ASSEMBLY BILL NO. 676–COMMITTEE ON COMMERCE AND LABOR

(ON BEHALF OF BUDGET DIVISION)

MARCH 22, 1999

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions relating to mortgage companies and loans secured by liens on real property. (BDR 54-1610)

FISCAL NOTE: Effect on Local Government: Yes.
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 certain loans secured by liens on real property; revising the provisions relating to the licensing and the operation of certain mortgage companies and mortgage brokers; establishing licensing requirements for certain mortgage agents and requiring such agents to pay certain fees; prohibiting various acts by mortgage companies, mortgage brokers and mortgage agents; providing for administrative sanctions and criminal penalties; 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. Title 54 of NRS is hereby amended by adding thereto a new chapter to consist of the provisions set forth as sections 2 to 36, inclusive, of this act.

Sec. 2. ***As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 3 to 8, inclusive, of this act have the meanings ascribed to them in those sections.***

Sec. 3. ***"Applicant" means a person who applies for licensure as a mortgage company pursuant to this chapter.***

Sec. 4. ***"Commissioner" means the commissioner of financial institutions.***

Sec. 5. ***"Depository financial institution" means a bank, savings and loan association, thrift company or credit union.***

Sec. 6. ***"Division" means the division of financial institutions of the department of business and industry.***

Sec. 7. ***"Licensee" means a person who is licensed as a mortgage company pursuant to this chapter.***

Sec. 8. ***1. "Mortgage company" means any person who, directly or indirectly:***

(a) Holds himself out as being able to:

(1) Buy or sell notes secured by liens on real property; or

(2) Make loans secured by liens on real property using his own money; and

(b) Does not engage in any other act or transaction described in the definition of "mortgage broker," as set forth in section 50 of this act, unless he is also licensed as a mortgage broker pursuant to chapter 645B of NRS.

2. For the purposes of this section, a person does not make a loan secured by a lien on real property using his own money if any portion of the money that is used to make the loan is provided by another person who acquires ownership of or a beneficial interest in the loan.

Sec. 9. ***The provisions of this chapter do not:***

1. Limit any statutory or common law right of a person to bring a civil action against a mortgage company for any act or omission involved in the transaction of business by or on behalf of the mortgage company;

2. Limit the right of the state to punish a person for the violation of any law, ordinance or regulation; or

3. Establish a basis for a person to bring a civil action against the state or its officers or employees for any act or omission in carrying out the provisions of this chapter, including, without limitation, any act or omission relating to the disclosure of information or the failure to disclose information pursuant to the provisions of this chapter.

Sec. 10. ***Except as otherwise provided in section 11 of this act, 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, independent mortgage agencies 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. A real estate broker rendering services in the performance of his duties as a real estate broker.

6. Any person doing any act under an order of any court.

7. 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.

8. Agencies of the United States and of this state and its political subdivisions, including the public employees' retirement system.

9. A seller of real property who offers credit secured by a mortgage of the property sold.

Sec. 11. ***1. A person who claims an exemption from the provisions of this chapter pursuant to subsection 1 of section 10 of this act must:***

(a) File a written application for a certificate of exemption with the office of the commissioner;

(b) Pay the fee required pursuant to section 15 of this act; and

(c) Include with the written application satisfactory proof that the person meets the requirements of subsection 1 of section 10 of this act.

2. The commissioner may require a person who claims an exemption from the provisions of this chapter pursuant to subsections 2 to 9, inclusive, of section 10 of this act to:

(a) File a written application for a certificate of exemption with the office of the commissioner;

(b) Pay the fee required pursuant to section 15 of this act; and

(c) Include with the written application satisfactory proof that the person meets the requirements of at least one of those exemptions.

3. A certificate of exemption expires automatically if, at any time, the person who claims the exemption no longer meets the requirements of at least one exemption set forth in the provisions of section 10 of this act.

4. If a certificate of exemption expires automatically pursuant to this section, the person shall not 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) A license as a mortgage company pursuant to this chapter; or

(b) Another certificate of exemption.

5. The commissioner may impose upon a person who is required to apply for a certificate of exemption or who holds a certificate of exemption an administrative fine of not more than $5,000 for each violation that he commits, if the person:

(a) Has knowingly made or caused to be made to the commissioner any false representation of material fact;

(b) Has suppressed or withheld from the commissioner any information which the person possesses and which, if submitted by him, would have rendered the person ineligible to hold a certificate of exemption; or

(c) Has violated any provision of this chapter, a regulation adopted pursuant to this chapter or an order of the commissioner that applies to a person who is required to apply for a certificate of exemption or who holds a certificate of exemption.

Sec. 12. ***1. A person may apply to the commissioner for an exemption from the provisions of this chapter governing the making of a loan or a particular class of loans of money.***

2. The commissioner may grant the exemption if he finds that:

(a) The making of the loan or the particular class of loans would not be detrimental to the financial condition of the lenders or debtors who would be involved in the loan or the particular class of loans;

(b) Such lenders or debtors have established a record of sound performance, efficient management, financial responsibility and integrity;

(c) The making of the loan or the particular class of loans is likely to increase the availability of capital for a sector of the state economy; and

(d) The making of the loan or the particular class of loans is not detrimental to the public interest.

3. The commissioner:

(a) May revoke an exemption unless a loan for which an exemption was granted has been made; and

(b) Shall issue a written statement setting forth the reasons for his decision to grant, deny or revoke an exemption.

Sec. 13. ***1. A person who wishes to be licensed as a mortgage company must file a written application for a license with the office of the commissioner and pay the fee required pursuant to section 15 of this act. An application for a license as a mortgage company must:***

(a) Be verified.

(b) State the name, residence address and business address of the applicant.

(c) State the location of each principal office and branch office at which the mortgage company will conduct business within this state. If the mortgage company will not maintain any offices within this state, the applicant must include the name and address of the person within this state who will serve as the resident agent for the mortgage company pursuant to section 14 of this act.

(d) State the name under which the applicant will conduct business as a mortgage company.

(e) If the applicant is not a natural person, list the name, residence address and business address of each person who will have an interest in the mortgage company as a principal, partner, officer, director, manager or trustee, specifying the capacity and title of each such person.

(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) Include any other information required pursuant to the regulations adopted by the commissioner or an order of the commissioner.

2. If a mortgage company will conduct business at one or more branch offices within this state, the mortgage company must apply for a license for each such branch office.

3. 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 this chapter; and

(b) The commissioner finds, after investigation, that 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 and 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 or chapter 645B of NRS 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 provision of this chapter or chapter 645B of NRS, a regulation adopted pursuant thereto or an order of the commissioner.

4. The commissioner shall not conduct an investigation of an applicant pursuant to paragraph (b) of subsection 3 if the applicant is:

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

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

5. If an applicant is a partnership, corporation or unincorporated association, the commissioner may refuse to issue a license to the applicant if any member of the partnership or any officer or director of the corporation or unincorporated association has committed any act or omission that would be cause for refusing to issue a license to a natural person.

Sec. 14. *1. The commissioner shall not issue a license pursuant to this chapter to an applicant who does not maintain an office in this state, unless the applicant has executed a written statement that appoints a person in this state as his resident agent for the service of process for any action or proceeding filed against him in this state.*

2. The statement of appointment must include a provision which provides:

(a) That any process which is served on the resident agent shall be deemed to have the same legal validity as if it had been served on the applicant;

(b) That the appointment of the resident agent as his agent for the service of process continues as long as any liability remains outstanding against him in this state; and

(c) For venue in any judicial or administrative district in this state without regard to the residence or principal place of business of the applicant.

3. The statement of appointment must be signed by the applicant and notarized. The applicant shall file a copy of the statement of appointment with the commissioner. A copy of such a statement that is certified by the commissioner shall be deemed sufficient evidence of the appointment.

4. If any process is served upon the resident agent pursuant to this section, the resident agent shall mail the process by certified mail to the last known address of the person holding the license. Service of process shall be deemed complete upon service upon the resident agent. The manner of the service of process described in this subsection does not affect the validity of any other service of process authorized by law.

Sec. 15. *1. A license issued to a mortgage company pursuant to this chapter expires each year on December 31, unless it is renewed. To renew a license, the licensee must submit to the commissioner on or before December 31 of each year:*

(a) An application for renewal that complies with the requirements of this chapter; and

(b) The fee required to renew the license pursuant to this section.

2. If the licensee fails to submit any item required pursuant to subsection 1 to the commissioner on or before December 31 of any year, the license is canceled. The commissioner may reinstate a canceled license if the licensee submits to the commissioner:

(a) An application for renewal that complies with the requirements of this chapter;

(b) The fee required to renew the license pursuant to this section; and

(c) A reinstatement fee of $200.

3. Except as otherwise provided in section 11 of this act, a certificate of exemption issued pursuant to this chapter expires each year on December 31, unless it is renewed. To renew a certificate of exemption, a person must submit to the commissioner on or before December 31 of each year:

(a) An application for renewal that complies with the requirements of this chapter; and

(b) The fee required to renew the certificate of exemption.

4. If the person fails to submit any item required pursuant to subsection 3 to the commissioner on or before December 31 of any year, the certificate of exemption is canceled. Except as otherwise provided in section 11 of this act, the commissioner may reinstate a canceled certificate of exemption if the person submits to the commissioner:

(a) An application for renewal that complies with the requirements of this chapter;

(b) The fee required to renew the certificate of exemption; and

(c) A reinstatement fee of $100.

5. A person must pay the following fees to apply for, to be issued or to renew a license as a mortgage company pursuant to this chapter:

(a) To file an original application for a license, $1,500 for the principal office and $40 for each branch office. The person must 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) To be issued a license, $1,000 for the principal office and $60 for each branch office.

(c) To renew a license, $500 for the principal office and $100 for each branch office.

6. A person must pay the following fees to apply for or to renew a certificate of exemption pursuant to this chapter:

(a) To file an application for a certificate of exemption, $200.

(b) To renew a certificate of exemption, $100.

7. To be issued a duplicate copy of any license or certificate of exemption, a person must make a satisfactory showing of its loss and pay a fee of $10.

8. 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. 16. *1. In addition to the requirements set forth in sections 13 and 15 of this act, a natural person who applies for the issuance or renewal of a license as a mortgage company shall submit to the commissioner:*

(a) In any application for issuance of a license, the social security number of the applicant and the statement prescribed by the welfare division of the department of human resources pursuant to NRS 425.520. The statement must be completed and signed by the applicant.

(b) In any application for renewal of a license, the statement prescribed by the welfare division of the department of human resources pursuant to NRS 425.520. The statement must be completed and signed by the applicant.

2. The commissioner shall include the statement required pursuant to subsection 1 in:

(a) The application or any other forms that must be submitted for the issuance or renewal of the license; or

(b) A separate form prescribed by the commissioner.

3. The commissioner shall not issue or renew a license as a mortgage company if the applicant is a natural person who:

(a) Fails to submit the statement required pursuant to subsection 1; or

(b) Indicates on the statement submitted pursuant to subsection 1 that he is subject to a court order for the support of a child and is not in compliance with the order or a plan approved by the district attorney or other public agency enforcing the order for the repayment of the amount owed pursuant to the order.

4. If an applicant indicates on the statement submitted pursuant to subsection 1 that he is subject to a court order for the support of a child and is not in compliance with the order or a plan approved by the district attorney or other public agency enforcing the order for the repayment of the amount owed pursuant to the order, the commissioner shall advise the applicant to contact the district attorney or other public agency enforcing the order to determine the actions that the applicant may take to satisfy the arrearage.

Sec. 17. *1. A license entitles a licensee to engage only in the activities authorized by this chapter.*

2. The provisions of this chapter do not prohibit a licensee from:

(a) Holding a license as a mortgage broker pursuant to chapter 645B of NRS; or

(b) Conducting the business of a mortgage company and the business of a mortgage broker in the same office.

Sec. 18. *A mortgage company may not transfer or assign a license to another person, unless the commissioner gives his written approval.*

Sec. 19. *1. The commissioner must be notified of a transfer of 5 percent or more of the outstanding voting stock of a mortgage company and must approve a transfer of voting stock of a mortgage company which constitutes a change of control.*

2. The person who acquires stock resulting in a change of control of the mortgage company shall apply to the commissioner for approval of the transfer. The application must contain information which shows that the requirements of this chapter for obtaining a license will be satisfied after the change of control. Except as otherwise provided in subsection 3, the commissioner shall conduct an investigation to determine whether those requirements will be satisfied. If, after the investigation, the commissioner denies the application, he may forbid the applicant from participating in the business of the mortgage company.

3. A mortgage company may submit a written request to the commissioner to waive an investigation pursuant to subsection 2. The commissioner may grant a waiver if the applicant:

(a) Has undergone a similar investigation by a state or federal agency in connection with the licensing of or his employment with a financial institution; or

(b) Satisfies the requirements of subsection 4 of section 13 of this act.

4. As used in this section, "change of control" means:

(a) A transfer of voting stock which results in giving a person, directly or indirectly, the power to direct the management and policy of a mortgage company; or

(b) A transfer of at least 25 percent of the outstanding voting stock of a mortgage company.

Sec. 20. *1. Subject to the administrative control of the director of the department of business and industry, the commissioner shall exercise general supervision and control over mortgage companies doing business in this state.*

2. In addition to the other duties imposed upon him by law, the commissioner shall:

(a) Adopt any regulations that are necessary to carry out the provisions of this chapter, except as to loan fees.

(b) Conduct such investigations as may be necessary to determine whether any person has violated any provision of this chapter, a

regulation adopted pursuant to this chapter or an order of the commissioner.

(c) Conduct an annual examination of each mortgage company doing business in this state unless, before the annual examination is conducted, the mortgage company submits to the commissioner an audited financial statement that has been prepared by a certified public accountant who is authorized to perform public accounting in this state.

(d) Conduct such other examinations, periodic or special audits, investigations and hearings as may be necessary and proper for the efficient administration of the laws of this state regarding mortgage companies.

(e) Classify as confidential certain records and information obtained by the division when those matters are obtained from a governmental agency upon the express condition that they remain confidential. This paragraph does not limit examination by the legislative auditor.

(f) Conduct such examinations and investigations as are necessary to ensure that mortgage companies meet the requirements of this chapter for obtaining a license, both at the time of the application for a license and thereafter on a continuing basis.

3. For each special audit, investigation or examination, a mortgage company shall pay a fee based on the rate established pursuant to NRS 658.101.

Sec. 21. *Each mortgage company shall pay the assessment levied pursuant to NRS 658.055 and cooperate fully with the audits and examinations performed pursuant thereto.*

Sec. 22. *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 all costs, including, without limitation, reasonable attorney's fees, that are attributable to any examination, periodic or special audit, investigation or hearing that is conducted to examine or investigate the conduct, activities or business of the person pursuant to this chapter.

Sec. 23. ***1. Each mortgage company shall keep and maintain at all times at each location where the mortgage company conducts business in this state complete and suitable records of all mortgage transactions made by the mortgage company at that location. Each mortgage company shall also keep and maintain at all times at each such location all original books, papers and data, or copies thereof, clearly reflecting the financial condition of the business of the mortgage company.***

2. Each mortgage company shall submit to the commissioner each month a report of the mortgage company's activity for the previous month. The report must:

(a) Specify the volume of loans arranged by the mortgage company for the month or state that no loans were arranged in that month;

(b) Include any information required pursuant to the regulations adopted by the commissioner; and

(c) Be submitted to the commissioner by the 15th day of the month following the month for which the report is made.

3. The commissioner may adopt regulations prescribing accounting procedures for mortgage companies handling trust accounts and the requirements for keeping records relating thereto.

Sec. 24. ***1. Except as otherwise provided in this section, not later than 60 days after the last day of each fiscal year for a mortgage company, the mortgage company shall submit to the commissioner a financial statement that:***

(a) Is dated not earlier than the last day of the fiscal year; and

(b) Has been prepared from the books and records of the mortgage company by an independent public accountant who holds a permit to engage in the practice of public accounting in this state that has not been revoked or suspended.

2. The commissioner may grant a reasonable extension for the submission of a financial statement pursuant to this section if a mortgage company requests such an extension before the date on which the financial statement is due.

3. If a mortgage company maintains any accounts described in section 27 of this act, the financial statement submitted pursuant to this section 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 that he submits the report to the mortgage company.

4. The commissioner shall adopt regulations prescribing the scope of an audit conducted pursuant to subsection 3.

Sec. 25. ***1. Except as otherwise provided in this section or by specific statute, all papers, documents, reports and other written instruments filed with the commissioner pursuant to this chapter are open to public inspection.***

2. The commissioner may withhold from public inspection or refuse to disclose to a person, for such time as the commissioner considers necessary, any information that, in his judgment, would:

(a) Impede or otherwise interfere with an investigation that is currently pending against a mortgage company; or

(b) Have an undesirable effect on the welfare of the public or the welfare of any mortgage company.

Sec. 26. ***1. Except as otherwise provided in subsection 3, the amount of any advance fee, salary, deposit or money paid to any mortgage company or other person to obtain a loan secured by a lien on real property must be placed in escrow pending completion of the loan or a commitment for the loan.***

2. The amount held in escrow pursuant to subsection 1 must be released:

(a) Upon completion of the loan or commitment for the loan, to the mortgage company or other person to whom the advance fee, salary, deposit or money was paid.

(b) If the loan or commitment for the loan fails, to the person who made the payment.

3. Advance payments to cover reasonably estimated costs paid to third persons are excluded from the provisions of subsections 1 and 2 if the person making them first signs a written agreement which specifies the estimated costs by item and the estimated aggregate cost, and which recites that money advanced for costs will not be refunded. If an itemized service is not performed and the estimated cost thereof is not refunded, the recipient of the advance payment is subject to the penalties provided in section 36 of this act.

Sec. 27. ***1. All money paid to the mortgage company for payment of taxes or insurance premiums on real property which secures any loan made by the mortgage company must be deposited in an insured depository financial institution and kept separate, distinct and apart from money belonging to the mortgage company. Such money, when deposited, is to be designated as an "impound trust account" or under some other appropriate name indicating that the accounts are not the money of the mortgage company.***

2. The mortgage company has a fiduciary duty to its debtors with respect to the money in an impound trust account.

3. The mortgage company shall, upon reasonable notice, account to any debtor whose real property secures a loan made by the mortgage company for any money which that person has paid to the mortgage company for the payment of taxes or insurance premiums on the real property.

4. The mortgage company shall, upon reasonable notice, account to the commissioner for all money in an impound trust account.

5. Except as otherwise provided in this section, a mortgage company shall maintain an impound trust account in the same manner that an escrow account must be maintained pursuant to section 10 of the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. § 2609, as amended, and the regulations adopted pursuant thereto.

6. A mortgage company shall not make payments from an impound trust account in a manner that causes a policy of insurance to be canceled or causes property taxes or similar payments to become delinquent.

Sec. 28. ***1. Money in an impound trust account is not subject to execution or attachment on any claim against the mortgage company.***

2. It is unlawful for a mortgage company knowingly to keep or cause to be kept any money in a depository financial institution under the heading of "impound trust account" or any other name designating such money as belonging to the debtors of the mortgage company, unless the money has been paid to the mortgage company by a debtor pursuant to section 27 of this act and is being held in trust by the mortgage company pursuant to the provisions of that section.

Sec. 29. ***1. Whether or not a complaint has been filed, the commissioner may investigate a mortgage company or other person if, for any reason, it appears that:***

(a) The mortgage company is conducting business in an unsafe and injurious manner or in violation of any provision of this chapter, a regulation adopted pursuant to this chapter or an order of the commissioner;

(b) The person is offering or providing any of the services of a mortgage company or otherwise engaging in, carrying on or holding himself out as engaging in or carrying on the business of a mortgage company without being licensed or exempt from licensing pursuant to the provisions of 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, 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, the commissioner may:

(a) Advise the district attorney of the county in which the conduct or violation occurred, and the district attorney shall cause the appropriate legal action to be taken against the mortgage company or other person to

enjoin the conduct or the operation of the business or prosecute the violation; and

(b) Bring a civil action to:

(1) Enjoin the mortgage company or other person from engaging in the conduct, operating the business or committing the violation; and

(2) Enjoin any other person who has encouraged, facilitated, aided or participated in the conduct, the operation of the business 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 commissioner 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 enjoin the conduct, the operation of the business or the commission of the violation and may grant any injunctions that are necessary to prevent and restrain the conduct, the operation of the business or the commission of the violation. During the pendency of the proceedings before the district court:

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

(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 ex parte issuance of a temporary restraining order; and

(c) The commissioner may apply for and on due showing is entitled to have issued the court's subpoena requiring forthwith the appearance of any person to:

(1) Produce any documents, books and records as may appear necessary for the hearing of the petition; and

(2) Testify and give evidence concerning the conduct complained of in the petition.

Sec. 30. ***1. For each violation committed by an applicant, whether or not he is issued a license, the commissioner may impose upon the applicant an administrative fine of not more than $5,000, if the applicant:***

(a) Has knowingly made or caused to be made to the commissioner any false representation of material fact;

(b) Has suppressed or withheld from the commissioner any information which the applicant possesses and which, if submitted by him, would have rendered the applicant ineligible to be licensed pursuant to the provisions of this chapter; or

(c) Has violated any provision of this chapter, a regulation adopted pursuant to this chapter or an order of the commissioner in completing and filing his application for a license or during the course of the investigation of his application for a license.

2. For each violation committed by a licensee, the commissioner may impose upon the licensee an administrative fine of not more than $5,000, may suspend, revoke or place conditions upon his license, or may do both, 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 provision of this chapter, a regulation adopted pursuant to this chapter or an order of the commissioner;

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

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

(f) 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 licensee possesses and which, if submitted by him, would have rendered the licensee ineligible to be licensed pursuant to the provisions of this chapter;

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

(h) 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;

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

(j) Has refused or failed to pay, within a reasonable time, any fees, assessments, costs or expenses that the licensee is required to pay pursuant to this chapter or a regulation adopted pursuant to this chapter;

(k) Has failed to satisfy a claim made by a debtor or prospective debtor which has been reduced to judgment;

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

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

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

Sec. 31. *1. If the commissioner receives a copy of a court order issued pursuant to NRS 425.540 that provides for the suspension of all professional, occupational and recreational licenses, certificates and permits issued to a person who is the holder of a license as a mortgage company, the commissioner shall deem the license issued to that person to be suspended at the end of the 30th day after the date on which the court order was issued unless the commissioner receives a letter issued to the holder of the license by the district attorney or other public agency pursuant to NRS 425.550 stating that the holder of the license has complied with the subpoena or warrant or has satisfied the arrearage pursuant to NRS 425.560.*

2. The commissioner shall reinstate a license as a mortgage company that has been suspended by a district court pursuant to NRS 425.540 if the commissioner receives a letter issued by the district attorney or other public agency pursuant to NRS 425.550 to the person whose license was suspended stating that the person whose license was suspended has complied with the subpoena or warrant or has satisfied the arrearage pursuant to NRS 425.560.

Sec. 32. *If a person is a partnership, corporation or unincorporated association, the commissioner may take any disciplinary action set forth in this chapter against the person if any member of the partnership or any officer or director of the corporation or unincorporated association has committed any act or omission that would be cause for taking such disciplinary action against a natural person.*

Sec. 33. *1. If the commissioner enters an order taking any disciplinary action against a person or denying a person's 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 person.*

2. Unless a hearing has already been conducted concerning the matter, the person, upon application, is entitled to a hearing. If the person does not make such an application within 20 days after the date of the initial order, the commissioner shall enter a final order concerning the matter.

3. A person may appeal a final order of the commissioner in accordance with the provisions of chapter 233B of NRS that apply to a contested case.

Sec. 34. *It is unlawful for any person to offer or provide any of the services of a mortgage company or otherwise to 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 this chapter, unless the person:*

1. Is exempt from the provisions of this chapter; and

2. Complies with the requirements for that exemption.

Sec. 35. ***Except as otherwise provided in section 36 of this act, a person, or any general partner, director, officer, agent or employee of a person, who violates any provision of this chapter is guilty of a misdemeanor.***

Sec. 36. ***A person, or any general partner, director, officer, agent or employee of a person, who violates any provision of section 26, 27 or 28 of this act is guilty of:***

1. A misdemeanor if the amount involved is less than $250;

2. A gross misdemeanor if the amount involved is $250 or more but less than $1,000; or

3. A category D felony if the amount involved is $1,000 or more, and shall be punished as provided in NRS 193.130.

Sec. 37. NRS 645A.037 is hereby amended to read as follows:

645A.037 1. Except as otherwise provided in subsection 2, no licensee may conduct the business of administering escrows for compensation within any office, suite, room or place of business in which any other business is solicited or engaged in, except a notary public, or in association or conjunction with any other business, unless authority to do so is given by the commissioner.

2. A licensee may conduct the business of administering escrows pursuant to this chapter in the same office or place of business as a mortgage company if:

(a) The licensee and the mortgage company:

(1) Operate as separate legal entities;

(2) Maintain separate accounts, books and records;

(3) Are subsidiaries of the same parent corporation; and

(4) Maintain separate licenses; and

(b) The mortgage company ~~[is]~~ ***:***

(1) Is licensed by this state ***pursuant to sections 2 to 36, inclusive, of this act;*** and ~~[does not receive money to acquire or repay loans or maintain trust accounts as provided by NRS 645B.175.]~~

(2) Does not conduct any business as a mortgage broker licensed pursuant to chapter 645B of NRS at the office or place of business.

Sec. 38. Chapter 645B of NRS is hereby amended by adding thereto the provisions set forth as sections 39 to 66, inclusive, of this act.

Sec. 39. ***"Applicant" means a person who applies for licensure as a mortgage broker or mortgage agent pursuant to this chapter.***

Sec. 40. ***"Commissioner" means the commissioner of financial institutions.***

Sec. 41. ***"Construction control" has the meaning ascribed to it in NRS 627.050.***

Sec. 42. ***"Depository financial institution" means a bank, savings and loan association, thrift company or credit union.***

Sec. 43. ***"Division" means the division of financial institutions of the department of business and industry.***

Sec. 44. ***"Escrow agency" has the meaning ascribed to it in NRS 645A.010.***

Sec. 45. ***"Escrow agent" has the meaning ascribed to it in NRS 645A.010.***

Sec. 46. ***"Escrow officer" has the meaning ascribed to it in NRS 692A.028.***

Sec. 47. ***"Investor" means a person who wants to acquire or who acquires ownership of or a beneficial interest in a loan secured by a lien on real property.***

Sec. 48. ***"Licensee" means a person who is licensed as a mortgage broker or mortgage agent pursuant to this chapter.***

Sec. 49. ***1. "Mortgage agent" means a natural person who:***

(a) Is an employee or independent contractor of a mortgage broker who is required to be licensed pursuant to this chapter; and

(b) Is authorized by the mortgage broker to engage in, on behalf of the mortgage broker, any activity that would require the person, if he were not an employee or independent contractor of the mortgage broker, to be licensed as a mortgage broker pursuant to this chapter.

2. The term does not include a person who:

(a) Is licensed as a mortgage broker;

(b) Is a general partner, officer or director of a mortgage broker; or

(c) Performs only clerical or ministerial tasks for a mortgage broker.

Sec. 50. ***1. "Mortgage broker" 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;

(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.

2. The term does not include a person who is licensed as a mortgage company, as defined in section 8 of this act, unless the person is also licensed as a mortgage broker pursuant to this chapter.

Sec. 51. ***"Policy of title insurance" has the meaning ascribed to it in NRS 692A.035.***

Sec. 52. ***"Relative" means a spouse or any other person who is related within the second degree by blood or marriage.***

Sec. 53. ***"Title agent" has the meaning ascribed to it in NRS 692A.060.***

Sec. 54. ***"Title insurer" has the meaning ascribed to it in NRS 692A.070.***

Sec. 55. ***1. A person may not be licensed as, conduct business as or hold a controlling interest or position in a mortgage broker or be licensed as or conduct business as a mortgage agent if the person or a relative of the person is licensed as, conducts business as or holds a controlling interest or position in:***

(a) A construction control;

(b) An escrow agency, escrow agent or escrow officer;

(c) A title agent or title insurer; or

(d) Any other legal entity, regardless of its purpose, if the legal entity holds a controlling interest or position in a legal entity described in paragraph (a), (b) or (c).

2. For the purposes of this section, a person shall be deemed to hold a controlling interest or position if the person:

(a) Owns or controls a majority of the voting stock or holds any other controlling interest, directly or indirectly, that gives him the power to direct management or determine policy; or

(b) Is a partner, officer, director or trustee.

Sec. 56. ***If a person is a partnership, corporation or unincorporated association, the person:***

1. May not be licensed as a mortgage agent; and

2. Shall not engage in any act or transaction that would require the person, if it were a natural person, to be licensed as a mortgage agent pursuant to this chapter.

Sec. 57. ***1. A person who claims an exemption from the provisions of this chapter pursuant to subsection 1 of NRS 645B.015 must:***

(a) File a written application for a certificate of exemption with the office of the commissioner;

(b) Pay the fee required pursuant to NRS 645B.050; and

(c) Include with the written application satisfactory proof that the person meets the requirements of subsection 1 of NRS 645B.015.

2. The commissioner may require a person who claims an exemption from the provisions of this chapter pursuant to subsections 2 to 9, inclusive, of NRS 645B.015 to:

(a) File a written application for a certificate of exemption with the office of the commissioner;

(b) Pay the fee required pursuant to NRS 645B.050; and

(c) Include with the written application satisfactory proof that the person meets the requirements of at least one of those exemptions.

3. A certificate of exemption expires automatically if, at any time, the person who claims the exemption no longer meets the requirements of at least one exemption set forth in the provisions of NRS 645B.015.

4. If a certificate of exemption expires automatically pursuant to this section, the person shall not provide any of the services of a mortgage broker or mortgage agent or otherwise engage in, carry on or hold himself out as engaging in or carrying on the business of a mortgage broker or mortgage agent, unless the person applies for and is issued:

(a) A license as a mortgage broker or mortgage agent pursuant to this chapter; or

(b) Another certificate of exemption.

5. The commissioner may impose upon a person who is required to apply for a certificate of exemption or who holds a certificate of exemption an administrative fine of not more than $5,000 for each violation that he commits, if the person:

(a) Has knowingly made or caused to be made to the commissioner any false representation of material fact;

(b) Has suppressed or withheld from the commissioner any information which the person possesses and which, if submitted by him, would have rendered the person ineligible to hold a certificate of exemption; or

(c) Has violated any provision of this chapter, a regulation adopted pursuant to this chapter or an order of the commissioner that applies to a person who is required to apply for a certificate of exemption or who holds a certificate of exemption.

Sec. 58. ***1. If an applicant is a natural person, the commissioner may refuse to issue a license to the applicant if it appears that the applicant would be subject to control by a relative who would be ineligible to be licensed pursuant to this chapter.***

2. If an applicant is a partnership, corporation or unincorporated association, the commissioner may refuse to issue a license to the applicant if:

(a) Any member of the partnership or any officer or director of the corporation or unincorporated association has committed any act or

omission that would be cause for refusing to issue a license to a natural person; or

(b) It appears that any member of the partnership or any officer or director of the corporation or unincorporated association would be subject to control by a relative who would be ineligible to be licensed pursuant to this chapter.

Sec. 59. *1. A license entitles a licensee to engage only in the activities authorized by this chapter.*

2. The provisions of this chapter do not prohibit a licensee who is licensed as a mortgage broker from:

(a) Holding a license as a mortgage company pursuant to sections 2 to 36, inclusive, of this act; or

(b) Conducting the business of a mortgage company and the business of a mortgage broker in the same office.

Sec. 60. *1. Except as otherwise provided in subsection 2, not later than 60 days after the last day of each fiscal year for a mortgage broker, the mortgage broker shall submit to the commissioner a financial statement that:*

(a) Is dated not earlier than the last day of the fiscal year; and

(b) Has been prepared from the books and records of the mortgage broker by an independent public accountant who holds a permit to engage in the practice of public accounting in this state that has not been revoked or suspended.

2. The commissioner may grant a reasonable extension for the submission of a financial statement pursuant to this section if a mortgage broker requests such an extension before the date on which the financial statement is due.

Sec. 61. *A mortgage broker shall:*

1. Teach his mortgage agents the fundamentals of mortgage lending and the ethics of the profession; and

2. Supervise the activities of his mortgage agents and the operation of his business.

Sec. 62. *1. If a mortgage agent terminates his association or employment with a mortgage broker for any reason, the mortgage broker shall, not later than the end of the next business day following the date of termination:*

(a) Deliver to the mortgage agent or send by certified mail to the last known residence address of the mortgage agent a written statement which advises him that his license is being delivered or mailed to the division; and

(b) Deliver or send by certified mail to the division:

(1) The license of the mortgage agent;

(2) A written statement of the circumstances surrounding the termination; and

(3) A copy of the written statement that the mortgage broker delivers or mails to the mortgage agent pursuant to paragraph (a).

2. A mortgage agent who terminates his association or employment with a mortgage broker shall not, on or after the date on which the division receives his license from the mortgage broker, engage in any activity, directly or indirectly, for which a license as a mortgage agent is required pursuant to this chapter, unless the mortgage agent is specifically authorized by the commissioner to transfer his license to another mortgage broker or he otherwise obtains a new license pursuant to this chapter.

Sec. 63. ***1. If a deed of trust is recorded in connection with a loan that has been funded, in whole or in part, by money from an investor, the mortgage broker that arranged the loan and his mortgage agents shall not engage in any act or transaction that subordinates the priority of the deed of trust, as recorded, unless the mortgage broker, before such an act or transaction, obtains written approval for the subordination from each investor who owns a beneficial interest in the loan.***

2. A mortgage broker or mortgage agent shall not act as the attorney in fact or the agent of an investor with respect to the giving of written approval pursuant to this section.

3. An investor and a mortgage broker or mortgage agent may not agree to alter or waive the provisions of this section by contract or other agreement. Any such contract or agreement is void and must not be given effect to the extent that it violates the provisions of this section.

Sec. 64. ***1. Except as otherwise provided in subsection 4, a mortgage broker or mortgage agent shall not accept money from an investor to acquire ownership of or a beneficial interest in a loan secured by a lien on real property, unless the mortgage broker has obtained a written appraisal of the real property securing the loan.***

2. The written appraisal of the real property:

(a) Must be performed by an appraiser who is authorized to perform appraisals in this state; and

(b) Must not be performed by the mortgage broker or a mortgage agent, unless the mortgage broker or mortgage agent is certified or licensed to perform such an appraisal pursuant to chapter 645C of NRS.

3. A copy of the written appraisal of the real property must be:

(a) Maintained at each office of the mortgage broker where money is accepted from an investor to acquire ownership of or a beneficial interest in a loan secured by a lien on the real property; and

(b) Made available during normal business hours for inspection by each such investor and the commissioner.

4. A mortgage broker is not required to obtain a written appraisal of the real property pursuant to this section if the mortgage broker obtains a written waiver of the appraisal from each investor who acquires ownership of or a beneficial interest in a loan secured by a lien on the real property. A mortgage broker or mortgage agent shall not act as the attorney in fact or the agent of an investor with respect to the giving of a written waiver pursuant to this subsection.

5. As used in this section, "appraisal" has the meaning ascribed to it in NRS 645C.030.

Sec. 65. *1. A mortgage broker or mortgage agent shall not engage in any act or transaction on behalf of an investor pursuant to a power of attorney unless:*

(a) The power of attorney is executed for the sole purpose of providing ministerial services for not more than one loan in which the investor owns a beneficial interest; and

(b) The provisions of the power of attorney:

(1) Have been approved by the commissioner; and

(2) Expressly prohibit the mortgage broker and his mortgage agents from using or releasing any money in which the investor owns a beneficial interest with regard to that loan for a purpose that is not directly related to providing ministerial services for the loan.

2. A power of attorney which designates a mortgage broker or mortgage agent as the attorney in fact or the agent of an investor and which violates the provisions of this section is void and must not be given effect with regard to any act or transaction that occurs on or after July 1, 1999, whether or not the power of attorney is or has been executed by the investor before, on or after July 1, 1999.

Sec. 66. *For the purposes of NRS 645B.100, if a licensee commits any unlawful act or violates any provision of this chapter, a regulation adopted pursuant to this chapter or an order of the commissioner:*

1. The unlawful act or violation is not cause for the suspension or revocation of the license of any other person who employs, is employed by or is associated with the licensee, unless it appears to the satisfaction of the commissioner that such other person knew or should have known of the unlawful act or violation; and

2. It is presumed that such other person knew or should have known of the unlawful act or violation if it is shown that the licensee persistently and consistently engaged in a course of dealing that involved the unlawful act or violation.

Sec. 67. 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 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.~~**]** ***, the words and terms defined in sections 39 to 54, inclusive, of this act have the meanings ascribed to them in those sections.***

Sec. 68. NRS 645B.015 is hereby amended to read as follows:

645B.015 Except as otherwise provided in **[**~~subsection 5 of NRS 645B.020,~~**]** ***section 57 of this act,*** 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. 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.]~~ Any person doing any act under an order of any court.

~~[8.]~~ ***7.*** 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.]~~ ***8.*** Agencies of the United States and of this state and its political subdivisions, including the public employees' retirement system.

~~[10.]~~ ***9.*** A seller of real property who offers credit secured by a mortgage of the property sold.

Sec. 69. NRS 645B.020 is hereby amended to read as follows:

645B.020 1. A ~~[license]~~ ***person who wishes to be licensed*** as a mortgage ~~[company may be obtained by filing]~~ ***broker must file*** a written application ~~[in]~~ ***for a license with*** the office of the commissioner ~~[.~~

~~2. The]~~ ***and pay the fee required pursuant to NRS 645B.050. An*** application ***for a license as a mortgage broker*** must:

(a) Be verified.

(b) State the ***name, residence address and business address of the applicant and the*** location of ~~[the applicant's]~~ ***each*** principal office and branch ~~[offices in the]~~ ***office at which the mortgage broker will conduct business within this*** state.

(c) State the name under which the applicant will conduct business ~~[.]~~ ***as a mortgage broker.***

(d) List the ~~[names,]~~ ***name,*** residence ***address*** and business ~~[addresses of all persons having]~~ ***address of each person who will:***

(1) If the applicant is not a natural person, have an interest in the ~~[business as principals, partners, officers, trustees and directors,]~~ ***mortgage broker as a principal, partner, officer, director, manager or trustee,*** specifying the capacity and title of each ~~[.]~~ ***such person.***

(2) Be associated with or employed by the mortgage broker as a mortgage agent, specifying whether the person has applied for a license or is presently licensed as a mortgage agent.

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

(f) ~~[Indicate the]~~ ***Include a*** general ***business*** plan and ~~[character of the business.]~~ ***a manual of policies and procedures for the mortgage broker and his mortgage agents that includes, without limitation, the underwriting standards, restrictions and other policies and procedures that the mortgage broker and his mortgage agents will follow to arrange loans and to conduct business pursuant to this chapter.***

(g) State the length of time the applicant has been engaged in the ***business of a*** mortgage ~~[company business.]~~ ***broker.***

(h) Include a financial statement of the applicant.

(i) Include ~~[such]~~ ***any*** other information ~~[as]~~ ***required pursuant to the regulations adopted by the commissioner or an order of*** the commissioner ***.*** ~~[determines necessary.~~

~~3. The]~~

2. A natural person who wishes to be licensed as a mortgage agent must file a written application for a license with the office of the commissioner and pay the fee required pursuant to NRS 645B.050. An application for a license as a mortgage agent must:

(a) Be verified.

(b) State the name, residence address and business address of the applicant and the name under which the applicant will conduct business as a mortgage agent.

(c) State the name of the mortgage broker with whom the applicant will be associated or employed and whether the mortgage broker has applied for a license or is presently licensed.

(d) State the location of each office of the mortgage broker at which the applicant will conduct business.

(e) Include the social security number of the applicant.

(f) Include a financial statement of the applicant.

(g) Include any other information required pursuant to the regulations adopted by the commissioner or an order of the commissioner.

3. If a mortgage broker will conduct business at one or more branch offices within this state, the mortgage broker must apply for a license for each such branch office. If a mortgage agent will conduct business from more than one office of the mortgage broker with whom he is associated or employed, the mortgage agent must apply for a license for each such office.

4. Except as otherwise provided in this chapter, the commissioner shall issue a license to an applicant as a mortgage ~~[company]~~ ***broker or mortgage agent*** 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 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 ~~[,]~~ ***and*** integrity and displays competence to transact the business of a mortgage ~~[company]~~ ***broker or mortgage agent*** 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 ***or sections 2 to 36, inclusive, of this act*** 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]~~ ***provision*** of this chapter or ~~[any]~~ ***sections 2 to 36, inclusive, of this act, a*** regulation adopted pursuant thereto ~~[.~~

~~4. 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.]~~ ***or an order of the commissioner.***

Sec. 70. NRS 645B.023 is hereby amended to read as follows:

645B.023 1. A natural person who applies for the issuance or renewal of a license as a mortgage ~~[company]~~ ***broker or mortgage agent*** shall submit to the commissioner the statement prescribed by the welfare division of the department of human resources pursuant to NRS 425.520. The statement must be completed and signed by the applicant.

2. The commissioner shall include the statement required pursuant to subsection 1 in:

(a) The application or any other forms that must be submitted for the issuance or renewal of the license; or

(b) A separate form prescribed by the commissioner.

3. A license as a mortgage ~~[company]~~ ***broker or mortgage agent*** may not be issued or renewed by the commissioner if the applicant is a natural person who:

(a) Fails to submit the statement required pursuant to subsection 1; or

(b) Indicates on the statement submitted pursuant to subsection 1 that he is subject to a court order for the support of a child and is not in compliance with the order or a plan approved by the district attorney or other public agency enforcing the order for the repayment of the amount owed pursuant to the order.

4. If an applicant indicates on the statement submitted pursuant to subsection 1 that he is subject to a court order for the support of a child and is not in compliance with the order or a plan approved by the district attorney or other public agency enforcing the order for the repayment of the amount owed pursuant to the order, the commissioner shall advise the applicant to contact the district attorney or other public agency enforcing the order to determine the actions that the applicant may take to satisfy the arrearage.

Sec. 71. NRS 645B.025 is hereby amended to read as follows:

645B.025 1. A ~~[licensee]~~ ***mortgage agent may not be associated with or employed by more than one mortgage broker at the same time.***

2. A mortgage broker shall not employ or pay for the services of a mortgage agent, unless the mortgage agent is licensed pursuant to this chapter and is not associated with or employed by another mortgage broker.

3. The license of a mortgage agent must be delivered or mailed to the mortgage broker with whom he is associated or employed and kept in the custody and control of the mortgage broker.

4. The license of a mortgage broker or mortgage agent must:

(a) Show the name of the licensee, the address of the office for which the license has been issued and, if the licensee is a mortgage agent, the name of the mortgage broker with whom he is associated or employed;

(b) Be imprinted with the seal of the division; and

(c) Include any other information required pursuant to the regulations adopted by the commissioner or an order of the commissioner.

5. A mortgage broker shall post [~~each~~] ***his*** license ***and the license of each of his mortgage agents*** in a conspicuous place in the office [~~to which it pertains.~~

~~2. A license~~] ***for which each license has been issued.***

6. A mortgage broker may not [~~be transferred or assigned~~] ***transfer or assign a license to another person,*** unless the commissioner gives his written approval.

7. A mortgage agent may not change the mortgage broker with whom he is associated or employed, unless the commissioner gives his written approval and the mortgage agent pays the fee required pursuant to NRS 645B.050.

Sec. 72. NRS 645B.050 is hereby amended to read as follows:

645B.050 1. A [~~mortgage company's~~] license ***issued pursuant to this chapter*** expires ***each year on*** June 30 [~~next after the date of issuance if it is not renewed. A license may be renewed by filing an~~] ***, unless it is renewed. To renew a license, the licensee must submit to the commissioner on or before June 30 of each year:***

(a) An application for renewal [~~, paying the annual fee for a license for the succeeding year and, if~~] ***;***

(b) The fee required to renew the license pursuant to this section; and

(c) 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.~~]

2. If the [~~application, statement, if required, or payment is not received by~~] ***licensee fails to submit any item required pursuant to subsection 1 to the commissioner on or before*** June 30 [~~,~~] ***of any year,*** the license is canceled. The commissioner may reinstate [~~the~~] ***a canceled*** license if the licensee [~~files an application, submits the statement, if required, pays the filing fee and pays a~~] ***submits to the commissioner:***

(a) An application for renewal;

(b) The fee required to renew the license pursuant to this section;

(c) If the licensee is a natural person, the statement required pursuant to NRS 645B.023; and

(d) 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]~~

3. Except as otherwise provided in section 57 of this act, a certificate of exemption issued pursuant to ~~[subsection 5 of NRS 645B.020]~~ ***this chapter*** expires ***each year on*** December 31 ~~[next after the date of issuance if it is not renewed. A]~~ ***, unless it is renewed. To renew a*** certificate of exemption ~~[may be renewed by filing an]~~ ***, a person must submit to the commissioner on or before December 31 of each year:***

(a) An application for renewal ~~[and paying the annual fee for renewal of a]~~ ***; and***

(b) The fee required to renew the 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.]~~

4. If the ~~[application or payment is not received by]~~ ***person fails to submit any item required pursuant to subsection 3 to the commissioner on or before*** December 31 ~~[,]~~ ***of any year,*** the certificate of exemption is canceled. ~~[The]~~ ***Except as otherwise provided in section 57 of this act, the*** commissioner may reinstate ~~[the]~~ ***a canceled*** certificate ***of exemption*** if the ~~[applicant pays the filing fee and a]~~ ***person submits to the commissioner:***

(a) An application for renewal;

(b) The fee required to renew the certificate of exemption; and

(c) A reinstatement fee of $100.

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

~~(a) For filing]~~ ***A person must pay the following fees to apply for, to be issued or to renew a license as a mortgage broker pursuant to this chapter:***

(a) To file an original application ~~[,]~~ ***for a license,*** $1,500 for the principal office and $40 for each branch office. The ~~[applicant shall]~~ ***person must*** 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,]~~ ***To be issued a license,*** $1,000 for the principal office and $60 for each branch office ***.*** ~~[before issuance.~~

~~(c) For filing an application for renewal,]~~

(c) To renew a license, $500 for the principal office and $100 for each branch office.

~~[(d) For filing]~~

6. A person must pay the following fees to apply for, to be issued or to renew a license as a mortgage agent pursuant to this chapter or to change the mortgage broker with whom the person is associated or employed as a mortgage agent:

(a) To file an original application for a license, $500 for the primary office at which the person will conduct business as a mortgage agent and $40 for each additional office at which the person will conduct business as a mortgage agent. The person must 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) To be issued a license, $250 for the primary office at which the person will conduct business as a mortgage agent and $40 for each additional office at which the person will conduct business as a mortgage agent.

(c) To renew a license, $150 for the primary office at which the person will conduct business as a mortgage agent and $40 for each additional office at which the person will conduct business as a mortgage agent.

(d) To change the mortgage broker with whom the person is associated or employed as a mortgage agent, $25 for the primary office at which the person will conduct business as a mortgage agent and $10 for each additional office at which the person will conduct business as a mortgage agent.

7. A person must pay the following fees to apply for or to renew a certificate of exemption pursuant to this chapter:

(a) To file an application for a certificate of exemption, $200.

~~[(e) For filing an application for renewal of]~~

(b) To renew a certificate of exemption, $100.

~~[(f) For filing an application for]~~

8. To be issued a duplicate copy of any license ~~[, upon]~~ ***or certificate of exemption, a person must make a*** satisfactory showing of its loss ~~[, $10.~~

~~6.]~~ ***and pay a fee of $10.***

9. 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. 73. NRS 645B.060 is hereby amended to read as follows:

645B.060 1. Subject to the administrative control of the director of the department of business and industry, the commissioner shall exercise general supervision and control over mortgage ~~[companies]~~ ***brokers and mortgage agents*** doing business in this state.

2. In addition to the other duties imposed upon him by law, the commissioner shall:

(a) Adopt ~~[reasonable regulations as may be necessary for making effective]~~ ***regulations prescribing standards for determining whether a mortgage broker has maintained adequate supervision of a mortgage agent pursuant to this chapter.***

(b) Adopt any other regulations that are necessary to carry out the provisions of this chapter, except as to loan brokerage fees.

~~[(b)]~~ ***(c)*** Conduct such investigations as may be necessary to determine whether any person has violated any provision of this chapter ~~[.~~
~~(c)]~~ ***, a regulation adopted pursuant to this chapter or an order of the commissioner.***

(d) Conduct an annual examination of each mortgage ~~[company]~~ ***broker*** doing business in this state.

~~[(d)]~~ ***(e)*** Conduct such other examinations, periodic or special audits, investigations and hearings as may be necessary and proper for the efficient administration of the laws of this state regarding mortgage ~~[companies.~~
~~(e)]~~ ***brokers and mortgage agents.***

(f) Classify as confidential certain records and information obtained by the division when those matters are obtained from a governmental agency upon the express condition that they remain confidential. This paragraph does not limit examination by the legislative auditor.

~~[(f)]~~ ***(g)*** Conduct such examinations and investigations as are necessary to ensure that mortgage ~~[companies]~~ ***brokers and mortgage agents*** meet the requirements of this chapter for obtaining a license, both at the time of the application for a license and thereafter on a continuing basis.

3. For each special audit, investigation or examination a mortgage ~~[company]~~ ***broker*** shall pay a fee based on the rate established pursuant to NRS 658.101.

Sec. 74. 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 ~~[cost of]~~ ***commissioner may assess against and collect from a person all costs, including, without limitation, reasonable attorney's fees, that are attributable to*** 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. 75. NRS 645B.080 is hereby amended to read as follows:

645B.080 1. ~~[All mortgage companies]~~ ***Each mortgage broker and mortgage agent*** shall keep and maintain at all times ~~[in their places of]~~ ***at each location where the mortgage broker or mortgage agent conducts*** business in this state complete and suitable records of all mortgage transactions made by ~~[them]~~ ***the mortgage broker or mortgage agent*** at that location ***.*** ~~[, together with]~~ ***Each mortgage broker shall also keep and maintain at all times at each such location*** all original books, papers and data, or copies thereof, clearly reflecting the financial condition of the business of ~~[such companies.]~~ ***the mortgage broker.***

2. Each mortgage ~~[company]~~ ***broker*** shall submit to the commissioner each month a report of the ~~[company's]~~ ***mortgage broker's*** activity for the previous month. The report must:

(a) Specify the volume of loans arranged by the ~~[company]~~ ***mortgage broker*** for the month or state that no loans were arranged in that month;

(b) Include ~~[such other information as]~~ ***any information required pursuant to the regulations adopted by*** the commissioner ***;*** ~~[by regulation requires;]~~ and

(c) Be submitted to the commissioner by the 15th day of the month following the month for which the report is made.

~~[3. The commissioner may adopt regulations prescribing accounting procedures for mortgage companies handling trust accounts and the requirements for keeping records relating thereto.]~~

Sec. 76. NRS 645B.090 is hereby amended to read as follows:

645B.090 ***1.*** Except as otherwise provided ***in this section or*** by ~~[law, all]~~ ***specific statute:***

(a) All papers, documents, reports and other written instruments filed with the commissioner ~~[under]~~ ***pursuant to*** this chapter are open to public inspection ***.*** ~~[, except that the]~~

(b) The commissioner shall disclose the following information concerning a mortgage broker or mortgage agent to any person who requests it:

(1) Information concerning any investigation that is currently pending against the mortgage broker or mortgage agent pursuant to the provisions of this chapter;

(2) The findings and results of any investigation that has been completed during the immediately preceding 5 years against the mortgage broker or mortgage agent pursuant to the provisions of this chapter; and

(3) The nature of any disciplinary action that has been taken during the immediately preceding 5 years against the mortgage broker or mortgage agent pursuant to the provisions of this chapter.

2. The commissioner may withhold from public inspection ***or refuse to disclose to a person,*** for such time as ~~[he]~~ ***the commissioner*** considers necessary ***,*** any information ~~[which]~~ ***that,*** in his judgment ***, would:***

(a) Impede or otherwise interfere with an investigation that is currently pending against a mortgage broker or mortgage agent; or

(b) Have an undesirable effect on the ~~[public]~~ welfare ***of the public*** or the welfare of any mortgage ~~[company requires to be so withheld.]~~ ***broker.***

Sec. 77. NRS 645B.095 is hereby amended to read as follows:

645B.095 1. As used in this section, "change of control" means:

(a) A transfer of voting stock which results in giving a person, directly or indirectly, the power to direct the management and policy of a mortgage ~~[company;]~~ ***broker;*** or

(b) A transfer of at least 25 percent of the outstanding voting stock of a mortgage ~~[company.]~~ ***broker.***

2. The commissioner must be notified of a transfer of 5 percent or more of the outstanding voting stock of a mortgage ~~[company]~~ ***broker*** and must approve a transfer of voting stock of a mortgage ~~[company]~~ ***broker*** which constitutes a change of control.

3. The person who acquires stock resulting in a change of control of the mortgage ~~[company]~~ ***broker*** shall apply to the commissioner for approval of the transfer. The application must contain information which shows that the requirements of this chapter for obtaining a license will be satisfied after the change of control. Except as ***otherwise*** provided in subsection 4, the commissioner shall conduct an investigation to determine whether those requirements will be satisfied. If, after the investigation, the commissioner denies the application, he may forbid the applicant from participating in the business of the mortgage ~~[company.]~~ ***broker.***

4. A mortgage ~~**[**company**]**~~ ***broker*** may submit a written request to the commissioner to waive an investigation pursuant to subsection 3. The commissioner may grant a waiver if the applicant has undergone a similar investigation by a state or federal agency in connection with the licensing of or his employment with a financial institution.

Sec. 78. NRS 645B.100 is hereby amended to read as follows:

645B.100 1. ***For each violation committed by an applicant, whether or not he is issued a license, the commissioner may impose upon the applicant an administrative fine of not more than $5,000 if the applicant:***

(a) Has knowingly made or caused to be made to the commissioner any false representation of material fact;

(b) Has suppressed or withheld from the commissioner any information which the applicant possesses and which, if submitted by him, would have rendered the applicant ineligible to be licensed pursuant to the provisions of this chapter; or

(c) Has violated any provision of this chapter, a regulation adopted pursuant to this chapter or an order of the commissioner in completing and filing his application for a license or during the course of the investigation of his application for a license.

2. The commissioner may ~~[require]~~ ***impose upon*** a licensee ~~[to pay]~~ ***who is licensed as a mortgage broker*** 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 ***which is*** received ~~[for the impound trust account;]~~ ***by the licensee and which is required to be placed in escrow pursuant to this chapter;***

(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~~**]** ***any fees, assessments, costs or expenses that the licensee is required to pay*** pursuant to **[**~~NRS 645B.050 or 645B.070;~~**]** ***this chapter or a regulation adopted pursuant to this chapter;***

(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 repeatedly violated the policies and procedures of the mortgage broker;***

(q) Has failed to maintain adequate supervision of a mortgage agent who, in the course of his association or employment with the licensee, has committed an unlawful act or violated any provision of this chapter, a regulation adopted pursuant to this chapter or an order of the commissioner, and the licensee knew or should have known of the unlawful act or violation;

(r) Has instructed a mortgage agent to commit an act that would be cause for the revocation of the license of the mortgage broker or mortgage agent, whether or not the mortgage agent commits the act; or

(s) Has not conducted verifiable business as a mortgage **[**~~company~~**]** ***broker*** for 12 consecutive months, except in the case of a new applicant. The commissioner shall determine whether a **[**~~company~~**]** ***mortgage broker*** 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 licensee who is licensed as a mortgage agent an administrative fine of not more than $5,000 for

each violation that he commits or suspend, revoke or place conditions upon his license, or do both, if the licensee, whether or not acting as such:

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

(b) Has violated 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 licensee 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 licensee possesses and which, if submitted by him, would have rendered the licensee ineligible to be licensed pursuant to the provisions of this chapter;

(f) 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;

(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 refused or failed to pay, within a reasonable time, any fees, assessments, costs or expenses that the licensee is required to pay pursuant to this chapter or a regulation adopted pursuant to this chapter;

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

(j) 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;

(k) 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;

(l) Has repeatedly violated the policies and procedures of the mortgage broker with whom he is associated or employed; or

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

Sec. 79. NRS 645B.105 is hereby amended to read as follows:

645B.105 1. If the commissioner receives a copy of a court order issued pursuant to NRS 425.540 that provides for the suspension of all professional, occupational and recreational licenses, certificates and permits issued to a person who is the holder of a license as a mortgage ~~[company,]~~ ***broker or mortgage agent,*** the commissioner shall deem the license issued to that person to be suspended at the end of the 30th day after the date on which the court order was issued unless the commissioner receives a letter issued to the holder of the license by the district attorney or other public agency pursuant to NRS 425.550 stating that the holder of the license has complied with the subpoena or warrant or has satisfied the arrearage pursuant to NRS 425.560.

2. The commissioner shall reinstate a license as a mortgage ~~[company]~~ ***broker or mortgage agent*** that has been suspended by a district court pursuant to NRS 425.540 if the commissioner receives a letter issued by the district attorney or other public agency pursuant to NRS 425.550 to the person whose license was suspended stating that the person whose license was suspended has complied with the subpoena or warrant or has satisfied the arrearage pursuant to NRS 425.560.

Sec. 80. 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 a license to any mortgage company must be given in writing,]~~ ***If the commissioner enters an order taking any disciplinary action against a person or denying a person's 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,]~~ ***person.***

2. Unless a hearing has already been conducted concerning the matter, the person, upon application, is entitled to a hearing ***.*** ~~[; but if no]~~ ***If the person 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.***

3. A person may appeal a final order of the commissioner in accordance with the provisions of chapter 233B of NRS that apply to a contested case.

Sec. 81. 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 may investigate a mortgage broker, mortgage agent or other person if, for any reason,*** it appears that ~~[a mortgage company]~~ ***:***

(a) The mortgage broker or mortgage agent 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 of the services of a mortgage broker or mortgage agent or otherwise*** engaging in ~~[the mortgage company business]~~ ***, carrying on or holding himself out as engaging in or carrying on the business of a mortgage broker or mortgage agent*** 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 has reasonable cause to believe that the mortgage broker, mortgage agent or other person has engaged in any conduct or committed any violation described in subsection 1,*** the commissioner may:

(a) Advise the district attorney of the county in which the ~~[business is conducted,]~~ ***conduct or violation occurred,*** and the district attorney shall cause the appropriate legal action to be taken ***against the mortgage broker, mortgage agent or other person*** to enjoin the ***conduct or the*** operation of the business or prosecute the ~~[violations of this chapter;]~~ ***violation;*** 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.]~~ ***a civil action to:***

(1) Enjoin the mortgage broker, mortgage agent or other person from engaging in the conduct, operating the business or committing the violation; and

(2) Enjoin any other person who has encouraged, facilitated, aided or participated in the conduct, the operation of the business 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 commissioner brings ~~[suit,]~~ ***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, the operation of the business 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, the operation of the business 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]~~ ***; and***

(c) The commissioner 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. 82. NRS 645B.150 is hereby amended to read as follows:

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

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

(b) A mortgage broker is conducting business in an unsafe and injurious manner that may result in danger to the public, ~~[he]~~ ***the commissioner*** may immediately take possession of all the property, business and assets of the ~~[company which]~~ ***mortgage broker that*** are located in this state and 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 ~~[company]~~ ***mortgage broker*** refuses to permit the commissioner to take possession of ~~[its property,]~~ the ***property of the mortgage broker 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 ~~[company. The commissioner thereupon shall make]~~ ***mortgage broker.***

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

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

~~3. The commissioner shall file]~~ ***mortgage broker; 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 ~~[company]~~ ***mortgage broker*** is located and shall mail one copy to each stockholder, partner, officer or associate of the mortgage ~~[company]~~ ***broker*** 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. 83. 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 broker pursuant to NRS 645B.150, the licensee,*** officers, directors, partners, associates or stockholders of the mortgage ~~[company]~~ ***broker*** 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 broker*** or remedy ~~[the unsafe condition of its affairs.]~~ ***any unsafe and injurious conditions or practices of the mortgage broker.***

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 ~~[company]~~ ***mortgage broker*** 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. 84. NRS 645B.165 is hereby amended to read as follows:

645B.165 1. ~~[The]~~ ***Except as otherwise provided in subsection 3, the*** amount of any advance fee, salary, deposit or money paid to any mortgage ~~[company]~~ ***broker, mortgage agent*** or other person to obtain a loan which will be secured by a lien on real property must be placed in escrow pending completion of the loan or a commitment for the loan.

2. The amount held in escrow ***pursuant to subsection 1*** must be released:

(a) Upon completion of the loan or commitment for the loan, to the mortgage ~~[company]~~ ***broker*** or other person to whom the advance fee, salary, deposit or money was paid.

(b) If the loan or commitment for the loan fails, to the person who made the payment.

3. Advance payments to cover reasonably estimated costs paid to third persons are excluded from the provisions of subsections 1 and 2 if the person making them first signs a written agreement which specifies the estimated costs by item and the estimated aggregate cost, and which recites that money advanced for costs will not be refunded. If an itemized service is not performed and the estimated cost thereof is not refunded, the recipient of the advance payment is subject to the penalties provided in ~~[subsection 4.~~

~~4. A person who violates the provisions of subsection 1:~~

~~(a) Is guilty of a misdemeanor if the amount is less than $250;~~

~~(b) Is guilty of a gross misdemeanor if the amount is $250 or more but less than $1000; or~~

~~(c) Is guilty of a category D felony if the amount is $1,000 or more, and shall be punished as provided in NRS 193.130.]~~ ***NRS 645B.225.***

Sec. 85. NRS 645B.175 is hereby amended to read as follows:

645B.175 1. All money received by a mortgage ~~[company from a person to acquire ownership of or a beneficial interest in a loan secured by a lien on real property, must:~~

~~(a) Be deposited in:~~

~~(1) An insured depository financial institution; or~~

~~(2) An]~~ ***broker and his mortgage agents from an investor must be deposited in an*** escrow account ~~[which]~~ ***that*** is controlled by ~~[a person]~~ ***an escrow agent, escrow officer or title agent*** who is ~~[independent]~~ ***:***

(a) Licensed pursuant to chapter 645A or 692A of NRS;

(b) Independent of the parties ***and the mortgage broker and his mortgage agents;*** and ~~[subject]~~

(c) Subject to instructions regarding the account ~~[which are]~~ ***that have been*** approved by the parties.

~~[(b) Be kept separate from money:~~

~~(1) Belonging to the mortgage company in an account appropriately named to indicate that the money does not belong to the mortgage company.~~

~~(2) Received pursuant to subsection 3.]~~

2. The amount held in ~~[trust]~~ ***escrow*** pursuant to subsection 1 must be released:

(a) Upon completion of the loan, including proper recordation of the respective interests or release, or upon completion of the transfer of the ownership or beneficial interest therein, to the debtor or his designee less

~~[that]~~ ***the*** amount due the mortgage ~~[company]~~ ***broker*** for the payment of any fee or service charge; ***or***

(b) If the loan or the transfer thereof is not consummated, to ~~[the person]~~ ***each investor*** who furnished the money held in ~~[trust; or~~

~~(c) Pursuant to any instructions regarding the escrow account.]~~ ***escrow.***

3. All money paid to a mortgage ~~[company]~~ ***broker and his mortgage agents*** by a person in full or in partial payment of a loan secured by a lien on real property ~~[, must:~~

~~(a) Be deposited in:~~

~~(1) An insured depository financial institution; or~~

~~(2) An]~~ ***must be deposited in an*** escrow account ~~[which]~~ ***that*** is controlled by ~~[a person]~~ ***an escrow agent, escrow officer or title agent*** who is ~~[subject]~~ ***:***

(a) Licensed pursuant to chapter 645A or 692A of NRS;

(b) Independent of the parties and the mortgage broker and his mortgage agents; and

(c) Subject to instructions regarding the account ~~[which are]~~ ***that have been*** approved by the parties.

~~[(b) Be kept separate from money:~~

~~(1) Belonging to the mortgage company in an account appropriately named to indicate that it does not belong to the mortgage company.~~

~~(2) Received pursuant to subsection 1.]~~

4. The amount held in ~~[trust]~~ ***escrow*** pursuant to subsection 3 ~~[must]~~ ***:***

(a) Must be released, upon the deduction and payment of any ~~[fees]~~ ***fee*** or service charge due the mortgage ~~[company, to the owner of or the person having the]~~ ***broker, to each investor who owns a*** beneficial interest in the ~~[note.~~

~~5. Upon reasonable notice, any mortgage company described in this section shall:~~

~~(a) Account to any debtor or creditor upon whose behalf money has been paid to the mortgage company and deposited in the trust accounts as set forth in this section; and~~

~~(b) Account to the commissioner for all money in the mortgage company's loan proceeds or loan payments trust account.~~

~~6.]~~ ***loan; and***

(b) May not be reinvested with the mortgage broker for at least 15 days.

5. Money received by ***an escrow agent, escrow officer or title agent at the direction of*** a mortgage ~~[company]~~ ***broker or his mortgage agents*** pursuant to this section from a person who is not associated with the ~~[company]~~ ***mortgage broker*** may be held in ~~[trust for no]~~ ***escrow for not*** more than 45 days ***.*** ~~[before an escrow account must be opened in connection with the loan.]~~ If, within this 45-day period, the loan or the transfer therefor is not consummated, the money must be returned ***to that person*** within 24 hours. If the money is so returned, it may not be reinvested with the mortgage ~~[company]~~ ***broker*** for at least 15 days.

6. A mortgage broker, any general partner, officer or director of the mortgage broker, or an affiliate of the mortgage broker shall not:

(a) Execute any instructions concerning an escrow account which holds or will hold any money that is subject to the provisions of this section or execute such instructions as the attorney in fact or the agent of a debtor, investor or lender who owns or will own a beneficial interest in any money in the escrow account;

(b) Hold any money that is received from an investor pursuant to subsection 1; or

(c) Receive or hold any other money that is subject to the provisions of this section, including, without limitation, receiving or holding such money as:

(1) The designee of a debtor;

(2) A construction control; or

(3) An escrow agent, escrow officer or title agent.

7. As used in this section, "general partner, officer or director of the mortgage broker, or an affiliate of the mortgage broker" means any person who:

(a) Is the spouse of the mortgage broker or any general partner, officer or director of the mortgage broker;

(b) Is related within the second degree by blood or marriage to the mortgage broker or any general partner, officer or director of the mortgage broker;

(c) Controls the mortgage broker or any general partner, officer or director of the mortgage broker;

(d) Is controlled by the mortgage broker or any general partner, officer or director of the mortgage broker, including, without limitation, a mortgage agent who is associated with or employed by the mortgage broker; or

(e) Is under common control with the mortgage broker or any general partner, officer or director of the mortgage broker.

For the purposes of this subsection, "control" means directly or indirectly having the power to direct or cause the direction of management policies.

Sec. 86. NRS 645B.185 is hereby amended to read as follows:

645B.185 1. ~~[Before a person invests money through a mortgage company licensed pursuant to this chapter, he must sign a written statement received from the company, acknowledging that:~~

~~(a) The company has explained to him the nature and risks of investing through the company, including the possibility of default in payment, the~~

~~fact that payments are not guaranteed, the resulting foreclosure and the losses that may result; and~~

~~(b) He is aware that the company is not a depository financial institution.~~

~~2. The investor must sign such a statement upon his initial investment only, and not before each subsequent investment.~~

~~3. The statement must be made on a form prescribed by the commissioner.~~**]** ***A mortgage broker or mortgage agent shall not accept money from an investor to acquire ownership of or a beneficial interest in a loan secured by a lien on real property unless:***

(a) The investor and the mortgage broker or mortgage agent sign and date a disclosure form that complies with the provisions of subsection 5; and

(b) The mortgage broker or mortgage agent gives the investor the original disclosure form that has been signed and dated.

2. An investor and a mortgage broker or mortgage agent must sign and date a separate disclosure form pursuant to subsection 1 for each loan in which the investor invests his money. A mortgage broker or mortgage agent shall not act as the attorney in fact or the agent of an investor with respect to the signing or dating of any disclosure form.

3. An investor and a mortgage broker or mortgage agent may not agree to alter or waive the provisions of this section by contract or other agreement. Any such contract or agreement is void and must not be given effect to the extent that it violates the provisions of this section.

4. A mortgage broker shall retain a copy of each disclosure form that is signed and dated pursuant to subsection 1 for the period that is prescribed in the regulations adopted by the commissioner.

5. The standard provisions for each such disclosure form must include, without limitation, statements:

(a) Explaining the risks of investing through the mortgage broker, including, without limitation:

(1) The possibility that the debtor may default on the loan;

(2) The nature of the losses that may result through foreclosure;

(3) The fact that payments of principal and interest are not guaranteed and that the investor may lose the entire amount of principal that he has invested;

(4) The fact that the mortgage broker is not a depository financial institution and that the investment is not insured by any depository insurance and is not otherwise insured or guaranteed by the federal or state government; and

(5) Any other information required pursuant to the regulations adopted by the commissioner; and

(b) Disclosing to the investor the following information, if the information is known or, in light of all the surrounding facts and circumstances, reasonably should be known to the mortgage broker:

(1) Whether the real property that will secure the loan is encumbered by any other liens and, if so, the priority of each such lien, the amount of debt secured by each such lien and the current status of that debt, including, without limitation, whether the debt is being paid or is in default;

(2) Whether the mortgage broker or any general partner, officer, director or mortgage agent of the mortgage broker has any direct or indirect interest in the debtor;

(3) Whether any disciplinary action has been taken by the commissioner against the mortgage broker or any general partner, officer, director or mortgage agent of the mortgage broker within the preceding 12 months, and the nature of any such disciplinary action;

(4) Whether the mortgage broker or any general partner, officer, director or mortgage agent of the mortgage broker has been convicted within the preceding 12 months for violating any law, ordinance or regulation that involves fraud, misrepresentation or a deceitful, fraudulent or dishonest business practice; and

(5) Any other information required pursuant to the regulations adopted by the commissioner.

6. Whether or not a mortgage broker is required to disclose any information to investors through a disclosure form that complies with the provisions of subsection 5, the commissioner may order the mortgage broker to disclose to investors or to the general public any information concerning the mortgage broker, any general partner, officer, director or mortgage agent of the mortgage broker or any loan in which the mortgage broker is or has been involved, if the commissioner, in his judgment, believes that the information:

(a) Would be of material interest to a reasonable investor who is deciding whether to invest money with the mortgage broker; or

(b) Is necessary to protect the welfare of the public.

7. In carrying out the provisions of subsection 6, the commissioner may, without limitation, order a mortgage broker to include statements of disclosure prescribed by the commissioner:

(a) In the disclosure form that must be given to investors pursuant to subsection 1;

(b) In additional disclosure forms that must be given to investors before or after they have invested money through the mortgage broker; or

(c) In any advertisement that the mortgage broker uses in carrying on his business.

8. The commissioner:

(a) Shall adopt regulations prescribing the period for which a mortgage broker must retain a copy of each disclosure form that is given to investors; and

(b) May adopt any other regulations that are necessary to carry out the provisions of this section, including, without limitation, regulations specifying the size of print and any required formatting or typesetting that a mortgage broker must use in any disclosure form that is given to investors.

Sec. 87. NRS 645B.188 is hereby amended to read as follows:

645B.188 Each mortgage **~~[company]~~** ***broker*** shall pay the assessment levied pursuant to NRS 658.055 ***.*** **~~[and]~~** ***Each mortgage broker and mortgage agent shall*** cooperate fully with the audits and examinations performed pursuant thereto.

Sec. 88. NRS 645B.189 is hereby amended to read as follows:

645B.189 ***1. Each mortgage broker shall include in each advertisement that the mortgage broker uses in carrying on his business:***

(a) A statement of disclosure in substantially the following form:

> ***Money invested through a mortgage broker is not insured or guaranteed by the federal or state government. An investor is not guaranteed to recover or to be repaid any of the money he invests. An investor is not guaranteed to earn or to be paid any interest or other return on the money he invests. An investor may lose some or all of the money he invests.***

(b) Any other statements of disclosure required pursuant to the regulations adopted by the commissioner or required pursuant to an order of the commissioner entered in accordance with subsections 6 and 7 of NRS 645B.185.

2. Each mortgage **~~[company]~~** ***broker*** shall submit any proposed advertisement **~~[it]~~** ***that the mortgage broker*** intends to use ***in carrying on his business*** to the commissioner for approval. **~~[The commissioner shall, within 5 working days after receiving the advertisement, approve or disapprove its use and notify the company of that decision.]~~** ***If the mortgage broker is required to include any statements of disclosure in such an advertisement pursuant to subsection 1 and the statements of disclosure will be displayed in printed form:***

(a) The size of the print must be approved by the commissioner; and

(b) If displayed on television or any other video screen, monitor or device, the length of time that the statements are displayed must be approved by the commissioner.

3. In addition to the requirements set forth in this chapter, each advertisement that a mortgage broker uses in carrying on his business must comply with the requirements of:

(a) NRS 598.0903 to 598.0999, inclusive, concerning deceptive trade practices; and

(b) Any applicable federal statute or regulation concerning deceptive advertising and the advertising of interest rates.

4. The commissioner may adopt any regulations that are necessary to carry out the provisions of this section.

Sec. 89. NRS 645B.191 is hereby amended to read as follows:

645B.191 Except pursuant to a contract for the collection or servicing of a loan which is governed by the requirements established by the Government National Mortgage Association, Federal Home Loan Mortgage Corporation or Federal National Mortgage Association, ~~[no mortgage company may]~~ ***a mortgage broker or mortgage agent shall not*** advance payments to an investor on behalf of a person who has obtained a loan secured by a lien on real property and who has defaulted in his payments.

Sec. 90. NRS 645B.193 is hereby amended to read as follows:

645B.193 A mortgage ~~[company]~~ ***broker*** shall not assign all or a part of ~~[its]~~ ***his*** interest in a ~~[mortgage]~~ ***loan secured by a lien on real property*** unless the ~~[company:]~~ ***mortgage broker:***

1. Obtains ***a policy of*** title insurance for the ~~[mortgaged]~~ ***real*** property; and

2. Records the assignment in the office of the county recorder of the county in which the ***real*** property is located.

Sec. 91. NRS 645B.197 is hereby amended to read as follows:

645B.197 1. A person may apply to the commissioner for an exemption from the provisions of this chapter governing the making of a loan of money.

2. The commissioner may grant the exemption if he finds that:

(a) The making of the loan would not be detrimental to the financial condition of the lender, ~~[borrower]~~ ***the debtor*** or ***the*** person who is providing the money for the loan;

(b) The lender, ~~[borrower]~~ ***the debtor*** or ***the*** person who is providing the money for the loan has established a record of sound performance, efficient management, financial responsibility and integrity;

(c) The making of the loan is likely to increase the availability of capital for a sector of the state economy; and

(d) The making of the loan is not detrimental to the public interest.

3. The commissioner:

(a) May revoke an exemption unless the loan for which the exemption was granted has been made; and

(b) Shall issue a written statement setting forth the reasons for his decision to grant, deny or revoke an exemption.

Sec. 92. NRS 645B.200 is hereby amended to read as follows:

645B.200 ~~[This chapter does not limit]~~ ***The provisions of this chapter do not:***

1. Limit any statutory or common law right of ~~[any]~~ ***a*** person to bring ~~[an action in any court]~~ ***a civil action against a mortgage broker or mortgage agent*** for any act ***or omission*** involved in the transaction of ***business by or on behalf of*** the mortgage ~~[company business or the]~~ ***broker or mortgage agent;***

2. Limit the right of the state to punish ~~[any]~~ ***a*** person for ~~[any]~~ ***the*** violation of any law ~~[.]~~ ***, ordinance or regulation; or***

3. Establish a basis for a person to bring a civil action against the state or its officers or employees for any act or omission in carrying out the provisions of this chapter, including, without limitation, any act or omission relating to the disclosure of information or the failure to disclose information pursuant to the provisions of this chapter.

Sec. 93. 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,]~~ ***broker or mortgage agent or otherwise*** to engage in ***,*** ~~[or]~~ carry on ~~[,]~~ or hold himself out as engaging in or carrying on ~~[,]~~ the business of a mortgage ~~[company]~~ ***broker or mortgage agent*** without first obtaining a license as a mortgage ~~[company.]~~ ***broker or mortgage agent pursuant to this chapter, unless the person:***

1. Is exempt from the provisions of this chapter; and

2. Complies with the requirements for that exemption.

Sec. 94. NRS 645B.220 is hereby amended to read as follows:

645B.220 It is unlawful for any foreign corporation, association or business trust to transact any mortgage business in this state unless it:

1. Qualifies under chapter 80 of NRS; and

2. Complies with the provisions of this chapter ~~[unless exempted by NRS 645B.015.]~~ ***or, if it claims an exemption from the provisions of this chapter, complies with the requirements for that exemption.***

Sec. 95. NRS 645B.225 is hereby amended to read as follows:

645B.225 A person ***, or any general partner, director, officer, agent or employee of a person,*** who violates any provision of NRS ~~[645B.170, 645B.175 or 645B.180:]~~ ***645B.165 or 645B.175:***

1. Is guilty of a misdemeanor if the amount involved is less than $250;

2. Is guilty of a gross misdemeanor if the amount involved is $250 or more but less than $1,000; or

3. Is guilty of a category D felony if the amount involved is $1,000 or more, and shall be punished as provided in NRS 193.130.

Sec. 96. NRS 645B.230 is hereby amended to read as follows:

645B.230 Except as ***otherwise*** provided in NRS 645B.225, ~~[any]~~ ***a*** person, or any ***general partner,*** director, officer, agent or employee of a person, who violates any ~~[of the provisions]~~ ***provision*** of this chapter is guilty of a misdemeanor.

Sec. 97. NRS 40.750 is hereby amended to read as follows:

40.750 1. As used in this section, “financial institution” means a bank, ***mortgage broker,*** mortgage company, credit union, thrift company or savings and loan association, or any subsidiary or affiliate of a bank, ***mortgage broker,*** mortgage company, credit union, thrift company or savings and loan association, which is authorized to transact business in this state and which makes or acquires, in whole or in part, any loan of the kind described in subsection 2.

2. Except as otherwise provided in subsection 5, a person who, for the purpose of obtaining a loan secured by a lien on real property, knowingly conceals a material fact, or makes a false statement concerning a material fact knowing that the statement is false, is liable to any financial institution which relied upon the absence of that concealed fact or on that false statement for any damages it sustains because of the fraud.

3. In addition to its actual damages, a financial institution may recover exemplary or punitive damages in an amount not to exceed 50 percent of the actual damages awarded.

4. The cause of action provided by this section:

(a) Is not, for the purposes of NRS 40.430, an action for the recovery of any debt or an action for the enforcement of any right secured by mortgage or lien upon real estate.

(b) Is in addition to and not in substitution for any right of foreclosure existing in favor of the financial institution. Any recovery pursuant to this section does not limit the amount of a judgment awarded pursuant to NRS 40.459, but the financial institution is not entitled to recover actual damages more than once for the same loss.

5. The provisions of this section do not apply to any loan which is secured by a lien on real property used for residential purposes if:

(a) The residence is a single-family dwelling occupied by the person obtaining the loan, as represented by him in connection with his application for the loan; and

(b) The loan is for the principal amount of $150,000 or less.

Sec. 98. NRS 80.015 is hereby amended to read as follows:

80.015 1. For the purposes of this chapter, the following activities do not constitute doing business in this state:

(a) Maintaining, defending or settling any proceeding;

(b) Holding meetings of the board of directors or stockholders or carrying on other activities concerning internal corporate affairs;

(c) Maintaining bank accounts;

(d) Maintaining offices or agencies for the transfer, exchange and registration of the corporation's own securities or maintaining trustees or depositaries with respect to those securities;

(e) Making sales through independent contractors;

(f) Soliciting or receiving orders outside of this state through or in response to letters, circulars, catalogs or other forms of advertising, accepting those orders outside of this state and filling them by shipping goods into this state;

(g) Creating or acquiring indebtedness, mortgages and security interests in real or personal property;

(h) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;

(i) Owning, without more, real or personal property;

(j) Isolated transactions completed within 30 days and not a part of a series of similar transactions;

(k) The production of motion pictures as defined in NRS 231.020;

(l) Transacting business as an out-of-state depository institution pursuant to the provisions of Title 55 of NRS; and

(m) Transacting business in interstate commerce.

2. The list of activities in subsection 1 is not exhaustive.

3. A person who is not doing business in this state within the meaning of this section need not qualify or comply with any provision of NRS 80.010 to 80.270, inclusive, chapter 645A or 645B of NRS ***, sections 2 to 36, inclusive, of this act*** or Title 55 or 56 of NRS unless he:

(a) Maintains an office in this state for the transaction of business; or

(b) Solicits or accepts deposits in the state, except pursuant to the provisions of chapter 666 or 666A of NRS.

Sec. 99. NRS 90.530 is hereby amended to read as follows:

90.530 The following transactions are exempt from NRS 90.460 and 90.560:

1. An isolated nonissuer transaction, whether or not effected through a broker-dealer.

2. A nonissuer transaction in an outstanding security if the issuer of the security has a class of securities subject to registration under section 12 of the Securities Exchange Act of 1934 ***, 15 U.S.C. § 78l,*** and has been subject to the reporting requirements of section 13 or **[**~~15(d)~~**]** ***15(c)*** of the Securities Exchange Act of 1934 ***, 15 U.S.C. §§ 78m and 78o(d),*** for not less than 90 days next preceding the transaction, or has filed and maintained with the administrator for not less than 90 days preceding the transaction information, in such form as the administrator, by regulation, specifies, substantially comparable to the information the issuer would be required to file under section 12(b) or 12(g) of the Securities Exchange Act

of 1934 ***, 15 U.S.C. §§ 78l(b) and 78l(g),*** were the issuer to have a class of its securities registered under section 12 of the Securities Exchange Act of 1934 ***, 15 U.S.C. § 78l,*** and paid a fee with the filing of $150.

3. A nonissuer transaction by a sales representative licensed in this state, in an outstanding security if:

(a) The security is sold at a price reasonably related to the current market price of the security at the time of the transaction;

(b) The security does not constitute all or part of an unsold allotment to, or subscription or participation by, a broker-dealer as an underwriter of the security;

(c) At the time of the transaction, a recognized securities manual designated by the administrator by regulation or order contains the names of the issuer's officers and directors, a statement of the financial condition of the issuer as of a date within the preceding 18 months, and a statement of income or operations for each of the last 2 years next preceding the date of the statement of financial condition, or for the period as of the date of the statement of financial condition if the period of existence is less than 2 years;

(d) The issuer of the security has not undergone a major reorganization, merger or acquisition within the preceding 30 days which is not reflected in the information contained in the manual; and

(e) At the time of the transaction, the issuer of the security has a class of equity security listed on the New York Stock Exchange, American Stock Exchange or other exchange designated by the administrator, or on the National Market System of the National Association of Securities Dealers Automated Quotation System. The requirements of this paragraph do not apply if:

(1) The security has been outstanding for at least 180 days;

(2) The issuer of the security is actually engaged in business and is not developing his business, in bankruptcy or in receivership; and

(3) The issuer of the security has been in continuous operation for at least 5 years.

4. A nonissuer transaction in a security that has a fixed maturity or a fixed interest or dividend provision if there has been no default during the current fiscal year or within the 3 preceding years, or during the existence of the issuer, and any predecessors if less than 3 years, in the payment of principal, interest or dividends on the security.

5. A nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to purchase.

6. A transaction between the issuer or other person on whose behalf the offering of a security is made and an underwriter, or a transaction among underwriters.

7. A transaction in a bond or other evidence of indebtedness secured by a real estate mortgage, deed of trust, personal property security agreement, or by an agreement for the sale of real estate or personal property, if the entire mortgage, deed of trust or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit.

8. A transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian or conservator.

9. A transaction executed by a bona fide secured party without the purpose of evading this chapter.

10. An offer to sell or sale of a security to a financial or institutional investor or to a broker-dealer.

11. Except as otherwise provided in this subsection, a transaction pursuant to an offer to sell securities of an issuer if:

(a) The transaction is part of an issue in which there are ~~[no]~~ ***not*** more than 25 purchasers in this state, other than those designated in subsection 10, during any 12 consecutive months;

(b) No general solicitation or general advertising is used in connection with the offer to sell or sale of the securities;

(c) No commission or other similar compensation is paid or given, directly or indirectly, to a person, other than a broker-dealer licensed or not required to be licensed under this chapter, for soliciting a prospective purchaser in this state; and

(d) One of the following conditions is satisfied:

(1) The seller reasonably believes that all the purchasers in this state, other than those designated in subsection 10, are purchasing for investment; or

(2) Immediately before and immediately after the transaction, the issuer reasonably believes that the securities of the issuer are held by 50 or fewer beneficial owners, other than those designated in subsection 10, and the transaction is part of an aggregate offering that does not exceed $500,000 during any 12 consecutive months.

The administrator by rule or order as to a security or transaction or a type of security or transaction, may withdraw or further condition the exemption set forth in this subsection or waive one or more of the conditions of the exemption.

12. An offer to sell or sale of a preorganization certificate or subscription if:

(a) No commission or other similar compensation is paid or given, directly or indirectly, for soliciting a prospective subscriber;

(b) No public advertising or general solicitation is used in connection with the offer to sell or sale;

(c) The number of offers does not exceed 50;

(d) The number of subscribers does not exceed 10; and

(e) No payment is made by a subscriber.

13. An offer to sell or sale of a preorganization certificate or subscription issued in connection with the organization of a depository institution if that organization is under the supervision of an official or agency of a state or of the United States which has and exercises the authority to regulate and supervise the organization of the depository institution. For the purpose of this subsection, ~~["supervision of the organization by]~~ ***"under the supervision of*** an official or agency" means that the official or agency by law has authority to require disclosures to prospective investors similar to those required under NRS 90.490, impound proceeds from the sale of a preorganization certificate or subscription until organization of the depository institution is completed, and require refund to investors if the depository institution does not obtain a grant of authority from the appropriate official or agency.

14. A transaction pursuant to an offer to sell to existing security holders of the issuer, including persons who at the time of the transaction are holders of transferable warrants exercisable within not more than 90 days after their issuance, convertible securities or nontransferable warrants, if:

(a) No commission or other similar compensation other than a standby commission, is paid or given, directly or indirectly, for soliciting a security holder in this state; or

(b) The issuer first files a notice specifying the terms of the offer to sell, together with a nonrefundable fee of $150, and the administrator does not by order disallow the exemption within the next 5 full business days.

15. A transaction involving an offer to sell, but not a sale, of a security not exempt from registration under the Securities Act of 1933 if:

(a) A registration or offering statement or similar document as required under the Securities Act of 1933 has been filed, but is not effective;

(b) A registration statement, if required, has been filed under this chapter, but is not effective; and

(c) No order denying, suspending or revoking the effectiveness of registration, of which the offeror is aware, has been entered by the administrator or the Securities and Exchange Commission, and no examination or public proceeding that may culminate in that kind of order is known by the offeror to be pending.

16. A transaction involving an offer to sell, but not a sale, of a security exempt from registration under the Securities Act of 1933 if:

(a) A registration statement has been filed under this chapter, but is not effective; and

(b) No order denying, suspending or revoking the effectiveness of registration, of which the offeror is aware, has been entered by the administrator and no examination or public proceeding that may culminate in that kind of order is known by the offeror to be pending.

17. A transaction involving the distribution of the securities of an issuer to the security holders of another person in connection with a merger, consolidation, exchange of securities, sale of assets or other reorganization to which the issuer, or its parent or subsidiary, and the other person, or its parent or subsidiary, are parties, if:

(a) The securities to be distributed are registered under the Securities Act of 1933 before the consummation of the transaction; or

(b) The securities to be distributed are not required to be registered under the Securities Act of 1933, written notice of the transaction and a copy of the materials, if any, by which approval of the transaction will be solicited, together with a nonrefundable fee of $150, are given to the administrator at least 10 days before the consummation of the transaction and the administrator does not, by order, disallow the exemption within the next 10 days.

18. A transaction involving the offer to sell or sale of one or more promissory notes each of which is directly secured by a first lien on a single parcel of real estate, or a transaction involving the offer to sell or sale of participation interests in the notes if the notes and participation interests are originated by a depository institution and are offered and sold subject to the following conditions:

(a) The minimum aggregate sales price paid by each purchaser may not be less than $250,000;

(b) Each purchaser must pay cash either at the time of the sale or within 60 days after the sale; and

(c) Each purchaser may buy for his own account only.

19. A transaction involving the offer to sell or sale of one or more promissory notes directly secured by a first lien on a single parcel of real estate or participating interests in the notes, if the notes and interests are originated by a mortgagee approved by the Secretary of Housing and Urban Development under sections 203 and 211 of the National Housing Act ***, 12 U.S.C. §§ 1709 and 1715b,*** and are offered or sold, subject to the conditions specified in subsection 18, to a depository institution or insurance company, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association or the Government National Mortgage Association.

20. A transaction between any of the persons described in subsection 19 involving a nonassignable contract to buy or sell the securities described in subsection 18 if the contract is to be completed within 2 years and if:

(a) The seller of the securities pursuant to the contract is one of the parties described in subsection 18 or 19 who may originate securities;

(b) The purchaser of securities pursuant to a contract is any other person described in subsection 19; and

(c) The conditions described in subsection 18 are fulfilled.

21. A transaction involving one or more promissory notes secured by a lien on real estate, or participating interests in those notes, by ~~[a]~~ ***:***

(a) A mortgage company licensed pursuant to ***sections 2 to 36, inclusive, of this act to engage in those transactions; or***

(b) A mortgage broker licensed pursuant to chapter 645B of NRS to engage in those transactions.

Sec. 100. NRS 232.545 is hereby amended to read as follows:

232.545 1. An investigative account for financial institutions is hereby created in the state general fund. The account consists of money which is:

(a) Received by the department of business and industry in connection with the licensing of financial ***institutions and persons associated with those*** institutions; and

(b) Required by law to be placed therein.

2. The director of the department of business and industry or his designee may authorize expenditures from the investigative account to pay the expenses incurred ~~[in]~~ ***:***

(a) In investigating applications for licensing of financial institutions and ~~[in]~~ ***persons associated with those institutions;***

(b) In conducting special investigations relating to ~~[those institutions, and expenses incurred in]~~ ***financial institutions and persons associated with those institutions; and***

(c) In connection with mergers, consolidations, conversions, receiverships and liquidations ~~[.]~~ ***of financial institutions.***

3. As used in this section, "financial institution" means an institution for which licensing is required by the provisions of Titles 55 and 56 and chapters 645B and 649 of NRS ~~[.]~~ ***and sections 2 to 36, inclusive, of this act.***

Sec. 101. NRS 604.090 is hereby amended to read as follows:

604.090 1. Except as otherwise provided in subsection 2, it is unlawful to operate a check-cashing or deferred deposit service without being registered with the commissioner.

2. The provisions of this chapter do not apply to:

(a) A person doing business pursuant to the authority of any law of this state or of the United States relating to banks, savings banks, trust companies, savings and loan associations, credit unions, development corporations, ***mortgage brokers,*** mortgage companies, thrift companies, pawnbrokers or insurance companies.

(b) A person licensed to make installment loans pursuant to chapter 675 of NRS.

(c) A person who is primarily engaged in the retail sale of goods or services who:

(1) As an incident to or independently of a retail sale or service from time to time cashes checks for a fee or other consideration of not more than $2; and

(2) Does not hold himself out as a check-cashing service.

(d) A person while performing any act authorized by a license issued pursuant to chapter 671 of NRS.

(e) A person who holds a nonrestricted gaming license issued pursuant to chapter 463 of NRS while performing any act in the course of that licensed operation.

(f) A person who is exclusively engaged in a check-cashing service relating to out-of-state checks.

(g) A corporation organized pursuant to the laws of this state that has been continuously and exclusively engaged in a check-cashing service in this state since July 1, 1973.

Sec. 102. NRS 657.120 is hereby amended to read as follows:

657.120 1. A financial institution may impose and collect a fee or charge, not to exceed an amount specified in or limited by specific statute, for any service it provides to a customer, if the fee or charge is clearly and conspicuously disclosed in writing to the customer before the customer receives the service. A financial institution must provide a customer with written notice of any increase in the fee or charge at least 10 days before the increase becomes effective.

2. A fee or charge for the presentation for payment, on a single business day, of multiple checks drawn by a customer on an account for which there is an insufficient balance to pay all ~~[of]~~ the checks, must be determined as if the checks drawn in a single series or class were presented in order of ascending amounts, the check for the smallest sum being presented first.

3. As used in this section, “financial institution” means an institution licensed pursuant to the provisions of Title 55 or 56 or chapter 645B or 649 of NRS ~~[,]~~ ***or sections 2 to 36, inclusive, of this act,*** or a similar institution chartered or licensed pursuant to federal law.

Sec. 103. NRS 657.130 is hereby amended to read as follows:

657.130 1. As used in this section, unless the context otherwise requires:

(a) “Committee to review compliance” means one or more persons assigned or engaged by a financial institution to test, review or evaluate its conduct, transactions or potential transactions, policies or procedures for the purpose of monitoring and improving or enforcing compliance with state and federal statutes and regulations requiring safe, sound and fair lending practices, including, without limitation, acts concerning equal credit opportunity, fair housing, fair lending, flood zone protection, housing and financial discrimination, truth in lending and financial reporting to federal or state regulatory agencies.

(b) "Financial institution" means an institution licensed pursuant to the provisions of this Title or Title 56 or chapter 645B of NRS ~~[,]~~ ***or sections 2 to 36, inclusive, of this act,*** or a similar institution chartered or licensed pursuant to federal law ***.*** ~~[and]~~ ***The term*** includes ***, without limitation,*** a holding company, affiliate or subsidiary of such an institution.

2. Except as otherwise voluntarily authorized by the financial institution:

(a) A document prepared for or created by a committee to review compliance is confidential and privileged, and is not subject to discovery or admissible in evidence in a civil action of this state, even if it has been submitted to a governmental or regulatory agency of this state, the United States or a foreign government.

(b) A member of a committee to review compliance or a person who acted under the direction of the committee cannot be required to testify in a civil action concerning the contents of a document described in paragraph (a) or concerning the discussions or conclusions of, or the actions taken by, the committee.

Sec. 104. NRS 675.040 is hereby amended to read as follows:

675.040 This chapter does not apply to:

1. A person doing business under the authority of any law of this state or of the United States relating to banks, savings banks, trust companies, savings and loan associations, credit unions, development corporations, ***mortgage brokers,*** mortgage companies, thrift companies, pawnbrokers or insurance companies.

2. A real estate investment trust, as defined in 26 U.S.C. § 856.

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 if the loan is secured by real property.

5. A real estate broker rendering services in the performance of his duties as a real estate broker if the loan is secured by real property.

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 or servicer; and

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

7. A person who provides money for investment in loans secured by a lien on real property, on his own account.

8. A seller of real property who offers credit secured by a mortgage of the property sold.

9. A person holding a nonrestricted state gaming license issued pursuant to the provisions of chapter 463 of NRS.

Sec. 105. NRS 675.230 is hereby amended to read as follows:

675.230 1. Except as otherwise provided in subsection 2, no licensee may conduct the business of making loans under this chapter within any office, suite, room or place of business in which any other business is solicited or engaged in, except an insurance agency or notary public, or in association or conjunction with any other business, unless authority to do so is given by the commissioner.

2. A licensee may conduct the business of making loans pursuant to this chapter in the same office or place of business as a mortgage company if:

(a) The licensee and the mortgage company:

(1) Operate as separate legal entities;

(2) Maintain separate accounts, books and records;

(3) Are subsidiaries of the same parent corporation; and

(4) Maintain separate licenses; and

(b) The mortgage company ~~[is]~~ ***:***

(1) Is licensed by this state ***pursuant to sections 2 to 36, inclusive, of this act;*** and ~~[does not receive money to acquire or repay loans or maintain trust accounts as provided by NRS 645B.175.]~~

(2) Does not conduct any business as a mortgage broker licensed pursuant to chapter 645B of NRS at the office or place of business.

Sec. 106. NRS 645B.130, 645B.140, 645B.170, 645B.180 and 645B.187 are hereby repealed.

Sec. 107. The amendatory provisions of this act do not apply to offenses that were committed before July 1, 1999.

Sec. 108. 1. If, on July 1, 1999, a person:

(a) Holds a valid license that was issued by the commissioner of financial institutions pursuant to chapter 645B of NRS before July 1, 1999; and

(b) Meets the definition of a "mortgage company," as set forth in the amendatory provisions of section 8 of this act,

the person shall be deemed to be licensed as a mortgage company pursuant to the amendatory provisions of sections 2 to 36, inclusive, of this act and the person's license as a mortgage company expires on December 31, 1999, unless it is renewed in accordance with the amendatory provisions of section 15 of this act.

2. Notwithstanding the provisions of subsection 1 and the amendatory provisions of section 15 of this act, for each person described in subsection 1, the commissioner shall reduce the fee that the person is required to pay to renew his license as a mortgage company on or before December 31, 1999, by an amount equal to one-half the fee that the person paid to renew his license as a mortgage company on or before June 30, 1999.

3. The provisions of this section do not prohibit a person described in subsection 1 from applying for a license as a mortgage broker on or after July 1, 1999, in accordance with the amendatory provisions of sections 39 to 96, inclusive, of this act.

Sec. 109. 1. If, on July 1, 1999, a person:

(a) Holds a valid license that was issued by the commissioner of financial institutions pursuant to chapter 645B of NRS before July 1, 1999; and

(b) Meets the definition of a "mortgage broker," as set forth in the amendatory provisions of section 50 of this act,

the person shall be deemed to be licensed as a mortgage broker pursuant to the amendatory provisions of sections 39 to 96, inclusive, of this act and the person's license as a mortgage broker expires on June 30, 2000, unless it is renewed in accordance with the amendatory provisions of section 72 of this act.

2. The provisions of this section do not prohibit a person described in subsection 1 from applying for a license as a mortgage company on or after July 1, 1999, in accordance with the amendatory provisions of sections 2 to 36, inclusive, of this act.

Sec. 110. A person who, on or after July 1, 1999, offers or provides any of the services of a mortgage agent or otherwise engages in, carries on or holds himself out as engaging in or carrying on the business of a mortgage agent:

1. Is not required to be licensed before July 1, 2000, notwithstanding the amendatory provisions of section 93 of this act; and

2. Is subject to all other amendatory provisions of sections 39 to 96, inclusive, of this act, whether or not he is licensed before July 1, 2000.

Sec. 111. 1. This act becomes effective on July 1, 1999.

2. Sections 16 and 31 of this act expire by limitation on the date on which the provisions of 42 U.S.C. § 666 requiring each state to establish procedures under which the state has authority to withhold or suspend, or to restrict the use of professional, occupational and recreational licenses of persons who:

(a) Have failed to comply with a subpoena or warrant relating to a procedure to determine the paternity of a child or to establish or enforce an obligation for the support of a child; or

(b) Are in arrears in the payment for the support of one or more children,
are repealed by the Congress of the United States.

LEADLINES OF REPEALED SECTIONS

645B.130 Procedure for appeal of final orders.
645B.140 Procedures following decision on appeal.
645B.170 Money for payment of taxes or insurance premiums: Deposit in designated accounts required; duties concerning impound trust accounts.
645B.180 Exemption from execution or attachment; commingling prohibited.
645B.187 Payment of premium interest by mortgage company.

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