

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.

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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 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;~~



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

~~(c) Any other person conducting loan or credit card processing activities in this State; and~~

~~(d) Any other bank, bank holding company, national bank, savings association, federal savings bank, trust company, credit union, building and loan association, investment company, registered broker or dealer in securities or commodities, finance company, dealer in commercial paper or other business entity engaged in the business of lending money, providing credit, securitizing receivables or fleet leasing, or any related business entity, doing business in this State.];~~

(b) A person licensed or registered or required to be licensed or registered pursuant to NRS 90.310, 90.330, 90.453, 686A.340 or 688C.190;

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

(d) A person designated or registered or required to be designated or registered pursuant to the Commodity Exchange Act, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Investment Company Act of 1940 or the Investment Advisers Act of 1940, as amended;

(e) A person licensed pursuant to 7 U.S.C. § 2009cc-3 to operate as a rural business investment company;

(f) A person registered or required to be registered as a savings and loan holding company pursuant to 12 U.S.C. § 1467a;

(g) A person registered or required to be registered as a bank holding company pursuant to 12 U.S.C. § 1844;

(h) An investment bank holding company supervised pursuant to 15 U.S.C. § 78q;

(i) A person electing to be treated as a business development company pursuant to 15 U.S.C. § 80a-53;

(j) A person licensed pursuant to 15 U.S.C. § 681 to operate as a small business investment company;

(k) A person granted final approval pursuant to 15 U.S.C. § 689c to operate as a new markets venture capital company;

(l) A person qualifying as and electing to be considered a real estate investment trust pursuant to 26 U.S.C. § 856;

(m) A bank, as defined in 12 U.S.C. § 1813(a);

(n) A savings association, as defined in 12 U.S.C. § 1813(b);

(o) A savings bank, as defined in 12 U.S.C. § 1813(g);

(p) A thrift institution, as defined in 12 U.S.C. § 1841(i);

(q) A national banking association organized under the National Bank Act;

(r) An entity that is related to any of the entities described in paragraphs (a), (b), (d) to (k), inclusive, and (m) to (q), inclusive,



1 *regardless of whether the entity described in any of those*
2 *paragraphs is doing business in this State; and*

3 *(s) An issuer or a service provider,*
4 *↳ who is doing business in this State.*

5 2. The term does not include ~~the~~:

6 *(a) A credit union organized under the provisions of chapter 678*
7 *of NRS or the Federal Credit Union Act ~~the~~;*

8 *(b) A federal land credit association, farm credit bank,*
9 *agricultural credit association or similar institution organized*
10 *under the provisions of the Farm Credit Act; and*

11 *(c) Any person or other entity that this State is prohibited from*
12 *taxing under the Constitution, laws or treaties of the United States*
13 *or the Nevada Constitution.*

14 3. For the purposes of this section:

15 *(a) "Credit card" has the meaning ascribed to it in*
16 *NRS 97A.050.*

17 *(b) "Entity" includes, without limitation, any corporation,*
18 *limited-liability company, association, organization, company,*
19 *firm, partnership, joint venture, trust, business trust, receiver,*
20 *trustee, syndicate, cooperative or assignee, or any other group or*
21 *combination acting as a unit.*

22 *(c) "Issuer" has the meaning ascribed to it in NRS 97A.100,*
23 *except that the term does not include a seller of goods or provider*
24 *of services who issues a credit card for the purpose of providing or*
25 *extending credit only in connection with the goods he sells or the*
26 *services he provides.*

27 *(d) Entities are "related" if at least 50 percent of the interest,*
28 *either by vote or value, in each entity is owned, either directly or*
29 *indirectly, by the same entity, including either of those entities.*

30 *(e) "Service provider" has the meaning ascribed to it in NRS*
31 *97A.130, except that the term does not include a service provider*
32 *who acts in that capacity solely on behalf of a seller of goods or*
33 *provider of services who issues a credit card for the purpose of*
34 *providing or extending credit only in connection with the goods he*
35 *sells or the services he provides.*

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

37 90.420 1. The Administrator by order may deny, suspend or
38 revoke any license, fine any licensed person, limit the activities
39 governed by this chapter that an applicant or licensed person may
40 perform in this State, bar an applicant or licensed person from
41 association with a licensed broker-dealer or investment adviser or
42 bar from employment with a licensed broker-dealer or investment
43 adviser a person who is a partner, officer, director, sales
44 representative, investment adviser or representative of an investment
45 adviser, or a person occupying a similar status or performing a



1 similar function for an applicant or licensed person, if the
2 Administrator finds that the order is in the public interest and that
3 the applicant or licensed person or, in the case of a broker-dealer or
4 investment adviser, any partner, officer, director, sales
5 representative, investment adviser, representative of an investment
6 adviser, or person occupying a similar status or performing similar
7 functions or any person directly or indirectly controlling the broker-
8 dealer or investment adviser:

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

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

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

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

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

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

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

39 (e) Is or has been permanently or temporarily enjoined by any
40 court of competent jurisdiction, unless the order has been vacated,
41 from acting as an investment adviser, representative of an
42 investment adviser, underwriter, broker-dealer or as an affiliated
43 person or employee of an investment company, depository
44 institution or insurance company or from engaging in or continuing



1 any conduct or practice in connection with any of the foregoing
2 activities or in connection with the purchase or sale of a security;

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

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

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

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

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

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

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

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

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

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

39 (k) Is determined by the Administrator in compliance with NRS
40 90.430 not to be qualified on the basis of lack of training,
41 experience and knowledge of the securities business; or

42 ~~(k)~~ (l) Has failed reasonably to supervise a sales
43 representative, employee or representative of an investment adviser.

44 2. The Administrator may not institute a proceeding on the
45 basis of a fact or transaction known to the director when the license



1 became effective unless the proceeding is instituted within 90 days
2 after issuance of the license.

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

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

12 90.730 1. Except as otherwise provided in subsection 2,
13 information and records filed with or obtained by the Administrator
14 are public information and are available for public examination.

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

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

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

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

29 (a) Attorney General or appropriate district attorney for the
30 purpose of prosecuting a criminal action under this chapter ~~§~~; and

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

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

41 5. This chapter does not create any privilege or diminish any
42 privilege existing at common law, by statute, regulation or
43 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.

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

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

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

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

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

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



1 4. Misappropriating, converting or improperly withholding
2 money or property received in the course of the business of
3 insurance.

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

6 6. Conviction of a felony.

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

9 8. Using fraudulent, coercive or dishonest practices, or
10 demonstrated incompetence, untrustworthiness or financial
11 irresponsibility in the conduct of business in this State or elsewhere.

12 9. Denial, suspension or revocation of a license as a producer
13 of insurance, or its equivalent, in any other state, territory or
14 province.

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

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

19 12. Knowingly accepting business related to insurance from an
20 unlicensed person.

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

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

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

26 688C.210 After notice, and after a hearing if requested, the
27 Commissioner may suspend, revoke, refuse to issue or refuse to
28 renew a license under this chapter if he finds that:

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

31 2. The licensee or an officer, partner, member or significant
32 managerial employee has been convicted of fraudulent or dishonest
33 practices, is subject to a final administrative action for
34 disqualification, or is otherwise shown to be untrustworthy or
35 incompetent;

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

38 4. The applicant or licensee has been found guilty of, or
39 pleaded guilty or nolo contendere to, a felony or a misdemeanor
40 involving fraud, forgery, embezzlement, obtaining money under
41 false pretenses, larceny, extortion, conspiracy to defraud or any
42 crime involving moral turpitude, whether or not a judgment of
43 conviction has been entered by the court;

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



1 6. A provider of viatical settlements has failed to honor
2 obligations of a viatical settlement;

3 7. The licensee no longer meets a requirement for initial
4 licensure;

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

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

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

14 11. The applicant or licensee has violated a provision of this
15 chapter.

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



