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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; 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



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 90.380 is hereby amended to read as follows:

8 90.380 1. Unless a proceeding under NRS 90.420 has been
9 instituted, the license of any broker-dealer, sales representative, investment
10 adviser or representative of an investment adviser becomes effective 30
11 days after an application for licensing has been filed and is complete,
12 including any amendment, if all requirements imposed pursuant to NRS
13 90.370 and 90.375 have been satisfied. An application or amendment is
14 complete when the applicant has furnished information responsive to each
15 applicable item of the application. The administrator may ~~by order~~
16 authorize an earlier effective date of licensing.

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

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

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

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

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

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

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

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

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

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

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

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



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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, ~~for essential employee,~~ limit the activities governed by this chapter that an applicant ~~or~~ or licensed person ~~for essential employee~~ may perform in this state, bar an applicant ~~or~~ or licensed person ~~for 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,



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- 1 broker-dealer or as an affiliated person or employee of an investment
2 company, depository institution or insurance company or from engaging in
3 or continuing any conduct or practice in connection with any of the
4 foregoing activities or in connection with the purchase or sale of a security;
- 5 (f) Is or has been the subject of an order of the administrator, unless the
6 order has been vacated, denying, suspending or revoking his license as a
7 broker-dealer, sales representative, investment adviser or representative of
8 an investment adviser;
- 9 (g) Is or has been the subject of any of the following orders which were
10 issued within the last 5 years, unless the order has been vacated:
- 11 (1) An order by the securities agency or administrator of another
12 state, Canadian province or territory or by the Securities and Exchange
13 Commission or a comparable regulatory agency of another country, entered
14 after notice and opportunity for hearing, denying, suspending or revoking
15 the person's license as a broker-dealer, sales representative, investment
16 adviser or representative of an investment adviser;
- 17 (2) A suspension or expulsion from membership in or association
18 with a member of a self-regulatory organization;
- 19 (3) An order of the United States Postal Service relating to fraud;
- 20 (4) An order to cease and desist entered after notice and opportunity
21 for hearing by the administrator, the securities agency or administrator of
22 another state, Canadian province or territory, the Securities and Exchange
23 Commission or a comparable regulatory agency of another country, or the
24 Commodity Futures Trading Commission; or
- 25 (5) An order by the Commodity Futures Trading Commission
26 denying, suspending or revoking registration under the Commodity
27 Exchange Act;
- 28 (h) Has engaged in unethical or dishonest practices in the securities
29 business;
- 30 (i) Is insolvent, either in the sense that liabilities exceed assets or in the
31 sense that obligations cannot be met as they mature, but the administrator
32 may not enter an order against a broker-dealer or investment adviser under
33 this ~~subparagraph~~ *paragraph* without a finding of insolvency as to the
34 broker-dealer or investment adviser;
- 35 (j) Is determined by the administrator in compliance with NRS 90.430
36 not to be qualified on the basis of lack of training, experience and
37 knowledge of the securities business; or
- 38 (k) Has failed reasonably to supervise a sales representative ~~for~~
39 ~~employee~~, *employee or representative of an investment adviser.*
- 40 2. The administrator may not institute a proceeding on the basis of a
41 fact or transaction known to the director when the license became effective
42 unless the proceeding is instituted within 90 days after issuance of the
43 license.
- 44 3. If the administrator finds that an applicant or licensed person is no
45 longer in existence or has ceased to do business as a broker-dealer, sales
46 representative, investment adviser or representative of an investment
47 adviser or is adjudicated mentally incompetent or subjected to the control
48 of a committee, conservator or guardian or cannot be located after



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1 reasonable search, the administrator may by order deny the application or
2 revoke the license.

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

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

10 90.440 1. An application for a license may be withdrawn by the
11 applicant without prejudice before the license becomes effective.

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

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

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

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

23 3. If a proceeding is pending or instituted under subsection 2,
24 withdrawal becomes effective at the time and upon the conditions the
25 administrator by order determines. If additional information is requested,
26 withdrawal is effective 30 days after the additional information is filed.
27 Although no proceeding is pending or instituted and withdrawal becomes
28 effective, the administrator may institute a proceeding pursuant to NRS
29 90.420 within ~~1 year~~ 2 years after withdrawal became effective and enter
30 an order as of the last date on which licensing was effective.

31 **Sec. 5.** NRS 90.620 is hereby amended to read as follows:

32 90.620 1. The administrator may make an investigation, within or
33 outside of this state, as he finds necessary to determine whether a person
34 has violated or is about to violate this chapter or any regulation or order of
35 the administrator under this chapter or to aid in enforcement of this
36 chapter.

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

42 3. For the purposes of an investigation or proceeding under this
43 chapter the administrator or any officer or employee designated by the
44 administrator by regulation, ~~for~~ order *or written direction* may conduct
45 hearings, administer oaths and affirmations, render findings of fact and
46 conclusions of law, subpoena witnesses, compel their attendance, take
47 evidence and require the production, by subpoena or otherwise, of books,
48 papers, correspondence, memoranda, agreements or other documents or
49 records which the administrator determines to be relevant or material to the



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

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

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

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

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

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

28 **Sec. 6.** NRS 90.830 is hereby amended to read as follows:

29 90.830 1. NRS 90.310, 90.330, 90.460, 90.570, 90.580, 90.610 and
30 90.660 apply to a person who sells or offers to sell a security or investment
31 advisory service if:

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

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

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

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

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

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

42 (a) Originates in this state; or

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

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

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

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



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

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

9 (a) Is not published in this state; or

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

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

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

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

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

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

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

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

35 **Sec. 7.** Sections 1 and 2 of this act expire by limitation on the date on
36 which the provisions of 42 U.S.C. § 666 requiring each state to establish
37 procedures under which the state has authority to withhold or suspend, or
38 to restrict the use of professional, occupational and recreational licenses of
39 persons who:

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

43 2. Are in arrears in the payment for the support of one or more
44 children,
45 are repealed by the Congress of the United States.

