

ASSEMBLY BILL NO. 547—COMMITTEE ON JUDICIARY

(ON BEHALF OF SECRETARY OF STATE)

MARCH 23, 2001

Referred to Committee on Judiciary

SUMMARY—Makes various changes to provisions governing securities. (BDR 7-502)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: 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 provisions governing securities; increasing the licensing fees for broker-dealers, sales representatives, investment advisers and representatives of an investment adviser; making various changes to provisions governing the authority of the administrator of the securities division of the office of the secretary of state in licensing matters; and providing other matters properly relating thereto.

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

- 1 **Section 1.** NRS 90.350 is hereby amended to read as follows:
2 90.350 1. An applicant for licensing as a broker-dealer, sales
3 representative, investment adviser or representative of an investment
4 adviser must file with the administrator an application for licensing and a
5 consent to service of process pursuant to NRS 90.770 and pay the fee
6 required by NRS 90.360. The application for licensing must contain the
7 social security number of the applicant and any other information the
8 administrator determines by regulation to be necessary and appropriate to
9 facilitate the administration of this chapter.
10 2. The requirements of subsection 1 are satisfied by an applicant who
11 has filed and maintains a completed and current registration with the
12 Securities and Exchange Commission or a self-regulatory organization if
13 the information contained in that registration is readily available to the
14 administrator through ~~the central depository system approved by him.~~ *the*
15 *central registration depository or another depository for registrations that*
16 *has been approved by the administrator by regulation or order.* Such an
17 applicant must also file a notice with the administrator in the form and
18 content determined by the administrator by regulation and a consent to
19 service of process pursuant to NRS 90.770 and the fee required by



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1 NRS 90.360. The administrator, by order, may require the submission of
2 additional information by an applicant.

3 *3. As used in this section, "central registration depository" means the*
4 *Central Registration Depository of the National Association of Securities*
5 *Dealers, Inc., or its successor, and the North American Securities*
6 *Administrators Association or its successor.*

7 **Sec. 2.** NRS 90.360 is hereby amended to read as follows:

8 90.360 1. An applicant for licensing shall pay a nonrefundable
9 licensing fee, due annually in the following amounts:

10 (a) Broker-dealer, ~~+\$150+~~ \$200.

11 (b) Sales representative, ~~+\$55+~~ \$75.

12 (c) Investment adviser, ~~+\$150+~~ \$200.

13 (d) Representative of an investment adviser, ~~+\$55+~~ \$75.

14 2. The administrator by regulation may require licensing of branch
15 offices and impose a fee for the licensing and an annual fee.

16 3. For the purpose of this section, a "branch office" means any place of
17 business in this state other than the principal office in the state of the
18 broker-dealer, from which one or more sales representatives transact
19 business.

20 **Sec. 3.** NRS 90.380 is hereby amended to read as follows:

21 90.380 1. Unless a proceeding under NRS 90.420 has been
22 instituted, the license of any broker-dealer, sales representative, investment
23 adviser or representative of an investment adviser becomes effective 30
24 days after an application for licensing has been filed and is complete,
25 including any amendment, if all requirements imposed pursuant to NRS
26 90.370 and 90.375 have been satisfied. An application or amendment is
27 complete when the applicant has furnished information responsive to each
28 applicable item of the application. The administrator may ~~by order~~
29 authorize an earlier effective date of licensing.

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

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

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

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

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

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



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

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

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

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

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

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

13 **Sec. 4.** NRS 90.420 is hereby amended to read as follows:

14 90.420 1. The administrator by order may deny, suspend or revoke
15 any license, fine any licensed person , ~~for-essential-employee.~~ limit the
16 activities governed by this chapter that an applicant ~~+~~ or licensed person
17 ~~for-essential-employee~~ may perform in this state, bar an applicant ~~+~~ or
18 licensed person ~~for-essential-employee~~ from association with a licensed
19 broker-dealer or investment adviser or bar from employment with a
20 licensed broker-dealer or investment adviser a person who is a partner,
21 officer, director, sales representative, investment adviser or representative
22 of an investment adviser, or a person occupying a similar status or
23 performing a similar function for an applicant or licensed person, if the
24 administrator finds that the order is in the public interest and that the
25 applicant or licensed person or, in the case of a broker-dealer or investment
26 adviser, any partner, officer, director, sales representative, investment
27 adviser, representative of an investment adviser , or person occupying a
28 similar status or performing similar functions or any person directly or
29 indirectly controlling the broker-dealer or investment adviser:

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

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

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

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



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- 1 (1) Involves the purchase or sale of a security, taking a false oath,
2 making a false report, bribery, perjury, burglary, robbery or conspiracy to
3 commit any of the foregoing offenses;
- 4 (2) Arises out of the conduct of business as a broker-dealer,
5 investment adviser, depository institution, insurance company or
6 fiduciary; or
- 7 (3) Involves the larceny, theft, robbery, extortion, forgery,
8 counterfeiting, fraudulent concealment, embezzlement, fraudulent
9 conversion or misappropriation of money or securities or conspiracy to
10 commit any of the foregoing offenses;
- 11 (e) Is or has been permanently or temporarily enjoined by any court of
12 competent jurisdiction, unless the order has been vacated, from acting as an
13 investment adviser, representative of an investment adviser, underwriter,
14 broker-dealer or as an affiliated person or employee of an investment
15 company, depository institution or insurance company or from engaging in
16 or continuing any conduct or practice in connection with any of the
17 foregoing activities or in connection with the purchase or sale of a security;
- 18 (f) Is or has been the subject of an order of the administrator, unless the
19 order has been vacated, denying, suspending or revoking his license as a
20 broker-dealer, sales representative, investment adviser or representative of
21 an investment adviser;
- 22 (g) Is or has been the subject of any of the following orders which were
23 issued within the last 5 years, unless the order has been vacated:
- 24 (1) An order by the securities agency or administrator of another
25 state, Canadian province or territory or by the Securities and Exchange
26 Commission or a comparable regulatory agency of another country, entered
27 after notice and opportunity for hearing, denying, suspending or revoking
28 the person's license as a broker-dealer, sales representative, investment
29 adviser or representative of an investment adviser;
- 30 (2) A suspension or expulsion from membership in or association
31 with a member of a self-regulatory organization;
- 32 (3) An order of the United States Postal Service relating to fraud;
- 33 (4) An order to cease and desist entered after notice and opportunity
34 for hearing by the administrator, the securities agency or administrator of
35 another state, Canadian province or territory, the Securities and Exchange
36 Commission or a comparable regulatory agency of another country, or the
37 Commodity Futures Trading Commission; or
- 38 (5) An order by the Commodity Futures Trading Commission
39 denying, suspending or revoking registration under the Commodity
40 Exchange Act;
- 41 (h) Has engaged in unethical or dishonest practices in the securities
42 business;
- 43 (i) Is insolvent, either in the sense that liabilities exceed assets or in the
44 sense that obligations cannot be met as they mature, but the administrator
45 may not enter an order against a broker-dealer or investment adviser under
46 this ~~subparagraph~~ paragraph without a finding of insolvency as to the
47 broker-dealer or investment adviser;



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

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

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

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

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

23 **Sec. 5.** NRS 90.440 is hereby amended to read as follows:

24 90.440 1. An application for a license may be withdrawn by the
25 applicant without prejudice before the license becomes effective.

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

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

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

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

37 3. If a proceeding is pending or instituted under subsection 2,
38 withdrawal becomes effective at the time and upon the conditions the
39 administrator by order determines. If additional information is requested,
40 withdrawal is effective 30 days after the additional information is filed.
41 Although no proceeding is pending or instituted and withdrawal becomes
42 effective, the administrator may institute a proceeding pursuant to NRS
43 90.420 within ~~{1-year}~~ *2 years* after withdrawal became effective and enter
44 an order as of the last date on which licensing was effective.

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

46 90.620 1. The administrator may make an investigation, within or
47 outside of this state, as he finds necessary to determine whether a person
48 has violated or is about to violate this chapter or any regulation or order of



1 the administrator under this chapter or to aid in enforcement of this
2 chapter.

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

8 3. For the purposes of an investigation or proceeding under this
9 chapter the administrator or any officer or employee designated by the
10 administrator by regulation, ~~for~~ order *or written direction* may conduct
11 hearings, administer oaths and affirmations, render findings of fact and
12 conclusions of law, subpoena witnesses, compel their attendance, take
13 evidence and require the production, by subpoena or otherwise, of books,
14 papers, correspondence, memoranda, agreements or other documents or
15 records which the administrator determines to be relevant or material to the
16 investigation or proceeding. A person whom the administrator does not
17 consider to be the subject of an investigation is entitled to reimbursement at
18 the rate of 25 cents per page for copies of documents which he is required
19 by subpoena to produce. The administrator may require or permit a person
20 to file a statement, under oath or otherwise as the administrator determines,
21 as to the facts and circumstances concerning the matter to be investigated.

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

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

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

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

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

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

44 90.830 1. NRS 90.310, 90.330, 90.460, 90.570, 90.580, 90.610 and
45 90.660 apply to a person who sells or offers to sell a security or investment
46 advisory service if:

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

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



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

- 4 (a) An offer to purchase is made in this state; or
5 (b) An offer to sell is made and accepted in this state.

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

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

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

- 14 (a) Is communicated to the offeror in this state; and
15 (b) Has not previously been communicated to the offeror, orally or in
16 writing, outside this state.

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

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

- 25 (a) Is not published in this state; or
26 (b) Is published in this state but has had more than two-thirds of its
27 circulation outside this state during the past 12 months.

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

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

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

- 39 (a) The program or communication is syndicated and distributed from
40 outside this state for redistribution to the general public in this state;
41 (b) The program is supplied by a radio, television or other electronic
42 network with the electronic signal originating from outside this state for
43 redistribution to the general public in this state;
44 (c) The program or communication is an electronic signal that originates
45 outside this state and is captured for redistribution to the general public in
46 this state by a community antenna or cable, radio, cable television, or other
47 electronic system; or



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

4 **Sec. 8.** Sections 1 and 3 of this act expire by limitation on the date on
5 which the provisions of 42 U.S.C. § 666 requiring each state to establish
6 procedures under which the state has authority to withhold or suspend, or
7 to restrict the use of professional, occupational and recreational licenses of
8 persons who:

9 1. Have failed to comply with a subpoena or warrant relating to a
10 proceeding to determine the paternity of a child or to establish or enforce
11 an obligation for the support of a child; or

12 2. Are in arrears in the payment for the support of one or more
13 children,
14 are repealed by the Congress of the United States.

