real property; or

(e) Offers for sale in this state any security which is exempt from registration under state or federal law and purports to make investments in promissory notes secured by liens on real property.

Sec. 17. NRS 645B.015 is hereby amended to read as follows:

645B.015 ~~[Except as otherwise provided in subsection 5 of NRS 645B.020, the]~~ ***The*** provisions of this chapter do not apply to:

1. ~~[Any person doing business under the laws of this state, any other state or the United States relating to banks, savings banks, trust companies, savings and loan associations, consumer finance companies, industrial loan companies, credit unions, thrift companies or insurance companies, unless the business conducted in this state is not subject to supervision by the regulatory authority of the other jurisdiction, in which case licensing pursuant to this chapter is required.~~

~~2. A real estate investment trust, as defined in 26 U.S.C. § 856, unless the business conducted in this state is not subject to supervision by the regulatory authority of the other jurisdiction, in which case licensing pursuant to this chapter is required.~~

~~3. An employee benefit plan, as defined in 29 U.S.C. § 1002(3), if the loan is made directly from money in the plan by the plan's trustee.~~

~~4.]~~ An attorney at law rendering services in the performance of his duties as an attorney at law.

~~[5.]~~ ***2.*** A real estate broker rendering services in the performance of his duties as a real estate broker.

~~[6. Except as otherwise provided in this subsection, any firm or corporation:~~

~~(a) Whose principal purpose or activity is lending money on real property which is secured by a mortgage;~~

~~(b) Approved by the Federal National Mortgage Association as a seller and servicer; and~~

~~(c) Approved by the Department of Housing and Urban Development and the Department of Veterans Affairs.~~

~~A firm or corporation is not exempt from the provisions of this chapter pursuant to this subsection if it maintains any accounts described in subsection 1 of NRS 645B.175 or offers for sale in this state any unregistered security under state or federal law and purports to make investments in promissory notes secured by liens on real property. A firm or corporation which is exempted pursuant to this subsection must submit annually as a condition of its continued exemption a certified statement by an independent certified public accountant that the firm or corporation does not maintain any such accounts. This subsection does not prohibit an exempt firm or corporation from maintaining accounts described in NRS 645B.170 and subsection 3 of NRS 645B.175.~~

~~7.]~~ ***3.*** Any person doing any act under an order of any court.

~~[8.]~~ ***4.*** Any one natural person, or husband and wife, who provides money for investment in loans secured by a lien on real property, on his own account.

~~[9.]~~ ***5.*** Agencies of the United States and of this state and its political subdivisions, including the public employees' retirement system.

~~[10.]~~ ***6.*** A seller of real property who offers credit secured by a mortgage of the property sold.

Sec. 18. NRS 645B.020 is hereby amended to read as follows:

645B.020 1. A license as a mortgage company may be obtained by filing a written application in the office of the commissioner.

2. The application must:

(a) Be verified.

(b) State the location of the applicant's principal office and branch offices in ~~[the]~~ ***this*** state.

(c) State the name under which the applicant will conduct business.

(d) List the names, residence and business addresses of all persons having an interest in the business as principals, partners, officers, trustees and directors, specifying the capacity and title of each.

(e) If the applicant is a natural person, include the social security number of the applicant.

(f) Indicate the general plan and character of the business.

(g) State the length of time the applicant has been engaged in the mortgage company business.

(h) Include a financial statement of the applicant.

(i) ***If the applicant is a corporation, include a notarized copy of:***

(1) Its articles of incorporation and its bylaws;

(2) Its most recent balance sheet and a statement of the profit and loss of the corporation;

(3) The most recent list of its officers, directors and resident agents that is filed with the secretary of state; and

(4) A current resume for each of its officers, directors, agents and employees.

(j) If the applicant is a partnership or joint venture, include a notarized copy of:

(1) The agreement of partnership or joint venture; and

(2) The financial statements of each of the partners or the participants in the joint venture for the 2 years immediately preceding the year of the application.

(k) Include such other information as the commissioner determines necessary.

3. ~~[The]~~ ***Except as otherwise provided in this chapter, the*** commissioner shall issue a license to an applicant as a mortgage company if:

(a) The application complies with the requirements of ~~[subsection 2;]~~ ***this chapter;***

(b) The applicant submits the statement required pursuant to NRS 645B.023, if the applicant is required to do so; ~~[and]~~

(c) ***The applicant or a general partner, officer or director of the applicant, if the applicant is a partnership, corporation or unincorporated association, has:***

(1) At least 2 years of verifiable experience in lending money for real property or mortgages; and

(2) A knowledge of generally accepted accounting practices and bookkeeping procedures evidenced by verifiable work experience in these areas or appropriate educational training, or both; and

(d) The applicant and each general partner, officer or director of the applicant, if the applicant is a partnership, corporation or unincorporated association:

(1) Has a good reputation for honesty, trustworthiness, integrity and displays competence to transact the business of a mortgage company in a manner which safeguards the interests of the general public. The applicant must submit satisfactory proof of these qualifications to the commissioner.

(2) Has not been convicted of, or entered a plea of nolo contendere to, a felony or any crime involving fraud, misrepresentation or moral turpitude.

(3) Has not made a false statement of material fact on his application.

(4) Has not had a license that was issued pursuant to the provisions of this chapter suspended or revoked within the 10 years immediately preceding the date of his application.

(5) Has not had a license that was issued in any other state, district or territory of the United States or any foreign country suspended or revoked within the 10 years immediately preceding the date of his application.

(6) Has not violated any of the provisions of this chapter or any regulation adopted pursuant thereto.

4. ***If an applicant is issued a license, the applicant shall file with the secretary of state a list that contains the business address of the principal office and each branch office of the mortgage company in this state.***

5. A license entitles the holder to engage only in the activities authorized by this chapter.

~~[5. A person who claims an exemption from the provisions of this chapter must apply to the commissioner for a certificate of exemption and pay the fee for application.]~~

Sec. 19. NRS 645B.050 is hereby amended to read as follows:

645B.050 1. A mortgage company's license expires June 30 next after the date of issuance if it is not renewed. A license may be renewed by filing an application for renewal, paying the annual fee for a license for the succeeding year and, if the licensee is a natural person, submitting the statement required pursuant to NRS 645B.023. The application, statement and payment must be received by the commissioner on or before June 30 next preceding the expiration date. If the application, statement, if required, or payment is not received by June 30, the license is canceled. The commissioner may reinstate the license if the licensee files an application, submits the statement, if required, pays the filing fee and pays a reinstatement fee of $200.

2. The commissioner shall require a licensee to deliver a financial statement prepared from his books and records by an independent public accountant who holds a permit to engage in the practice of public accounting in this state which has not been revoked or suspended. The financial statement must be dated not earlier than the close of the latest fiscal year of the company and must be submitted within 60 days thereafter. The commissioner may grant a reasonable extension for the submission of the financial statement if requested before the statement is due.

3. If a licensee maintains any accounts described in subsection 1 of NRS 645B.175, the financial statement submitted pursuant to this section must be audited. If the licensee maintains any accounts described in subsection 3 of NRS 645B.175, those accounts must be audited. The public accountant who prepares the report of an audit shall submit a copy of the report to the commissioner at the same time as he submits the report to the company. The commissioner shall, by regulation, prescribe the scope of audits conducted pursuant to this subsection.

4. ~~[A certificate of exemption issued pursuant to subsection 5 of NRS 645B.020 expires December 31 next after the date of issuance if it is not renewed. A certificate of exemption may be renewed by filing an application for renewal and paying the annual fee for renewal of a certificate of exemption for the succeeding year. The application and payment must be received by the commissioner on or before December 31 next preceding the expiration date. If the application or payment is not received by December 31, the certificate of exemption is canceled. The commissioner may reinstate the certificate if the applicant pays the filing fee and a reinstatement fee of $100.~~

~~5.]~~ The filing fees are:

(a) For filing an original application, $1,500 for the principal office and $40 for each branch office. The applicant shall also pay such additional expenses incurred in the process of investigation as the commissioner deems necessary. All money received by the commissioner pursuant to this paragraph must be placed in the investigative account created by NRS 232.545.

(b) If the license is approved for issuance, $1,000 for the principal office and $60 for each branch office before issuance.

(c) For filing an application for renewal, $500 for the principal office and $100 for each branch office.

(d) ~~[For filing an application for a certificate of exemption, $200.~~

~~(e) For filing an application for renewal of a certificate of exemption, $100.~~

~~(f)]~~ For filing an application for a duplicate copy of any license, upon satisfactory showing of its loss, $10.

~~[6.]~~ ***5.*** Except as otherwise provided in this chapter, all fees received pursuant to this chapter must be deposited in the state treasury for credit to the state general fund.

Sec. 20. NRS 645B.070 is hereby amended to read as follows:

645B.070 1. In the conduct of any examination, periodic or special audit, investigation or hearing, the commissioner may:

(a) Compel the attendance of any person by subpoena.

(b) Administer oaths.

(c) Examine any person under oath concerning the business and conduct of affairs of any person subject to the provisions of this chapter and in connection therewith require the production of any books, records or papers relevant to the inquiry.

2. Every person subpoenaed under the provisions of this section who willfully refuses or willfully neglects to appear at the time and place named in the subpoena or to produce books, records or papers required by the commissioner, or who refuses to be sworn or answer as a witness, is guilty of a misdemeanor.

3. The ***commissioner may assess against and collect from a person the*** cost of any examination, periodic or special audit, investigation or hearing ***that is*** conducted ~~[under]~~ ***to examine or investigate the conduct, activities or business of the person pursuant to*** this chapter ***.*** ~~[may be assessed to and collected from the mortgage company in question by the commissioner.]~~

Sec. 21. NRS 645B.100 is hereby amended to read as follows:

645B.100 1. The commissioner may ~~[require]~~ ***impose upon*** a licensee ~~[to pay]~~ an administrative fine of not more than ~~[$500]~~ ***$5,000*** for each violation ***that*** he commits or suspend, revoke or place conditions upon his license, or do both, ~~[at any time]~~ if the licensee, whether or not acting as such:

(a) Is insolvent;

(b) Is grossly negligent or incompetent in performing any act for which he is required to be licensed pursuant to the provisions of this chapter;

(c) Does not conduct his business in accordance with law or has violated any ~~[provisions]~~ ***provision*** of this chapter ~~[;]~~ ***, a regulation adopted pursuant to this chapter or an order of the commissioner;***

(d) Is in such financial condition that he cannot continue in business with safety to his customers;

(e) Has made a material misrepresentation in connection with any transaction governed by this chapter;

(f) Has suppressed or withheld from a client any material facts, data or other information relating to any transaction governed by the provisions of this chapter which ~~[he knew,]~~ ***the licensee knew*** or ***,*** by the exercise of reasonable diligence, should have known;

(g) Has knowingly made or caused to be made to the commissioner any false representation of material fact or has suppressed or withheld from the commissioner any information which the applicant or licensee possesses ~~[,]~~ and which ***,*** if submitted by him ***,*** would have rendered the applicant or licensee ineligible to be licensed pursuant to the provisions of this chapter;

(h) Has failed to account to persons interested for all money received for the impound trust account;

(i) Has refused to permit an examination by the commissioner of his books and affairs or has refused or failed, within a reasonable time, to furnish any information or make any report that may be required by the commissioner pursuant to the provisions of this ***chapter or a regulation adopted pursuant to this*** chapter;

(j) Has been convicted of, or entered a plea of nolo contendere to, a felony or any crime involving fraud, misrepresentation or moral turpitude;

(k) Has refused or failed to pay, within a reasonable time, those expenses assessed to the mortgage company pursuant to NRS 645B.050 or 645B.070;

(l) Has failed to satisfy a claim made by a client which has been reduced to judgment;

(m) Has failed to account for or to remit any money of a client within a reasonable time after a request for an accounting or remittal;

(n) Has commingled the money or other property of a client with his own or has converted the money or property of others to his own use;

(o) Has engaged in any other conduct constituting a deceitful, fraudulent or dishonest business practice; ~~[or]~~

(p) ***Has failed to maintain adequate supervision of an employee of the mortgage company;***

(q) Has instructed an employee of the mortgage company to commit an act that would be cause for the revocation of the license of the mortgage company, whether or not the employee commits the act; or

(r) Has not conducted verifiable business as a mortgage company for 12 consecutive months, except in the case of a new applicant. The commissioner shall determine whether a ***mortgage*** company is conducting business by examining the monthly reports of activity submitted by the licensee or by conducting an examination of the licensee.

2. It is sufficient cause for refusal or revocation of a license in the case of a partnership or corporation or any unincorporated association that any member of the partnership or any officer or director of the corporation or association has been guilty of any act or omission which would be cause for refusing or revoking the registration of a natural person.

3. The commissioner may impose upon a person who is an agent or employee of a mortgage company an administrative fine of not more than $5,000 for each violation that he commits or prohibit the person, for a limited period or indefinitely, from being associated with or employed by the mortgage company, or do both, if the person:

(a) Is grossly negligent or incompetent in performing any act for which the mortgage company is required to be licensed pursuant to the provisions of this chapter;

(b) Has encouraged, facilitated, aided or participated in any act of the mortgage company that violates any provision of this chapter, a regulation adopted pursuant to this chapter or an order of the commissioner;

(c) Has made a material misrepresentation in connection with any transaction governed by this chapter;

(d) Has suppressed or withheld from a client any material facts, data or other information relating to any transaction governed by the provisions of this chapter which the person knew or, by the exercise of reasonable diligence, should have known;

(e) Has knowingly made or caused to be made to the commissioner any false representation of material fact or has suppressed or withheld

from the commissioner any information which the person possesses and which, if submitted by him, would have rendered the mortgage company ineligible to be licensed pursuant to the provisions of this chapter;

(f) Has refused or failed, within a reasonable time, to furnish any information or make any report that may be required by the commissioner pursuant to the provisions of this chapter or a regulation adopted pursuant to this chapter;

(g) Has been convicted of, or entered a plea of nolo contendere to, a felony or any crime involving fraud, misrepresentation or moral turpitude;

(h) Has failed to satisfy a claim made by a client which has been reduced to judgment;

(i) Has failed to account for or to remit any money of a client within a reasonable time after a request for an accounting or remittal;

(j) Has commingled the money or other property of a client with his own or has converted the money or property of others to his own use; or

(k) Has engaged in any other conduct constituting a deceitful, fraudulent or dishonest business practice.

Sec. 22. NRS 645B.110 is hereby amended to read as follows:

645B.110 1. ~~[Notice of the entry of any order of suspension or of refusing]~~ ***If the commissioner enters an order suspending or revoking*** a license ~~[to any mortgage company must be given in writing,]~~ ***or denying an application for a license, the commissioner shall cause written notice of the order to be*** served personally or sent by certified mail or by telegraph to the ~~[company affected.~~

~~2. The company,]~~ ***licensee or applicant.***

2. Unless a hearing has already been conducted concerning the matter, the licensee or applicant, upon application, is entitled to a hearing ***.*** ~~[; but if no]~~ ***If the licensee or applicant does not make*** such ***an*** application ~~[is made]~~ within 20 days after the ~~[entry of an order of suspension or of refusing a license of any company,]~~ ***date of the initial order,*** the commissioner shall enter a final order ~~[in either case.]~~ ***concerning the matter.***

Sec. 23. NRS 645B.120 is hereby amended to read as follows:

645B.120 1. ~~[The commissioner may investigate either upon complaint or otherwise when]~~ ***Whether or not a complaint has been filed, the commissioner shall investigate a mortgage company or other person if, for any reason,*** it appears that ~~[a]~~ ***:***

(a) The mortgage company is conducting ~~[its]~~ business in an unsafe and injurious manner or in violation of ***any provision of*** this chapter ~~[or the regulations promulgated thereunder by the commissioner, or when it appears that any]~~ ***, a regulation adopted pursuant to this chapter or an order of the commissioner;***

(b) The person is ***offering or providing any services of a mortgage company or otherwise*** engaging in [~~the~~] ***, carrying on or holding himself out as engaging in or carrying on the business of a*** mortgage company [~~business~~] without being licensed [~~under~~] ***or exempt from licensing pursuant to*** the provisions of [~~those sections.~~] ***this chapter; or***

(c) The person is violating any other provision of this chapter, a regulation adopted pursuant to this chapter or an order of the commissioner.

2. If ***,*** upon investigation [~~it appears that such company is so conducting its business or an unlicensed person is engaged in the mortgage company business, the commissioner may:~~

~~(a) Advise the district attorney of the county in which the business is conducted, and the district attorney shall cause the appropriate legal action to be taken to enjoin the operation of the business or prosecute the violations of this chapter; and~~

~~(b) Bring suit in the name and on behalf of the State of Nevada against such person and any other person concerned in or in any way participating in or about to participate in such unsafe or injurious practices or action in violation of this chapter or regulations thereunder to enjoin any such person from continuing such practices or engaging therein or doing any such act.~~

~~3. If the commissioner brings suit,~~] ***, the commissioner has reasonable cause to believe that the mortgage company or other person has engaged in any conduct or committed any violation described in subsection 1:***

(a) The commissioner shall notify the attorney general of the conduct or violation and, if applicable, the commissioner shall immediately take possession of the property of the mortgage company pursuant to NRS 645B.150; and

(b) The attorney general shall:

(1) Investigate and, if appropriate, prosecute the mortgage company or other person pursuant to section 14 of this act; and

(2) Bring a civil action to enjoin the mortgage company or other person from engaging in the conduct or committing the violation and to enjoin any other person who has encouraged, facilitated, aided or participated in the conduct or the commission of the violation, or who is likely to engage in such acts, from engaging in or continuing to engage in such acts.

3. If the attorney general brings a civil action pursuant to subsection 2, the district court of any county of this state is hereby vested with the jurisdiction in equity to [~~restrain unsafe, injurious or illegal practices or transactions~~] ***enjoin the conduct or the commission of the violation*** and may grant ***any*** injunctions ***that are necessary*** to prevent and restrain [~~such practices or transactions. The court may, during~~] ***the conduct or the***

commission of the violation. During the pendency of the proceedings before ~~[it, issue such]~~ ***the district court:***

(a) The court may issue any temporary restraining orders as may appear to be just and proper; ~~[and the]~~

(b) The findings of the commissioner shall be deemed to be prima facie evidence and sufficient grounds, in the discretion of the court, for the ~~[issue]~~ ex parte ***issuance*** of a temporary restraining order ~~[. In any such court proceedings the commissioner]~~ ***; and***

(c) The attorney general may apply for and on due showing is entitled to have issued the court's subpoena requiring forthwith the appearance of any ~~[defendant and his employees and the production of]~~ ***person to:***

(1) Produce any documents, books and records as may appear necessary for the hearing of the petition ***;*** ~~[, to testify]~~ and

(2) Testify and give evidence concerning the ~~[acts or conduct or things]~~ ***conduct*** complained of in the ~~[application for injunction.]~~ ***petition.***

Sec. 24. NRS 645B.150 is hereby amended to read as follows:

645B.150 1. ~~[When]~~ ***In addition to any other action that is required or permitted pursuant to this chapter, if*** the commissioner ~~[ascertains by examination or otherwise that]~~ ***has reasonable cause to believe:***

(a) That the assets or capital of ~~[any]~~ ***a*** mortgage company are impaired ***;*** or ~~[that a mortgage company's affairs are in an unsafe condition which]~~

(b) That a mortgage company is conducting its business in an unsafe and injurious manner that may result in danger to the public, ~~[he may]~~ ***the commissioner shall*** immediately take possession of all the property, business and assets of the ***mortgage*** company ~~[which]~~ ***that*** are located in this state and ***shall*** retain possession of them pending further proceedings provided for in this chapter.

2. If the ***licensee, the*** board of directors or any officer or person in charge of the offices of the ***mortgage*** company refuses to permit the commissioner to take possession of ~~[its property,]~~ the ***property of the mortgage company pursuant to subsection 1:***

(a) The commissioner shall ~~[communicate that fact to]~~ ***notify*** the attorney general ~~[. Thereupon the]~~ ***; and***

(b) The attorney general shall immediately ~~[institute]~~ ***bring*** such proceedings as may be necessary to place the commissioner in immediate possession of the property of the ***mortgage*** company. ~~[The commissioner thereupon shall make]~~

3. If the commissioner takes possession of the property of the mortgage company, the commissioner shall:

(a) Make or have made an inventory of the assets and known liabilities of the ***mortgage*** company ~~[.~~

~~3. The commissioner shall file]~~ ***; and***

(b) File one copy of the inventory in his office and one copy in the office of the clerk of the district court of the county in which the principal office of the ***mortgage*** company is located and shall mail one copy to each stockholder, partner, officer or associate of the mortgage company at his last known address.

4. The clerk of the court with which the copy of the inventory is filed shall file it as any other case or proceeding pending in the court and shall give it a docket number.

Sec. 25. NRS 645B.160 is hereby amended to read as follows:

645B.160 1. ~~[The]~~ ***If the commissioner takes possession of the property of a mortgage company pursuant to NRS 645B.150, the licensee,*** officers, directors, partners, associates or stockholders of the mortgage company may, within 60 days ~~[from the date when]~~ ***after the date on which*** the commissioner takes possession of the property, ~~[business and assets,]~~ make good any deficit ~~[which may exist]~~ ***in the assets or capital of the mortgage company*** or remedy ~~[the unsafe condition of its affairs.]~~ ***any unsafe and injurious conditions or practices of the mortgage company.***

2. At the expiration of ~~[such time,]~~ ***the 60-day period,*** if the deficiency in assets or capital has not been made good or the unsafe ~~[condition]~~ ***and injurious conditions or practices*** remedied, the commissioner may apply to the court to be appointed receiver and proceed to liquidate the assets of the ***mortgage*** company which are located in this state in the same manner as now provided by law for liquidation of a private corporation in receivership.

3. No other person may be appointed receiver by any court without first giving the commissioner ample notice of his application.

4. The inventory made by the commissioner and all claims filed by creditors are open at all reasonable times for inspection ***,*** and any action taken by the receiver upon any of the claims is subject to the approval of the court before which the cause is pending.

5. The expenses of the receiver and compensation of counsel, as well as all expenditures required in the liquidation proceedings, must be fixed by the commissioner subject to the approval of the court, and, upon certification of the commissioner, must be paid out of the money in his hands as the receiver.

Sec. 26. NRS 645B.210 is hereby amended to read as follows:

645B.210 It is unlawful for any person to ***offer or*** provide any of the services of a mortgage company ~~[, unless he is exempted under NRS 645B.015,]~~ ***or otherwise*** to engage in ***,*** ~~[or]~~ carry on ~~[,]~~ or hold himself out as engaging in or carrying on ~~[,]~~ the business of a mortgage company without first obtaining a license as a mortgage company ~~[.]~~ ***pursuant to***

this chapter, unless the person is exempt from the provisions of this chapter pursuant to NRS 645B.015.

Sec. 27. NRS 645B.230 is hereby amended to read as follows:

645B.230 ~~[Except as provided in NRS 645B.225, any]~~ ***Unless a specific criminal penalty is set forth in another provision of this chapter, a*** person, or any director, officer, agent or employee of a person, who violates any ~~[of the provisions]~~ ***provision*** of this chapter ***, a regulation adopted pursuant to this chapter or an order of the commissioner*** is guilty of a misdemeanor.

Sec. 28. NRS 41.745 is hereby amended to read as follows:

41.745 ***Except as otherwise provided in section 8 of this act:***

1. An employer is not liable for harm or injury caused by the intentional conduct of an employee if the conduct of the employee:

(a) Was a truly independent venture of the employee;

(b) Was not committed in the course of the very task assigned to the employee; and

(c) Was not reasonably foreseeable under the facts and circumstances of the case considering the nature and scope of his employment.

For the purposes of this subsection, conduct of an employee is reasonably foreseeable if a person of ordinary intelligence and prudence could have reasonably anticipated the conduct and the probability of injury.

2. Nothing in this section imposes strict liability on an employer for any unforeseeable intentional act of his employee.

3. For the purposes of this section:

(a) "Employee" means any person who is employed by an employer, including, without limitation, any present or former officer or employee, immune contractor or member of a board or commission or legislator in this state.

(b) "Employer" means any public or private employer in this state, including, without limitation, the State of Nevada, any agency of this state and any political subdivision of the state.

(c) "Immune contractor" has the meaning ascribed to it in subsection 3 of NRS 41.0307.

(d) "Officer" has the meaning ascribed to it in subsection 4 of NRS 41.0307.

Sec. 29. 1. Any certificate of exemption issued by the commissioner of financial institutions pursuant to chapter 645B of NRS before October 1, 1999, is void and must not be given effect with regard to any act or transaction that occurs on or after October 1, 1999.

2. Any person who holds a certificate of exemption described in subsection 1 shall not, on or after October 1, 1999, offer or provide any of the services of a mortgage company or otherwise engage in, carry on or hold himself out as engaging in or carrying on the business of a mortgage

company without first obtaining a license as a mortgage company pursuant to chapter 645B of NRS, unless the person is exempt from the provisions of this chapter pursuant to NRS 645B.015.

Sec. 30. 1. Any license issued to a mortgage company by the commissioner of financial institutions pursuant to chapter 645B of NRS before October 1, 1999, expires on June 30, 2000, and may not be renewed pursuant to the provisions of NRS 645B.050.

2. Any person who holds a license described in subsection 1 shall not, on or after June 30, 2000, offer or provide any of the services of a mortgage company or otherwise engage in, carry on or hold himself out as engaging in or carrying on the business of a mortgage company, unless the person applies for and is issued a new license as a mortgage company pursuant to chapter 645B of NRS and the amendatory provisions of this act.

Sec. 31. The amendatory provisions of this act do not apply to offenses that were committed before October 1, 1999.

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