

ASSEMBLY BILL NO. 290—ASSEMBLYMEN PARKS, COBB, HARDY,
ANDERSON, BOBZIEN, CARPENTER, CLABORN, CONKLIN,
DENIS, GERHARDT, GOEDHART, GOICOECHEA, GRADY,
HOGAN, HORNE, KIHUEN, KIRKPATRICK, KOIVISTO,
MANENDO, MCCLAIN, MORTENSON, MUNFORD,
OHRENSCHALL, SEGERBLOM, SETTELMAYER, STEWART
AND WOMACK (BY REQUEST)

MARCH 13, 2007

Referred to Committee on Taxation

SUMMARY—Revises provisions governing taxes imposed on
mortgage brokers. (BDR 32-198)

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 taxation; exempting mortgage brokers from
paying the excise tax imposed on financial institutions;
requiring mortgage brokers to pay the excise tax imposed
on other businesses; and providing other matters properly
relating thereto.

Legislative Counsel's Digest:

1 Existing law imposes an excise tax on financial institutions at the rate of 2
2 percent of the wages paid by the financial institution to its employees. (NRS
3 363A.130) Existing law also imposes an excise tax on other businesses in this State
4 at the rate of 0.65 percent of the wages paid by the employers to their employees.
5 (NRS 363B.110)
6 This bill removes a mortgage broker licensed pursuant to chapter 645B of NRS
7 from the definition of "financial institution," thereby exempting a mortgage broker
8 from paying the excise tax imposed on financial institutions pursuant to NRS
9 363A.130 and requiring a mortgage broker to pay the excise tax imposed on
10 employers pursuant to NRS 363B.110 at the lower rate.



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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 title 55 or 56 of NRS or chapter 604A ~~[-645B]~~ or 645E of NRS, or a similar institution chartered or licensed pursuant to federal law;

(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,



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

3 (s) An issuer or a service provider,
4 ➔ who is conducting a business activity in this State.

5 2. The term does not include:

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

8 (b) A federal land credit association, farm credit bank,
9 agricultural credit association or similar institution organized under
10 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 or
13 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, firm,
19 partnership, joint venture, trust, business trust, receiver, trustee,
20 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 of
24 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 645B.060 is hereby amended to read as follows:

37 645B.060 1. Subject to the administrative control of the
38 Director of the Department of Business and Industry, the
39 Commissioner shall exercise general supervision and control over
40 mortgage brokers and mortgage agents doing business in this State.

41 2. In addition to the other duties imposed upon him by law, the
42 Commissioner shall:

43 (a) Adopt any regulations that are necessary to carry out the
44 provisions of this chapter, except as to loan brokerage fees.



(b) Conduct such investigations as may be necessary to determine whether any person has violated any provision of this chapter, a regulation adopted pursuant to this chapter or an order of the Commissioner.

(c) Conduct an annual examination of each mortgage broker doing business in this State. The annual examination must include, without limitation, a formal exit review with the mortgage broker. The Commissioner shall adopt regulations prescribing:

(1) Standards for determining the rating of each mortgage broker based upon the results of the annual examination; and

(2) Procedures for resolving any objections made by the mortgage broker to the results of the annual examination. The results of the annual examination may not be opened to public inspection pursuant to NRS 645B.090 until any objections made by the mortgage broker have been decided by the Commissioner.

(d) Conduct such other examinations, periodic or special audits, investigations and hearings as may be necessary and proper for the efficient administration of the laws of this State regarding mortgage brokers and mortgage agents. The Commissioner shall adopt regulations specifying the general guidelines that will be followed when a periodic or special audit of a mortgage broker is conducted pursuant to this chapter.

(e) Classify as confidential certain records and information obtained by the Division when those matters are obtained from a governmental agency upon the express condition that they remain confidential. This paragraph does not limit examination by:

(1) The Legislative Auditor; or

(2) The Department of Taxation if necessary to carry out the provisions of chapter ~~363A~~ 363B of NRS.

(f) Conduct such examinations and investigations as are necessary to ensure that mortgage brokers and mortgage agents meet the requirements of this chapter for obtaining a license, both at the time of the application for a license and thereafter on a continuing basis.

3. For each special audit, investigation or examination, a mortgage broker or mortgage agent shall pay a fee based on the rate established pursuant to NRS 645F.280.

Sec. 3. NRS 645B.670 is hereby amended to read as follows:

645B.670 Except as otherwise provided in NRS 645B.690:

1. For each violation committed by an applicant for a license issued pursuant to this chapter, whether or not he is issued a license, the Commissioner may impose upon the applicant an administrative fine of not more than \$10,000, if the applicant:

(a) Has knowingly made or caused to be made to the Commissioner any false representation of material fact;



1 (b) Has suppressed or withheld from the Commissioner any
2 information which the applicant possesses and which, if submitted
3 by him, would have rendered the applicant ineligible to be licensed
4 pursuant to the provisions of this chapter; or

5 (c) Has violated any provision of this chapter, a regulation
6 adopted pursuant to this chapter or an order of the Commissioner in
7 completing and filing his application for a license or during the
8 course of the investigation of his application for a license.

9 2. For each violation committed by a mortgage broker, the
10 Commissioner may impose upon the mortgage broker an
11 administrative fine of not more than \$10,000, may suspend, revoke
12 or place conditions upon his license, or may do both, if the mortgage
13 broker, whether or not acting as such:

14 (a) Is insolvent;

15 (b) Is grossly negligent or incompetent in performing any act for
16 which he is required to be licensed pursuant to the provisions of this
17 chapter;

18 (c) Does not conduct his business in accordance with law or has
19 violated any provision of this chapter, a regulation adopted pursuant
20 to this chapter or an order of the Commissioner;

21 (d) Is in such financial condition that he cannot continue in
22 business with safety to his customers;

23 (e) Has made a material misrepresentation in connection with
24 any transaction governed by this chapter;

25 (f) Has suppressed or withheld from a client any material facts,
26 data or other information relating to any transaction governed by the
27 provisions of this chapter which the mortgage broker knew or, by
28 the exercise of reasonable diligence, should have known;

29 (g) Has knowingly made or caused to be made to the
30 Commissioner any false representation of material fact or has
31 suppressed or withheld from the Commissioner any information
32 which the mortgage broker possesses and which, if submitted by
33 him, would have rendered the mortgage broker ineligible to be
34 licensed pursuant to the provisions of this chapter;

35 (h) Has failed to account to persons interested for all money
36 received for a trust account;

37 (i) Has refused to permit an examination by the Commissioner
38 of his books and affairs or has refused or failed, within a reasonable
39 time, to furnish any information or make any report that may be
40 required by the Commissioner pursuant to the provisions of this
41 chapter or a regulation adopted pursuant to this chapter;

42 (j) Has been convicted of, or entered a plea of nolo contendere
43 to, a felony relating to the practice of mortgage brokers or any crime
44 involving fraud, misrepresentation or moral turpitude;



(k) Has refused or failed to pay, within a reasonable time, any fees, assessments, costs or expenses that the mortgage broker is required to pay pursuant to this chapter or a regulation adopted pursuant to this chapter;

(l) Has failed to satisfy a claim made by a client which has been reduced to judgment;

(m) Has failed to account for or to remit any money of a client within a reasonable time after a request for an accounting or remittal;

(n) Has commingled the money or other property of a client with his own or has converted the money or property of others to his own use;

(o) Has engaged in any other conduct constituting a deceitful, fraudulent or dishonest business practice;

(p) Has repeatedly violated the policies and procedures of the mortgage broker;

(q) Has failed to exercise reasonable supervision over the activities of a mortgage agent as required by NRS 645B.460;

(r) Has instructed a mortgage agent to commit an act that would be cause for the revocation of the license of the mortgage broker, whether or not the mortgage agent commits the act;

(s) Has employed a person as a mortgage agent or authorized a person to be associated with the mortgage broker as a mortgage agent at a time when the mortgage broker knew or, in light of all the surrounding facts and circumstances, reasonably should have known that the person:

(1) Had been convicted of, or entered a plea of nolo contendere to, a felony relating to the practice of mortgage agents or any crime involving fraud, misrepresentation or moral turpitude; or

(2) Had a financial services license or registration suspended or revoked within the immediately preceding 10 years;

(t) Has failed to pay a tax as required pursuant to the provisions of chapter ~~363A~~ 363B of NRS; or

(u) Has not conducted verifiable business as a mortgage broker for 12 consecutive months, except in the case of a new applicant. The Commissioner shall determine whether a mortgage broker is conducting business by examining the monthly reports of activity submitted by the mortgage broker or by conducting an examination of the mortgage broker.

3. For each violation committed by a mortgage agent, the Commissioner may impose upon the mortgage agent an administrative fine of not more than \$10,000, may suspend, revoke or place conditions upon his license, or may do both, if the mortgage agent, whether or not acting as such:



1 (a) Is grossly negligent or incompetent in performing any act for
2 which he is required to be licensed pursuant to the provisions of this
3 chapter;

4 (b) Has made a material misrepresentation in connection with
5 any transaction governed by this chapter;

6 (c) Has suppressed or withheld from a client any material facts,
7 data or other information relating to any transaction governed by the
8 provisions of this chapter which the mortgage agent knew or, by the
9 exercise of reasonable diligence, should have known;

10 (d) Has knowingly made or caused to be made to the
11 Commissioner any false representation of material fact or has
12 suppressed or withheld from the Commissioner any information
13 which the mortgage agent possesses and which, if submitted by him,
14 would have rendered the mortgage agent ineligible to be licensed
15 pursuant to the provisions of this chapter;

16 (e) Has been convicted of, or entered a plea of nolo contendere
17 to, a felony relating to the practice of mortgage agents or any crime
18 involving fraud, misrepresentation or moral turpitude;

19 (f) Has failed to account for or to remit any money of a client
20 within a reasonable time after a request for an accounting or
21 remittal;

22 (g) Has commingled the money or other property of a client
23 with his own or has converted the money or property of others to his
24 own use;

25 (h) Has engaged in any other conduct constituting a deceitful,
26 fraudulent or dishonest business practice;

27 (i) Has repeatedly violated the policies and procedures of the
28 mortgage broker with whom he is associated or by whom he is
29 employed; or

30 (j) Has violated any provision of this chapter, a regulation
31 adopted pursuant to this chapter or an order of the Commissioner or
32 has assisted or offered to assist another person to commit such a
33 violation.

34 **Sec. 4.** This act becomes effective on July 1, 2007.

