

SENATE BILL NO. 391—COMMITTEE ON TAXATION

(ON BEHALF OF THE LEGISLATIVE COMMITTEE ON
TAXATION, PUBLIC REVENUE AND TAX POLICY)

MARCH 29, 2005

Referred to Committee on Taxation

SUMMARY—Revises provisions governing liability for tax on financial institutions. (BDR 32-716)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

~

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to the taxation of financial institutions; revising the provisions governing liability for the tax on financial institutions; providing additional procedures for enforcement of that tax; 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 363A.050 is hereby amended to read as follows:

363A.050 1. Except as otherwise provided in subsection 2, “financial institution” means:

(a) An institution licensed, registered or otherwise authorized to do business in this State pursuant to the provisions of chapter 604, 645B ~~[, 645E or 649]~~ or *645E* of NRS or title 55 or 56 of NRS, or a similar institution chartered or licensed pursuant to federal law and doing business in this State;

(b) ~~Any person primarily engaged in:~~
~~(1) The purchase, sale and brokerage of securities;~~
~~(2) Originating, underwriting and distributing issues of securities;~~



~~—— (3) Buying and selling commodity contracts on either a spot or future basis for the person's own account or for the account of others, if the person is a member or is associated with a member of a recognized commodity exchange;~~

~~—— (4) Furnishing space and other facilities to members for the purpose of buying, selling or otherwise trading in stocks, stock options, bonds or commodity contracts;~~

~~—— (5) Furnishing investment information and advice to others concerning securities on a contract or fee basis;~~

~~—— (6) Furnishing services to holders of or brokers or dealers in securities or commodities;~~

~~—— (7) Holding or owning the securities of banks for the sole purpose of exercising some degree of control over the activities of the banks whose securities the person holds;~~

~~—— (8) Holding or owning securities of companies other than banks, for the sole purpose of exercising some degree of control over the activities of the companies whose securities the person holds;~~

~~—— (9) Issuing shares, other than unit investment trusts and face-amount certificate companies, whose shares contain a provision requiring redemption by the company upon request of the holder of the security;~~

~~—— (10) Issuing shares, other than unit investment trusts and face-amount certificate companies, whose shares contain no provision requiring redemption by the company upon request by the holder of the security;~~

~~—— (11) Issuing unit investment trusts or face-amount certificates;~~

~~—— (12) The management of the money of trusts and foundations organized for religious, educational, charitable or nonprofit research purposes;~~

~~—— (13) The management of the money of trusts and foundations organized for purposes other than religious, educational, charitable or nonprofit research;~~

~~—— (14) Investing in oil and gas royalties or leases, or fractional interests therein;~~

~~—— (15) Owning or leasing franchises, patents and copyrights which the person in turn licenses others to use;~~

~~—— (16) Closed end investments in real estate or related mortgage assets operating in such a manner as to meet the requirements of the Real Estate Investment Trust Act of 1960, as amended;~~

~~—— (17) Investing; or~~

~~—— (18) Any combination of the activities described in this paragraph;~~



1 ~~→ who is doing business in this State;~~

2 ~~— (e) Any other person conducting loan or credit card processing~~
3 ~~activities in this State; and~~

4 ~~— (d) Any other bank, bank holding company, national bank,~~
5 ~~savings association, federal savings bank, trust company, credit~~
6 ~~union, building and loan association, investment company,~~
7 ~~registered broker or dealer in securities or commodities, finance~~
8 ~~company, dealer in commercial paper or other business entity~~
9 ~~engaged in the business of lending money, providing credit,~~
10 ~~securitizing receivables or fleet leasing, or any related business~~
11 ~~entity, doing business in this State.] A person licensed or registered~~

12 ~~or required to be licensed or registered pursuant to NRS 90.310,~~
13 ~~90.330, 90.453, 686A.340 or 688C.190;~~

14 *(c) A person holding or required to hold a solicitation permit*
15 *or license pursuant to NRS 692B.040, 692B.190 or 692B.260;*

16 *(d) A person designated or registered or required to be*
17 *designated or registered pursuant to the Commodity Exchange*
18 *Act, the Securities Exchange Act of 1934, the Public Utility*
19 *Holding Company Act of 1935, the Investment Company Act of*
20 *1940 or the Investment Advisers Act of 1940, as amended, who is*
21 *doing business in this State;*

22 *(e) A person licensed pursuant to 7 U.S.C. § 2009cc-3 to*
23 *operate as a rural business investment company who is doing*
24 *business in this State;*

25 *(f) A person registered or required to be registered as a savings*
26 *and loan holding company pursuant to 12 U.S.C. § 1467a who is*
27 *doing business in this State;*

28 *(g) A person registered or required to be registered as a bank*
29 *holding company pursuant to 12 U.S.C. § 1844 who is doing*
30 *business in this State;*

31 *(h) An investment bank holding company supervised pursuant*
32 *to 15 U.S.C. § 78q who is doing business in this State;*

33 *(i) A person electing to be treated as a business development*
34 *company pursuant to 15 U.S.C. § 80a-53 who is doing business in*
35 *this State;*

36 *(j) A person licensed pursuant to 15 U.S.C. § 681 to operate as*
37 *a small business investment company who is doing business in this*
38 *State;*

39 *(k) A person granted final approval pursuant to 15 U.S.C. §*
40 *689c to operate as a new markets venture capital company who is*
41 *doing business in this State; and*

42 *(l) A person qualifying as and electing to be considered a real*
43 *estate investment trust pursuant to 26 U.S.C. § 856 who is doing*
44 *business in this State.*

45 2. The term does not include ~~+~~ :



1 (a) A credit union organized under the provisions of chapter 678
2 of NRS or the Federal Credit Union Act ~~H~~;

3 (b) A federal land credit association, farm credit bank,
4 agricultural credit association or similar institution organized
5 under the provisions of the Farm Credit Act; and

6 (c) Any person or other entity that this State is prohibited from
7 taxing under the Constitution, laws or treaties of the United States
8 or the Nevada Constitution.

9 **Sec. 2.** NRS 90.420 is hereby amended to read as follows:

10 90.420 1. The Administrator by order may deny, suspend or
11 revoke any license, fine any licensed person, limit the activities
12 governed by this chapter that an applicant or licensed person may
13 perform in this State, bar an applicant or licensed person from
14 association with a licensed broker-dealer or investment adviser or
15 bar from employment with a licensed broker-dealer or investment
16 adviser a person who is a partner, officer, director, sales
17 representative, investment adviser or representative of an investment
18 adviser, or a person occupying a similar status or performing a
19 similar function for an applicant or licensed person, if the
20 Administrator finds that the order is in the public interest and that
21 the applicant or licensed person or, in the case of a broker-dealer or
22 investment adviser, any partner, officer, director, sales
23 representative, investment adviser, representative of an investment
24 adviser, or person occupying a similar status or performing similar
25 functions or any person directly or indirectly controlling the broker-
26 dealer or investment adviser:

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

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

36 (c) Is the subject of an adjudication or determination after notice
37 and opportunity for hearing, within the last 5 years by a securities
38 agency or administrator of another state or a court of competent
39 jurisdiction that the person has violated the Securities Act of 1933,
40 the Securities Exchange Act of 1934, the Investment Advisers Act
41 of 1940, the Investment Company Act of 1940, the Commodity
42 Exchange Act or the securities law of any other state, but only if the
43 acts constituting the violation of that state's law would constitute a
44 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 paragraph without a finding of insolvency as to the broker-dealer or investment adviser;

(j) *Has failed to pay a tax as required pursuant to the provisions of chapter 363A of NRS;*

(k) 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

~~(l)~~ (l) Has failed reasonably to supervise a sales representative, 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.

Sec. 3. NRS 90.730 is hereby amended to read as follows:

90.730 1. Except as otherwise provided in subsection 2, information and records filed with or obtained by the Administrator are public information and are available for public examination.

2. Except as otherwise provided in subsections 3 and 4, the following information and records do not constitute public information under subsection 1 and are confidential:

(a) Information or records obtained by the Administrator in connection with an investigation concerning possible violations of this chapter; and

(b) Information or records filed with the Administrator in connection with a registration statement filed under this chapter or a report under NRS 90.390 which constitute trade secrets or commercial or financial information of a person for which that person is entitled to and has asserted a claim of privilege or confidentiality authorized by law.



3. The Administrator may submit any information or evidence obtained in connection with an investigation to the :

(a) Attorney General or appropriate district attorney for the purpose of prosecuting a criminal action under this chapter ~~[-]~~; and

(b) *Department of Taxation for its use in carrying out the provisions of chapter 363A of NRS.*

4. The Administrator may disclose any information obtained in connection with an investigation pursuant to NRS 90.620 to the agencies and administrators specified in subsection 1 of NRS 90.740 but only if disclosure is provided for the purpose of a civil, administrative or criminal investigation or proceeding, and the receiving agency or administrator represents in writing that under applicable law protections exist to preserve the integrity, confidentiality and security of the information.

5. This chapter does not create any privilege or diminish any privilege existing at common law, by statute, regulation or otherwise.

Sec. 4. NRS 649.395 is hereby amended to read as follows:

649.395 1. The Commissioner may impose an administrative fine, not to exceed \$500 for each violation, or suspend or revoke the license of a collection agency, or both impose a fine and suspend or revoke the license, by an order made in writing and filed in his office and served on the licensee by registered or certified mail at the address shown in the records of the Commissioner, if:

(a) The licensee is adjudged liable in any court of law for breach of any bond given under the provisions of this chapter; *or*

(b) After notice and hearing, the licensee is found guilty of:

(1) Fraud or misrepresentation;

(2) An act or omission inconsistent with the faithful discharge of his duties and obligations; or

(3) A violation of any provision of this chapter. ~~[-; or~~

~~—(c) The Commissioner determines that the licensee has failed to pay a tax as required pursuant to the provisions of chapter 363A of NRS.-]~~

2. The Commissioner may suspend or revoke the license of a collection agency without notice and hearing if:

(a) The suspension or revocation is necessary for the immediate protection of the public; and

(b) The licensee is afforded a hearing to contest the suspension or revocation within 20 days after the written order of suspension or revocation is served upon the licensee.

3. Upon revocation of his license, all rights of the licensee under this chapter terminate, and no application may be received from any person whose license has once been revoked.



1 4. An order that imposes discipline and the findings of fact and
2 conclusions of law supporting that order are public records.

3 **Sec. 5.** NRS 683A.451 is hereby amended to read as follows:

4 683A.451 The Commissioner may refuse to issue a license or
5 certificate pursuant to this chapter or may place any person to whom
6 a license or certificate is issued pursuant to this chapter on
7 probation, suspend him for not more than 12 months, or revoke or
8 refuse to renew his license or certificate, or may impose an
9 administrative fine or take any combination of the foregoing actions,
10 for one or more of the following causes:

11 1. Providing incorrect, misleading, incomplete or partially
12 untrue information in his application for a license.

13 2. Violating a law regulating insurance, or violating a
14 regulation, order or subpoena of the Commissioner or an equivalent
15 officer of another state.

16 3. Obtaining or attempting to obtain a license through
17 misrepresentation or fraud.

18 4. Misappropriating, converting or improperly withholding
19 money or property received in the course of the business of
20 insurance.

21 5. Intentionally misrepresenting the terms of an actual or
22 proposed contract of or application for insurance.

23 6. Conviction of a felony.

24 7. Admitting or being found to have committed an unfair trade
25 practice or fraud.

26 8. Using fraudulent, coercive or dishonest practices, or
27 demonstrated incompetence, untrustworthiness or financial
28 irresponsibility in the conduct of business in this State or elsewhere.

29 9. Denial, suspension or revocation of a license as a producer
30 of insurance, or its equivalent, in any other state, territory or
31 province.

32 10. Forging another's name to an application for insurance or
33 any other document relating to the transaction of insurance.

34 11. Improperly using notes or other reference material to
35 complete an examination for a license related to insurance.

36 12. Knowingly accepting business related to insurance from an
37 unlicensed person.

38 13. Failing to comply with an administrative or judicial order
39 imposing an obligation of child support.

40 ***14. Failing to pay a tax as required pursuant to the provisions***
41 ***of chapter 363A of NRS.***

42 **Sec. 6.** NRS 688C.210 is hereby amended to read as follows:

43 688C.210 After notice, and after a hearing if requested, the
44 Commissioner may suspend, revoke, refuse to issue or refuse to
45 renew a license under this chapter if he finds that:



1 1. There was material misrepresentation in the application for
2 the license;

3 2. The licensee or an officer, partner, member or significant
4 managerial employee has been convicted of fraudulent or dishonest
5 practices, is subject to a final administrative action for
6 disqualification, or is otherwise shown to be untrustworthy or
7 incompetent;

8 3. A provider of viatical settlements has engaged in a pattern of
9 unreasonable payments to viators;

10 4. The applicant or licensee has been found guilty of, or
11 pleaded guilty or nolo contendere to, a felony or a misdemeanor
12 involving fraud, forgery, embezzlement, obtaining money under
13 false pretenses, larceny, extortion, conspiracy to defraud or any
14 crime involving moral turpitude, whether or not a judgment of
15 conviction has been entered by the court;

16 5. A provider of viatical settlements has entered into a viatical
17 settlement in a form not approved pursuant to NRS 688C.220;

18 6. A provider of viatical settlements has failed to honor
19 obligations of a viatical settlement;

20 7. The licensee no longer meets a requirement for initial
21 licensure;

22 8. A provider of viatical settlements has assigned, transferred
23 or pledged a viaticated policy to a person other than another
24 provider licensed under this chapter, a purchaser of the viatical
25 settlement, a special organization or a trust for a related provider;

26 9. The applicant or licensee has provided materially untrue
27 information to an insurer that issued a policy that is the subject of a
28 viatical settlement; ~~for~~

29 10. *The applicant or licensee has failed to pay a tax as*
30 *required pursuant to the provisions of chapter 363A of NRS; or*

31 *11.* The applicant or licensee has violated a provision of this
32 chapter.

33 **Sec. 7.** This act becomes effective on July 1, 2005.



