REQUIRES TWO-THIRDS MAJORITY VOTE (§ 5)

S.B. 124

SENATE BILL NO. 124–COMMITTEE ON JUDICIARY

(ON BEHALF OF SECRETARY OF STATE)

FEBRUARY 4, 1999

Referred to Committee on Judiciary

SUMMARY—Makes various changes to provisions governing securities. (BDR 7-658)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

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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 securities; making various changes to the provisions governing securities; removing the exemption for certain transactions by mortgage companies from the requirements regarding registration of securities; 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. NRS 90.350 is hereby amended to read as follows:

90.350 1. An applicant for licensing as a broker-dealer, sales representative, investment adviser or representative of an investment adviser must file with the administrator an application for licensing and a consent to service of process pursuant to NRS 90.770 and pay the fee required by NRS 90.360. The application for licensing must contain the social security number of the applicant and any other information the administrator determines by regulation to be necessary and appropriate to facilitate the administration of this chapter.

2. The requirements of subsection 1 are satisfied by an applicant who has filed and maintains a completed and current registration with the Securities and Exchange Commission or a self-regulatory organization if the information contained in that registration is readily available to the administrator through **[**~~a central depository system~~**]** ***the central registration depository or another depository for registrations that has been*** approved by **[**~~him.~~**]** ***the administrator by regulation or order.*** Such an applicant must also file a notice with the administrator in the form and content determined

by the administrator by regulation and a consent to service of process pursuant to NRS 90.770 and the fee required by NRS 90.360. The administrator, by order, may require the submission of additional information by an applicant.

3. As used in this section, "central registration depository" means the Central Registration Depository of the National Association of Securities Dealers and the North American Securities Administrators Association.

Sec. 2. NRS 90.380 is hereby amended to read as follows:

90.380 1. Unless a proceeding under NRS 90.420 has been instituted, the license of any broker-dealer, sales representative, investment adviser or representative of an investment adviser becomes effective 30 days after an application for licensing has been filed and is complete, including any amendment, if all requirements imposed pursuant to NRS 90.370 and 90.375 have been satisfied. An application or amendment is complete when the applicant has furnished information responsive to each applicable item of the application. The administrator may **[**~~by order~~**]** authorize an earlier effective date of licensing.

2. The license of a broker-dealer, sales representative, investment adviser or representative of an investment adviser is effective until terminated by revocation, suspension, expiration or withdrawal.

3. The license of a sales representative is only effective with respect to transactions effected on behalf of the broker-dealer or issuer for whom the sales representative is licensed.

4. A person shall not at any one time act as a sales representative for more than one broker-dealer or for more than one issuer, unless the administrator by regulation or order authorizes multiple licenses.

5. If a person licensed as a sales representative terminates association with a broker-dealer or issuer or ceases to be a sales representative, the sales representative and the broker-dealer or issuer on whose behalf the sales representative was acting shall promptly notify the administrator.

6. The administrator by regulation may authorize one or more special classifications of licenses as a broker-dealer, sales representative, investment adviser or representative of an investment adviser to be issued to applicants subject to limitations and conditions on the nature of the activities that may be conducted by persons so licensed.

7. The license of a broker-dealer, sales representative, investment adviser or representative of an investment adviser expires if:

(a) The statement required pursuant to NRS 90.375 is not submitted when it is due; or

(b) The annual fee required by NRS 90.360 is not paid when it is due.

8. A license that has expired may be reinstated retroactively if the licensed person:

(a) Submits the statement required pursuant to NRS 90.375; and

(b) Pays the fee required by NRS 90.360, plus a fee for reinstatement in the amount of $25,

within 30 days after the date of expiration. If the license is not reinstated within that time, it shall be deemed to have lapsed as of the date of expiration, and the licensed person must thereafter submit a new application for licensing if he desires to be relicensed.

Sec. 3. NRS 90.420 is hereby amended to read as follows:

90.420 1. The administrator by order may deny, suspend or revoke any license, fine any licensed person **,** ~~[or essential employee,]~~ limit the activities governed by this chapter that an applicant ~~[,]~~ ***or*** licensed person ~~[or essential employee]~~ may perform in this state, bar an applicant ~~[,]~~ ***or*** licensed person ~~[or essential employee]~~ from association with a licensed broker-dealer or investment adviser or bar from employment with a licensed broker-dealer or investment adviser a person who is a partner, officer, director, sales representative, investment adviser or representative of an investment adviser, or a person occupying a similar status or performing a similar function for an applicant or licensed person, if the administrator finds that the order is in the public interest and that the applicant or licensed person or, in the case of a broker-dealer or investment adviser, any partner, officer, director, sales representative, investment adviser, representative of an investment adviser or person occupying a similar status or performing similar functions or any person directly or indirectly controlling the broker-dealer or investment adviser:

(a) Has filed an application for licensing with the administrator which, as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in a material respect or contained a statement that was, in light of the circumstances under which it was made, false or misleading with respect to a material fact;

(b) Has violated or failed to comply with a provision of this chapter as now or formerly in effect or a regulation or order adopted or issued under this chapter;

(c) Is the subject of an adjudication or determination after notice and opportunity for hearing, within the last 5 years by a securities agency or administrator of another state or a court of competent jurisdiction that the person has violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act or the securities law of any other state, but only if the acts constituting the violation of that state's law would constitute a violation of this chapter had the acts taken place in this state;

(d) Within the last 10 years has been convicted of a felony or misdemeanor which the administrator finds:

(1) Involves the purchase or sale of a security, taking a false oath, making a false report, bribery, perjury, burglary, robbery or conspiracy to commit any of the foregoing offenses;

(2) Arises out of the conduct of business as a broker-dealer, investment adviser, depository institution, insurance company or fiduciary; or

(3) Involves the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion or misappropriation of money or securities or conspiracy to commit any of the foregoing offenses;

(e) Is or has been permanently or temporarily enjoined by any court of competent jurisdiction, unless the order has been vacated, from acting as an investment adviser, representative of an investment adviser, underwriter, broker-dealer or as an affiliated person or employee of an investment company, depository institution or insurance company or from engaging in or continuing any conduct or practice in connection with any of the foregoing activities or in connection with the purchase or sale of a security;

(f) Is or has been the subject of an order of the administrator, unless the order has been vacated, denying, suspending or revoking his license as a broker-dealer, sales representative, investment adviser or representative of an investment adviser;

(g) Is or has been the subject of any of the following orders which were issued within the last 5 years, unless the order has been vacated:

(1) An order by the securities agency or administrator of another state, Canadian province or territory or by the Securities and Exchange Commission or a comparable regulatory agency of another country, entered after notice and opportunity for hearing, denying, suspending or revoking the person’s license as a broker-dealer, sales representative, investment adviser or representative of an investment adviser;

(2) A suspension or expulsion from membership in or association with a member of a self-regulatory organization;

(3) An order of the United States Postal Service relating to fraud;

(4) An order to cease and desist entered after notice and opportunity for hearing by the administrator, the securities agency or administrator of another state, Canadian province or territory, the Securities and Exchange Commission or a comparable regulatory agency of another country, or the Commodity Futures Trading Commission; or

(5) An order by the Commodity Futures Trading Commission denying, suspending or revoking registration under the Commodity Exchange Act;

(h) Has engaged in unethical or dishonest practices in the securities business;

(i) Is insolvent, either in the sense that liabilities exceed assets or in the sense that obligations cannot be met as they mature, but the administrator may not enter an order against a broker-dealer or investment adviser under this subparagraph without a finding of insolvency as to the broker-dealer or investment adviser;

(j) Is determined by the administrator in compliance with NRS 90.430 not to be qualified on the basis of lack of training, experience and knowledge of the securities business; or

(k) Has failed reasonably to supervise a sales representative [~~or employee.~~] ***, employee or representative of an investment adviser.***

2. The administrator may not institute a proceeding on the basis of a fact or transaction known to the director when the license became effective unless the proceeding is instituted within 90 days after issuance of the license.

3. If the administrator finds that an applicant or licensed person is no longer in existence or has ceased to do business as a broker-dealer, sales representative, investment adviser or representative of an investment adviser or is adjudicated mentally incompetent or subjected to the control of a committee, conservator or guardian or cannot be located after reasonable search, the administrator may by order deny the application or revoke the license.

[~~4. As used in this section, "essential employee" means a person performing the function of a representative of an investment adviser or sales representative, or a similar function, for a licensed person. The term does not include an investment adviser, sales representative or representative of an investment adviser who holds a license or registration issued in accordance with the provisions of this chapter.~~]

Sec. 4. NRS 90.440 is hereby amended to read as follows:

90.440 1. An application for a license may be withdrawn by the applicant without prejudice before the license becomes effective.

2. Withdrawal from licensing as a broker-dealer, sales representative, investment adviser or representative of an investment adviser becomes effective 30 days after receipt by the administrator of an application to withdraw or within such shorter period as the administrator determines, unless:

(a) A proceeding to revoke or suspend is pending when the application is filed;

(b) A proceeding to revoke or suspend or to impose conditions upon the withdrawal is instituted within 30 days after the application is filed; or

(c) Additional information is requested by the administrator regarding the application.

3. If a proceeding is pending or instituted under subsection 2, withdrawal becomes effective at the time and upon the conditions the

administrator by order determines. If additional information is requested, withdrawal is effective 30 days after the additional information is filed. Although no proceeding is pending or instituted and withdrawal becomes effective, the administrator may institute a proceeding pursuant to NRS 90.420 within **~~[1 year]~~** ***2 years*** after withdrawal became effective and enter an order as of the last date on which licensing was effective.

Sec. 5. 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 and has been subject to the reporting requirements of section 13 or **~~[15(d)]~~** ***15(c)*** of the Securities Exchange Act of 1934 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 were the issuer to have a class of its securities registered under section 12 of the Securities Exchange Act of 1934 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 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 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 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 mortgage company licensed pursuant to chapter 645B of NRS to engage in those transactions.~~**]**

Sec. 6. NRS 90.620 is hereby amended to read as follows:

90.620 1. The administrator may make an investigation, within or outside of this state, as he finds necessary to determine whether a person has violated or is about to violate this chapter or any regulation or order of the administrator under this chapter or to aid in enforcement of this chapter.

2. Except as otherwise provided in subsection 4 of NRS 90.730, the administrator may publish information concerning a violation of this chapter or a regulation or order of the administrator under this chapter or concerning types of securities or acts or practices in the offer, sale or purchase of types of securities which may operate as a fraud or deceit.

3. For the purposes of an investigation or proceeding under this chapter **,** the administrator or any officer or employee designated by the administrator by regulation **,** **[**~~or~~**]** order ***or written direction*** may conduct hearings, administer oaths and affirmations, render findings of fact and conclusions of law, subpoena witnesses, compel their attendance, take evidence and require the production, by subpoena or otherwise, of books, papers, correspondence, memoranda, agreements or other documents or

records which the administrator determines to be relevant or material to the investigation or proceeding. A person whom the administrator does not consider to be the subject of an investigation is entitled to reimbursement at the rate of 25 cents per page for copies of documents which he is required by subpoena to produce. The administrator may require or permit a person to file a statement, under oath or otherwise as the administrator determines, as to the facts and circumstances concerning the matter to be investigated.

4. If the activities constituting an alleged violation for which the information is sought would be a violation of this chapter had the activities occurred in this state, the administrator may issue and apply to enforce subpoenas in this state at the request of a securities agency or administrator of another state.

5. If a person does not testify or produce the documents required by the administrator or a designated officer or employee pursuant to subpoena, the administrator or designated officer or employee may apply to the court for an order compelling compliance. A request for an order of compliance may be addressed to:

(a) The district court in and for the county where service may be obtained on the person refusing to testify or produce, if the person is subject to service of process in this state; or

(b) A court of another state having jurisdiction over the person refusing to testify or produce, if the person is not subject to service of process in this state.

6. Not later than the time the administrator requests an order for compliance, the administrator shall either send notice of the request by registered or certified mail, return receipt requested, to the respondent at the last known address or take other steps reasonably calculated to give the respondent actual notice.

Sec. 7. NRS 90.830 is hereby amended to read as follows:

90.830 1. NRS 90.310, 90.330, 90.460, 90.570, 90.580, 90.610 and 90.660 apply to a person who sells or offers to sell a security or investment advisory service if:

(a) An offer to sell is made in this state; or

(b) An offer to purchase is made and accepted in this state.

2. NRS 90.310, 90.330, 90.570, 90.580 and 90.610 apply to a person who purchases or offers to purchase a security **[**~~or investment advisory service~~**]** if:

(a) An offer to purchase is made in this state; or

(b) An offer to sell is made and accepted in this state.

3. For the purpose of this section, an offer to sell or to purchase is made in this state, whether or not either party is present in this state, if the offer:

(a) Originates in this state; or

(b) Is directed by the offeror to a destination in this state and received where it is directed, or at a post office in this state if the offer is mailed.

4. For the purpose of this section, an offer to purchase or to sell is accepted in this state if acceptance:

(a) Is communicated to the offeror in this state; and

(b) Has not previously been communicated to the offeror, orally or in writing, outside this state.

Acceptance is communicated to the offeror in this state, whether or not either party is present in this state, if the offeree directs it to the offeror in this state reasonably believing the offeror to be in this state and it is received where it is directed, or at any post office in this state if the acceptance is mailed.

5. For the purpose of subsections 1 to 4, inclusive, an offer to sell or to purchase made in a newspaper or other publication of general, regular and paid circulation is not made in this state if the publication:

(a) Is not published in this state; or

(b) Is published in this state but has had more than two-thirds of its circulation outside this state during the past 12 months.

6. For the purpose of subsection 5, if a publication is published in editions, each edition is a separate publication except for material common to all editions.

7. For the purpose of subsections 1 to 4, inclusive, an offer to sell or to purchase made in a radio or television program or other electronic communication received in this state which originates outside this state is not made in this state.

8. For the purpose of subsection 7, a radio or television program or other electronic communication is considered as having originated in this state if either the broadcast studio or originating source of transmission is located within the state, unless:

(a) The program or communication is syndicated and distributed from outside this state for redistribution to the general public in this state;

(b) The program is supplied by a radio, television or other electronic network with the electronic signal originating from outside this state for redistribution to the general public in this state;

(c) The program or communication is an electronic signal that originates outside this state and is captured for redistribution to the general public in this state by a community antenna or cable, radio, cable television, or other electronic system; or

(d) The program or communication consists of an electronic signal which originates within this state, but which is not intended for redistribution to the general public in this state.

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