

CHAPTER.....

AN ACT relating to business; providing for the licensing and regulation of exchange facilitators by the Division of Financial Institutions of the Department of Business and Industry; authorizing the Division to charge and collect fees in certain circumstances; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, the Real Estate Division of the Department of Business and Industry regulates the activities of qualified intermediaries. (NRS 645.606-645.6085) This bill transfers regulatory and licensing authority concerning qualified intermediaries from the Real Estate Division to the Division of Financial Institutions of the Department of Business and Industry.

Section 42 of this bill renames the entities to be regulated and licensed as “exchange facilitators,” and expands the scope of this term to include both qualified intermediaries and exchange accommodation titleholders.

Sections 3-21.5, 42, 43 and 47-50 of this bill regulate the activities of exchange facilitators and include provisions concerning: (1) applications for and renewals of a license as an exchange facilitator; (2) certain bonds and insurance policies that must be maintained by a licensee; (3) the handling of money held in accounts for clients; (4) the management of a licensee that is not a natural person; and (5) notice that must be provided to clients and to the Division in certain circumstances. **Sections 21 and 21.5** set forth the fees which the Division is required to charge and collect relating to applications for and renewals of a license and how money received by the Division must be deposited.

Sections 22-38 of this bill govern disciplinary proceedings against an exchange facilitator. **Section 22** authorizes the Commissioner of the Division of Financial Institutions to investigate an exchange facilitator. **Section 25** authorizes the Commissioner to require a licensee to pay an administrative fine of not more than \$200 per day or to suspend, revoke, deny the renewal of or place conditions upon his license, or impose any combination of such actions in certain circumstances. Under **section 38**, a person who is not licensed pursuant to the provisions of this bill who acts as an exchange facilitator or holds himself out as a licensee is guilty of a gross misdemeanor and is further liable to the Division for a civil penalty of \$200 per day for each day that the violation continues.

Section 39 of this bill authorizes the Division to issue a reciprocal license to a person who is licensed as an exchange facilitator in another state in certain circumstances. **Section 39.5** of this bill authorizes the Division to issue a special license to a financial institution that maintains an office in this State in certain circumstances.

Section 40 of this bill requires the Commissioner to conduct an audit of all exchange facilitators at least every 5 years and to conduct on a random basis additional partial audits of any licensee who has a history of violations of the provisions of this bill.

Upon passage and approval of this bill, the Legislative Counsel will transfer NRS 645.606 to 645.6085, inclusive, and **sections 3 to 40**, inclusive, of this act from chapter 645 of NRS to a new chapter of NRS. Upon passage and approval of this bill, the Legislative Counsel will transfer all the regulations created under NRS 645.606 to 645.6085, inclusive, and **sections 3 to 40**, inclusive, of this act to the



chapter of NAC that corresponds with the new chapter of NRS in which NRS 645.606 to 645.6085, inclusive, and **sections 3 to 40**, inclusive, of this act are transferred.

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

Section 1. (Deleted by amendment.)

Sec. 2. Chapter 645 of NRS is hereby amended by adding thereto the provisions set forth as sections 3 to 40, inclusive, of this act.

Sec. 3. *As used in NRS 645.606 to 645.6085, inclusive, and sections 3 to 40, inclusive, of this act, unless the context otherwise requires, the words and terms defined in NRS 645.606 and sections 4 to 7, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 4. *“Commissioner” means the Commissioner of Financial Institutions.*

Sec. 5. *“Division” means the Division of Financial Institutions of the Department of Business and Industry.*

Sec. 6. *“Financial institution” means any bank, savings and loan association, savings bank or trust company, including a subsidiary or holding company of these, doing business in this State that is federally insured and organized under, or supervised pursuant to, the laws of the United States or of any state.*

Sec. 7. *“Licensee” means a person licensed as an exchange facilitator pursuant to the provisions of NRS 645.606 to 645.6085, inclusive, and sections 3 to 40, inclusive, of this act.*

Sec. 8. *Except as otherwise provided in NRS 645.606 to 645.6085, inclusive, and sections 3 to 40, inclusive, of this act, the provisions of NRS 645.606 to 645.6085, inclusive, and sections 3 to 40, inclusive, of this act, do not apply to:*

1. Any bank, thrift company, credit union, trust company, savings and loan association, including a subsidiary or holding company of these, or any mortgage or farm loan association licensed under the laws of this State or of the United States, with reference to property it has acquired for development, for the convenient transaction of its business, or as a result of foreclosure of property encumbered in good faith as security for a loan or other obligation it has originated or holds.

2. A receiver, trustee in bankruptcy, administrator or executor, or any other person doing any of the acts specified in NRS 645.030 under the jurisdiction of any court.



3. *A trustee acting under a trust agreement, deed of trust or will, or the regular salaried employees thereof.*

4. *The purchase, sale or locating of mining claims or options thereon or interests therein.*

5. *The State of Nevada or a political subdivision thereof.*

Sec. 9. 1. *A license issued pursuant to NRS 645.606 to 645.6085, inclusive, and sections 3 to 40, inclusive, of this act is nontransferable.*

2. *The business of a licensee must not be sold or ownership of the business transferred before the prospective buyer or owner has complied with the provisions of section 43 of this act.*

Sec. 10. 1. *A licensee may establish one or more branch offices in this State.*

2. *A licensee who establishes one or more branch offices in this State shall provide written notice to the Division of the establishment of any such branch office within 30 days after establishment of the branch office.*

Sec. 11. *A license issued pursuant to the provisions of NRS 645.606 to 645.6085, inclusive, and sections 3 to 40, inclusive, of this act must be conspicuously displayed in the primary place of business of the licensee, and a copy of the license must be conspicuously displayed in each branch office of the licensee.*

Sec. 12. 1. *The business of a licensee, if the licensee is not a natural person, must be conducted under the direct management of an officer or employee of the licensee designated by the licensee as an exchange facilitator officer, who is licensed pursuant to the provisions of NRS 645.606 to 645.6085, inclusive, and sections 3 to 40, inclusive, of this act and who is:*

(a) *An attorney or certified public accountant admitted to practice in any state or territory of the United States;*

(b) *A certified exchange specialist certified by the Federation of Exchange Accommodators or its successor; or*

(c) *A person who has been actively conducting the business of an exchange facilitator or who has equivalent experience, as determined by the Division, for the 3 years immediately preceding his designation as an exchange facilitator officer.*

2. *A licensee shall notify the Division in writing within 10 working days after:*

(a) *The designation of any exchange facilitator officer, setting forth the experience and qualifications of the exchange facilitator officer and other such information as may be required by the Division; and*

(b) *The termination of the employment of any exchange facilitator officer.*



Sec. 13. *1. Each licensee is a fiduciary of all money, property, other considerations and instruments received by the licensee from the client.*

2. Each licensee shall invest money related to a tax-deferred exchange of property in investments which meet the reasonable standards that are applicable to persons acting as fiduciaries in this State.

Sec. 14. *Money held in any account for a client may not be withdrawn from the account without the written approval of the licensee and the client.*

Sec. 15. *1. Except as otherwise provided in subsection 2, a licensee shall maintain a policy of insurance covering liability for errors and omissions in an amount not less than \$250,000 executed by an insurer authorized to do business in this State and approved by the Division.*

2. In lieu of such a policy of insurance, a licensee may deposit with the Division under such terms and conditions as the Division may prescribe, a like amount of lawful money of the United States or any other form of security authorized by NRS 100.065. If security is provided in the form of a savings certificate, certificate of deposit or investment certificate, the certificate must state that the amount is unavailable for withdrawal except upon order of the Division.

3. A licensee shall provide proof of the coverage required pursuant to this section, including, without limitation, the name and address of the insurer, to a client.

4. The provisions of subsections 1 and 2 do not prohibit the licensee from maintaining a policy of insurance, deposits or other forms of security in excess of the amounts required by subsections 1 and 2.

5. Any person claiming against a policy of insurance or deposit required by this section may bring an action in a court of competent jurisdiction on the policy of insurance or deposit for damages to the extent covered by the policy. A person who brings an action on a policy or deposit shall notify the Division in writing upon filing the action.

6. Upon receiving a request from a client of an exchange facilitator, the Division shall notify the client:

(a) That a policy of insurance is in effect or that a deposit has been made, and the amount of either; and

(b) If there is an action against the policy of insurance, of the title, court and case number of the action and the amount sought by the plaintiff.



7. *If an insurer, or in the case of a deposit, the Division, wishes to make payment without awaiting action by a court, the amount of the policy or deposit must be reduced to the extent of any payment made by the insurer or the Division in good faith under the policy or deposit. Any payment must be based on written claims received by the insurer or the Division before any action is taken by a court.*

8. *Claims against a policy of insurance or deposit have equal priority, and if the policy or deposit is insufficient to pay all claims in full, they must be paid on a pro rata basis. Partial payment of claims is not full payment, and any claimant may bring an action against the exchange facilitator for the unpaid balance.*

Sec. 16. *A licensee shall provide written notice to the Division at least 30 days before the cancellation or withdrawal of any bond, policy of insurance or security required pursuant to NRS 645.608 or section 15 of this act. The Division shall suspend the license of a licensee upon notice that the licensee has cancelled or withdrawn any bond, policy of insurance or security required pursuant to NRS 645.608 or section 15 of this act.*

Sec. 17. (Deleted by amendment.)

Sec. 18. *All exchange funds must be kept separate from money belonging to the licensee and must be deposited in a financial institution that is federally insured or insured by a private insurer approved pursuant to NRS 678.755 unless another financial institution has been designated in writing in the exchange agreement. The money when deposited must be designated as "trust funds" or "escrow accounts" or under some other appropriate name indicating that the money is not the money of the licensee.*

Sec. 19. 1. *Exchange funds are not subject to execution or attachment on any claim against the licensee.*

2. *A licensee shall not knowingly keep or cause to be kept any money in any bank, credit union or other financial institution under any name designating the money as belonging to the clients of any licensee, unless the money belongs to the client and was actually entrusted to the licensee by the client.*

Sec. 20. *If a licensee fails to apply for a renewal of his license before the date of the expiration thereof, no license may be issued to him except upon another application for an original license, except that within 1 year of such expiration a renewal may be issued upon payment of a fee one and one-half times the amount otherwise required for renewal.*

Sec. 21. 1. *The Commissioner shall charge and collect the following fees:*



(a) *For the filing and investigation of an application for a license, a nonrefundable fee of not more than \$1,000 and any additional expenses incurred in the process of investigation;*

(b) *For the issuance of a license, at least \$200;*

(c) *For the annual renewal of a license, at least \$200;*

(d) *For the issuance of a license for each branch office of a licensee, a nonrefundable fee of at least \$200;*

(e) *For the annual renewal of a license for each branch office of a licensee, at least \$250;*

(f) *For the issuance of a reciprocal license, at least \$150;*

(g) *For the annual renewal of a reciprocal license, at least \$150; and*

(h) *For the reissuance of a license because of a change in the business address of the licensee, at least \$200.*

2. *All money received by the Commissioner pursuant to paragraph (a) of subsection 1 must be placed in the Investigative Account for Financial Institutions created by NRS 232.545.*

3. *The Commissioner shall adopt regulations establishing the amount of fees required pursuant to this section.*

Sec. 21.5. *Except as otherwise provided in NRS 645.6085 and section 21 of this act, all money received by the Commissioner pursuant to this chapter must be deposited in the State Treasury pursuant to the provisions of NRS 658.091.*

Sec. 22. *The Commissioner or the Division may investigate the actions of any exchange facilitator or any person who acts in any such capacity within this State.*

Sec. 23. *The Division shall maintain a public docket or other record in which it shall record from time to time as made:*

1. *The rulings or decisions upon all complaints filed with the Division concerning an exchange facilitator.*

2. *All investigations instituted by the Commissioner or the Division in the first instance, upon or in connection with which any hearing has been held, or in which the licensee charged has made no defense.*

3. *Denials of applications made to the Division for licensing.*

Sec. 24. 1. *Except as otherwise provided in this section, a complaint filed with the Division alleging a violation of NRS 645.606 to 645.6085, inclusive, and sections 3 to 40, inclusive, of this act, all documents and other information filed with the complaint and all documents and other information compiled as a result of an investigation conducted to determine whether to initiate disciplinary action are confidential.*

2. *A complaint or other document filed with the Division to initiate disciplinary action and all documents and information*



considered by the Division when determining whether to impose discipline are public records.

Sec. 25. 1. The Commissioner may require a licensee to pay an administrative fine of not more than \$200 per day for each violation he commits or may suspend, revoke, deny the renewal of or place conditions upon his license, or impose any combination of those actions, at any time if:

(a) The licensee, by false or fraudulent representation, obtained a license.

(b) The licensee, whether or not acting as such, is found guilty of:

(1) Making any material misrepresentation.

(2) Making any false promises of a character likely to influence, persuade or induce.

(c) The licensee has failed, within a reasonable time, to account for or to remit any money which comes into his possession or under his control and which belongs to others.

(d) The licensee has engaged in any fraudulent act.

(e) The licensee or an owner, officer, director or employee of a licensee, is found guilty of any crime involving fraud, misrepresentation, deceit, embezzlement, misappropriation of money, robbery or theft.

(f) The licensee has failed to fulfill a contractual duty to deliver property or money, unless the failure to deliver such property or money is beyond the control of the licensee.

(g) A receiver or conservator is appointed to take control of the assets of a licensee.

(h) The licensee is dissolved.

(i) The licensee is bankrupt.

(j) The licensee fails to maintain, for review and audit by the Division, each agreement governed by the provisions of NRS 645.606 to 645.6085, inclusive, and sections 3 to 40, inclusive, of this act and entered into by the licensee.

(k) The licensee violates any provision of NRS 645.606 to 645.6085, inclusive, and sections 3 to 40, inclusive, of this act or any regulations adopted pursuant thereto.

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

3. In addition to any action set forth in subsection 1, the Division may, if it determines that an applicant for a license or a licensee has committed any of the acts set forth in subsection 1, after notice and a hearing required by law, require the applicant or licensee to pay the costs incurred by the Division to conduct any related investigation or hearing.



Sec. 26. 1. *The Division shall not suspend the license of a licensee pursuant to section 25 of this act for more than 2 years.*

2. After the revocation of any license by the Commissioner as provided in NRS 645.606 to 645.6085, inclusive, and sections 3 to 40, inclusive, of this act, no new license may be issued to the same licensee within 2 years after the date of the revocation and then only provided that the licensee satisfies all the requirements for an original license.

Sec. 27. (Deleted by amendment.)

Sec. 28. *The expiration or revocation of a license by operation of law or by order or decision of the Division or a court of competent jurisdiction, or the voluntary surrender of a license does not:*

1. Prohibit the Commissioner or the Division from initiating or continuing an investigation of, or action or disciplinary proceeding against, the exchange facilitator as authorized pursuant to the provisions of NRS 645.606 to 645.6085, inclusive, and sections 3 to 40, inclusive, of this act or the regulations adopted pursuant thereto; or

2. Prevent the imposition or collection of any penalty authorized pursuant to the provisions of NRS 645.606 to 645.6085, inclusive, and sections 3 to 40, inclusive, of this act or the regulations adopted pursuant thereto against the exchange facilitator.

Sec. 29. 1. *The procedure set forth in this section and section 30 of this act must be followed before the Division revokes, suspends or denies the renewal of any license issued pursuant to NRS 645.606 to 645.6085, inclusive, and sections 3 to 40, inclusive, of this act.*

2. Upon the initiation of a complaint by the Division, the matter must be set for a hearing by the Commissioner, who shall schedule a hearing before the Commissioner, and the licensee is entitled to be heard thereon in person or by counsel.

3. The Commissioner shall hold the hearing within 90 days after the filing of a complaint by the Division. The time of the hearing may be continued at the discretion of the Commissioner or upon the written request of the licensee or of the Division for good cause shown.

4. The licensee must be given at least 30 days' notice in writing by the Division of the date, time and place of the hearing together with a copy of the complaint and copies of all communications, reports, affidavits or depositions in possession of the Division relevant to the complaint. The Division may present evidence obtained after the notice only if the Division shows that



the evidence was not available after diligent investigation before the time notice was given to the licensee and that the evidence was given or communicated to the licensee immediately after it was obtained.

5. Notice is complete upon delivery personally to the licensee or by mailing by certified mail to the last known address of the licensee.

Sec. 30. *1. The licensee shall file an answer to the charges with the Commissioner not later than 30 days after service of the notice and other documents described in subsection 4 of section 29 of this act. The answer must contain an admission or denial of the allegations contained in the complaint and any defenses upon which the licensee will rely. If no answer is filed within the time limit described in this subsection, the Division may, after notice to the licensee served in the manner authorized in subsection 5 of section 29 of this act, move for the entry of a default against the licensee.*

2. The answer may be served by delivery to the Division, or by mailing the answer by certified mail to the principal office of the Division.

3. No proceeding to suspend, revoke or deny the renewal of any license may be maintained unless it is commenced by the giving of notice to the licensee within 3 years of the time of the act charged, whether of commission or omission, except:

(a) If the charges are based upon a misrepresentation, or failure to disclose, the period does not commence until the discovery of facts which do or should lead to the discovery of the misrepresentation or failure to disclose; and

(b) Whenever any action or proceeding is instituted to which the Division or the licensee is a party and which involves the conduct of the licensee in the transaction with which the charges are related, the running of the 3-year period with respect to the institution of a proceeding pursuant to NRS 645.606 to 645.6085, inclusive, and sections 3 to 40, inclusive, of this act to suspend, revoke or deny the renewal of the license is suspended during the pendency of the action or proceeding.

Sec. 31. *The hearing on the charges must be held at such time and place as the Commissioner prescribes. At the hearing, a stenographic transcript of the proceedings must be made if requested or required for judicial review. Any party to the proceedings desiring a transcript must be furnished with a copy upon payment to the Division of the reasonable cost of transcription.*



Sec. 32. 1. *The Commissioner shall have the power to administer oaths, certify to all official acts, and issue subpoenas for attendance of witnesses and the production of books and papers.*

2. *In any hearing or investigation in any part of the State, the process issued by the Commissioner shall extend to all parts of the State and may be served by any person authorized to serve process of courts of record. The person serving any such process shall receive such compensation as may be allowed by the Commissioner, not to exceed the fees prescribed by law for similar service, and such fees must be paid in the same manner as provided in section 33 of this act for the payment of the fees of witnesses.*

Sec. 33. 1. *Each witness who appears by order of the Commissioner is entitled to receive for his attendance the same fees and mileage allowed by law to a witness in civil cases, which amount must be paid by the party at whose request the witness is subpoenaed.*

2. *When any witness not otherwise required to attend is subpoenaed by the Commissioner, his fees and mileage must be paid by the Division.*

Sec. 34. 1. *The district court in and for the county in which any hearing may be held shall have the power to compel the attendance of witnesses, the giving of testimony and the production of books and papers as required by any subpoena issued by the Commissioner.*

2. *In case of the refusal of any witness to attend or testify or produce any papers required by such subpoena, the Commissioner may report to the district court in and for the county in which the hearing is pending by petition, setting forth:*

(a) *That due notice has been given of the time and place of attendance of the witness or the production of the books and papers;*

(b) *That the witness has been subpoenaed in the manner prescribed in NRS 645.606 to 645.6085, inclusive, and sections 3 to 40, inclusive, of this act; and*

(c) *That the witness has failed and refused to attend or produce the papers required by subpoena before the Commissioner in the cause or proceeding named in the subpoena, or has refused to answer questions propounded to him in the course of such hearing,*

↪ *and asking an order of the court compelling the witness to attend and testify or produce the books or papers before the Commissioner.*



3. *The court, upon petition of the Commissioner, shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court in such order, the time to be not more than 10 days from the date of the order, and then and there show cause why he has not attended or testified or produced the books or papers before the Commissioner. A certified copy of the order shall be served upon the witness. If it shall appear to the court that the subpoena was regularly issued by the Commissioner, the court shall thereupon enter an order that the witness appear before the Commissioner at the time and place fixed in the order and testify or produce the required books or papers, and upon failure to obey the order, the witness shall be dealt with as for contempt of court.*

Sec. 35. 1. *The Commissioner may, in any hearing before him, cause the depositions of witnesses residing within or without the State to be taken in the manner prescribed by the Nevada Rules of Civil Procedure for like depositions in civil actions in the district courts of this State, and to that end may compel the attendance of witnesses and the production of books and papers.*

2. *The clerk of the district court in and for the county in which any hearing may be held by the Commissioner shall, upon the application of the Commissioner, issue commissions to other states for the taking of evidence therein for use in any proceedings before the Commissioner.*

3. *Any party to any hearing before the Commissioner shall have the right to the attendance of witnesses in his behalf at such hearing or upon deposition as set forth in this section upon making request therefor to the Commissioner and designating the name and address of the person or persons sought to be subpoenaed.*

Sec. 36. 1. *The Commissioner shall render an informal decision on any complaint within 15 days after the final hearing thereon and shall give notice in writing of the ruling or decision to the applicant or licensee affected thereby within 60 days after the final hearing thereon by certified mail to the last known address of the person to whom the notice is sent.*

2. *If the ruling is adverse to the licensee, the Commissioner shall also state in the notice the date upon which the ruling or decision becomes effective, which date must not be less than 30 days after the date of the notice.*

3. *The decision of the Commissioner may not be stayed by any appeal in accordance with the provisions of section 37 of this act, unless the district court so orders upon motion of the licensee,*



notice to the Division of the motion and opportunity for the Division to be heard.

4. An appeal from a decision of the district court affirming the revocation or suspension of a license does not stay the order of the Commissioner unless the district or appellate court, in its discretion and upon petition of the licensee, after notice and hearing orders such stay, and upon the filing of a bond for costs in the amount of \$1,000.

Sec. 37. 1. A ruling or decision of the Commissioner in any disciplinary action is final when in favor of the licensee.

2. If a ruling or decision is against the licensee, the licensee is entitled to judicial review of the ruling or decision in the manner provided by chapter 233B of NRS.

Sec. 38. 1. Any person who is not licensed pursuant to NRS 645.606 to 645.6085, inclusive, and sections 3 to 40, inclusive, of this act who acts as an exchange facilitator in this State or holds himself out as a licensee and any licensee who commits an act set forth in subsection 1 of section 25 of this act is:

(a) Guilty of a gross misdemeanor.

(b) Liable to the Division for a civil penalty of \$200 per day for each day that the violation continues.

2. The Division may file an action for injunctive relief in the appropriate district court in this State to prevent the occurrence or continuance of that act.

Sec. 39. 1. A person who is licensed as an exchange facilitator in another state or territory of the United States and is not otherwise required to be licensed pursuant to the provisions of NRS 645.606 to 645.6085, inclusive, and sections 3 to 40, inclusive, of this act may submit an application for a reciprocal license as an exchange facilitator pursuant to the provisions of this section. The Division shall issue a reciprocal license to the applicant if:

(a) The applicant is licensed in a jurisdiction that grants reciprocal licensing to a person licensed pursuant to NRS 645.606 to 645.6085, inclusive, and sections 3 to 40, inclusive, of this act;

(b) The Division determines that the laws and regulations governing exchange facilitators of the jurisdiction in which the applicant is licensed are at least equivalent to the provisions of NRS 645.606 to 645.6085, inclusive, and sections 3 to 40, inclusive, of this act;

(c) The applicant provides proof satisfactory to the Division that the applicant has complied with the requirements of NRS 645.608 and section 15 of this act;



(d) The applicant pays the fee required pursuant to section 21 of this act;

(e) The applicant designates the Division as its representative to receive service of process for matters arising in this State; and

(f) The applicant does not maintain an office in this State in connection with the conduct of the business of an exchange facilitator.

2. The Division shall:

(a) Examine the laws of each state to identify the jurisdictions that meet the requirements for recognition of a reciprocal license pursuant to this section; and

(b) Publish annually a list of the jurisdictions that meet the requirements of this section.

3. A license issued pursuant to this section must be renewed annually on or before July 1, by providing the information required by the Division for that purpose and paying the renewal fee prescribed by section 21 of this act.

Sec. 39.5. *1. A financial institution may obtain a special license pursuant to this section.*

2. The Division shall issue a special license to a financial institution if the financial institution:

(a) Maintains an office in this State;

(b) Pays the fee required pursuant to section 21 of this act for the issuance of a license; and

(c) Complies with any other requirements set forth by regulations adopted by the Division.

3. A financial institution which obtains a special license pursuant to this section is exempt from the requirements of subsections 2 to 7, inclusive, of section 43 of this act except as otherwise required by regulations adopted by the Division.

4. A license issued pursuant to this section must be renewed annually on or before July 1, by providing the information required by the Division for that purpose and paying the renewal fee prescribed by section 21 of this act.

Sec. 40. *1. The Commissioner shall cause to be conducted at least every 5 years an audit of all licensees. The Commissioner shall cause to be conducted each year on a random basis additional partial audits of any licensee who has a history of violations of the provisions of NRS 645.606 to 645.6085, inclusive, and sections 3 to 40, inclusive, of this act, or the regulations adopted pursuant thereto, as determined by the Commissioner.*

2. The Commissioner shall require the use of standard auditing procedures and shall establish a manual to describe the



standard auditing procedures. The manual must include, without limitation:

- (a) Specific audit objectives;*
- (b) Standards for documentation;*
- (c) Policies for supervisory review;*
- (d) Policies for the training of auditors;*
- (e) The format for the audit report; and*
- (f) Procedures for the presentation, distribution and retention of the audit report.*

3. On or before March 1 of each year, the Commissioner shall make a report of each audit to the Legislature, if it is in session, or to the Interim Finance Committee, if the Legislature is not in session.

Sec. 41. NRS 645.240 is hereby amended to read as follows:

645.240 ~~[[1-]]~~ The provisions of this chapter do not apply to, and the terms “real estate broker” and “real estate salesman” do not include, any:

~~[(a)]~~ **1.** Owner or lessor of property, or any regular employee of such a person, who performs any of the acts mentioned in NRS 645.030, 645.040, 645.230 and 645.260, with respect to the property in the regular course of or as an incident to the management of or investment in the property. For the purposes of this paragraph, “management” means activities which tend to preserve or increase the income from the property by preserving the physical desirability of the property or maintaining high standards of service to tenants. The term does not include sales activities.

~~[(b)]~~ **2.** Employee of a real estate broker while engaged in the collection of rent for or on behalf of the broker.

~~[(c)]~~ **3.** Person while performing the duties of a property manager for a property, if the person maintains an office on the property and does not engage in property management with regard to any other property.

~~[(d)]~~ **4.** Person while performing the duties of a property manager for a common-interest community governed by the provisions of chapter 116 of NRS, a condominium project governed by the provisions of chapter 117 of NRS, a time share governed by the provisions of chapter 119A of NRS, or a planned unit development governed by the provisions of chapter 278A of NRS, if the person is a member in good standing of, and, if applicable, holds a current certificate, registration or other similar form of recognition from, a nationally recognized organization or association for persons managing such properties that has been approved by the Real Estate Division by regulation.



~~[(e)]~~ 5. Person while performing the duties of a property manager for property used for residential housing that is subsidized either directly or indirectly by this State, an agency or political subdivision of this State, or the Federal Government or an agency of the Federal Government.

~~[2.—Except as otherwise provided in NRS 645.606 to 645.6085, inclusive, the provisions of this chapter do not apply to:~~

~~—(a) Any bank, thrift company, credit union, trust company, savings and loan association or any mortgage or farm loan association licensed under the laws of this State or of the United States, with reference to property it has acquired for development, for the convenient transaction of its business, or as a result of foreclosure of property encumbered in good faith as security for a loan or other obligation it has originated or holds.~~

~~—(b) A corporation which, through its regular officers who receive no special compensation for it, performs any of those acts with reference to the property of the corporation.~~

~~—(c) The services rendered by an attorney at law in the performance of his duties as an attorney at law.~~

~~—(d) A receiver, trustee in bankruptcy, administrator or executor, or any other person doing any of the acts specified in NRS 645.030 under the jurisdiction of any court.~~

~~—(e) A trustee acting under a trust agreement, deed of trust or will, or the regular salaried employees thereof.~~

~~—(f) The purchase, sale or locating of mining claims or options thereon or interests therein.~~

~~—(g) The State of Nevada or a political subdivision thereof.]~~

Sec. 42. NRS 645.606 is hereby amended to read as follows:

645.606 1. ~~[As used in NRS 645.606 to 645.6085, inclusive, “qualified intermediary” has the meaning ascribed to it]~~ *“Exchange facilitator” means a person who, for compensation of any kind, acts as:*

(a) A qualified intermediary as defined in 26 C.F.R. § ~~[1.1031(k)-1(g)]~~ 1.1031(k)-1(g)(4) for a client whose relinquished property is located in this State; or

(b) An exchange accommodation titleholder, as that term is defined in Rev. Proc. 2000-37, who holds title to property located in this State.

2. The term includes any person who ~~[advertises]~~ :

(a) Maintains an office in this State for the purpose of soliciting business as an exchange facilitator; or

(b) Advertises or holds himself out as prepared to facilitate a tax-deferred exchange of property in this State by acting as the custodian of money or other property.



3. The term does not include ~~[a bank, credit union or other depository institution, an escrow company, a title insurer, an agent licensed pursuant to chapter 692A of NRS or its subsidiaries or employees.]~~:

(a) *A taxpayer or disqualified person, as those terms are defined in 26 C.F.R. § 1.1031(k)-1(k), who is seeking to qualify for nonrecognition pursuant to 26 U.S.C. § 1031;*

(b) *A financial institution when acting solely as a depository for funds used in a tax-deferred exchange of property;*

(c) *A person who advertises for and teaches seminars or classes, or otherwise gives presentations to attorneys, accountants, real estate professionals, tax professionals or other professionals with the primary purpose of teaching such professionals about tax-deferred exchanges or training such professionals to act as exchange facilitators; or*

(d) *A qualified intermediary, as defined in 26 C.F.R. § 1.1031(k)-1(g)(4), who holds exchange funds received from the disposition of relinquished property located outside this State.*

Sec. 43. NRS 645.6065 is hereby amended to read as follows:

645.6065 1. Except as otherwise provided in NRS 645.607, a person shall not act as ~~[a qualified intermediary]~~ *an exchange facilitator* unless he is ~~[registered]~~ *licensed* as such with the Division. The Division may adopt such regulations as it deems necessary to carry out the provisions of NRS 645.606 to 645.6085, inclusive ~~[]~~, *and sections 3 to 40, inclusive, of this act, including, without limitation, regulations prescribing amounts required for liquidity purposes.*

2. To apply for ~~[registration,]~~ *a license as an exchange facilitator*, a person must pay the Division ~~[a fee of \$100 and a fee to pay the costs of an investigation of the person's background.]~~ *the fee prescribed by section 21 of this act.*

3. In addition to the requirements set forth in subsection 2, the person must submit to the Division:

(a) The following information on a form provided by the Division:

(1) The applicant's name, *business* address and telephone number;

(2) The name under which the applicant will hold the money or other property of a client;

(3) The names, residence and business addresses of all *shareholders or members who hold 10 percent or more of the voting stock of the applicant's business and all* persons having an interest in the business as principals, partners, officers, trustees or directors, specifying the capacity and title of each; and



(4) The length of time the applicant has been engaged in the business of acting as such an ~~intermediary; and~~ *exchange facilitator;*

(5) *A summary description of the business of the applicant;*

(6) *A list of any similar licenses obtained and maintained in other states or other jurisdiction and information regarding revocation of any such license;*

(7) *The tax identification number of the applicant; and*

(8) *A current certificate of good standing for the applicant from the state or other jurisdiction in which the applicant's business is formed; and*

(b) All information required to complete the application.

4. Each applicant must, as part of his application and at his own expense:

(a) Arrange to have ~~a complete set of his fingerprints~~ taken, by a law enforcement agency or other authorized entity acceptable to the Division ~~;~~, *a complete set of the applicant's fingerprints and the fingerprints of each person or officer who will be conducting the business of the applicant in this State and who has authority to transfer exchange money held by the applicant; and*

(b) Submit to the Division:

(1) A completed fingerprint card and written permission authorizing the Division to submit the ~~applicant's~~ fingerprints *described in paragraph (a)* to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for a report on the ~~applicant's~~ background *of each person whose fingerprints were taken* and to such other law enforcement agencies as the Division deems necessary; or

(2) Written verification, on a form prescribed by the Division, stating that the fingerprints ~~of the applicant~~ *described in paragraph (a)* were taken and directly forwarded electronically or by another means to the Central Repository and that ~~the applicant~~ *each person whose fingerprints were taken* has given written permission to the law enforcement agency or other authorized entity taking the fingerprints to submit the fingerprints to the Central Repository for submission to the Federal Bureau of Investigation for a report on the ~~applicant's~~ background *of each such person* and to such other law enforcement agencies as the Division deems necessary.

5. The Division may:

(a) Unless the ~~applicant's~~ fingerprints *described in paragraph (a) of subsection 4* are directly forwarded pursuant to subparagraph (2) of paragraph (b) of subsection 4, submit those fingerprints to the Central Repository for submission to the Federal Bureau of



Investigation and to such other law enforcement agencies as the Division deems necessary; and

(b) Request from each such agency any information regarding the ~~[applicant's]~~ background *of each person whose fingerprints were taken* as the Division deems necessary.

6. ~~[Registration]~~ *The Division shall approve an application submitted pursuant to this section within 45 days after the submission of the completed application, any additional information required by the Division and proof satisfactory to the Division that the applicant has complied with the provisions of NRS 645.608. Upon approval of an application, the Division shall issue a license to the applicant.*

7. A license issued pursuant to ~~[this section]~~ *NRS 645.606 to 645.6085, inclusive, and sections 3 to 40, inclusive, of this act* must be renewed ~~[each year]~~ *annually* on or before ~~[the date of the original registration]~~ *July 1*, by providing the information required by the Division for that purpose and paying a renewal fee ~~[of \$75.]~~ *prescribed by section 21 of this act.*

Sec. 44. NRS 645.6068 is hereby amended to read as follows:

645.6068 1. In addition to any other requirements set forth in this chapter:

(a) A natural person who applies for the issuance of his ~~[registration as a qualified intermediary]~~ *license as an exchange facilitator* shall include the social security number of the applicant in the application submitted to the Division.

(b) A natural person who applies for the issuance or renewal of his ~~[registration as a qualified intermediary]~~ *license as an exchange facilitator* shall submit to the Division the statement prescribed by the Division of Welfare and Supportive Services of the Department of Health and Human Services pursuant to NRS 425.520. The statement must be completed and signed by the applicant.

2. The Division shall include the statement required pursuant to subsection 1 in:

(a) The application or any other forms that must be submitted for the issuance or renewal of the ~~[registration:]~~ *license*; or

(b) A separate form prescribed by the Division.

3. An applicant may not be ~~[registered as a qualified intermediary]~~ *licensed as an exchange facilitator* by the Division if the applicant is a natural person who:

(a) Fails to submit the statement required pursuant to subsection 1; or

(b) Indicates on the statement submitted pursuant to subsection 1 that he is subject to a court order for the support of a child and is not in compliance with the order or a plan approved by the district



attorney or other public agency enforcing the order for the repayment of the amount owed pursuant to the order.

4. If an applicant indicates on the statement submitted pursuant to subsection 1 that he is subject to a court order for the support of a child and is not in compliance with the order or a plan approved by the district attorney or other public agency enforcing the order for the repayment of the amount owed pursuant to the order, the Division shall advise the applicant to contact the district attorney or other public agency enforcing the order to determine the actions that the applicant may take to satisfy the arrearage.

Sec. 45. NRS 645.6068 is hereby amended to read as follows:

645.6068 1. In addition to any other requirements set forth in this chapter, a natural person who applies for the issuance or renewal of his ~~{registration as a qualified intermediary}~~ *license as an exchange facilitator* shall submit to the Division the statement prescribed by the Division of Welfare and Supportive Services of the Department of Health and Human Services pursuant to NRS 425.520. The statement must be completed and signed by the applicant.

2. The Division shall include the statement required pursuant to subsection 1 in:

(a) The application or any other forms that must be submitted for the issuance or renewal of the ~~{registration;}~~ *license*; or

(b) A separate form prescribed by the Division.

3. An applicant may not be ~~{registered as a qualified intermediary}~~ *licensed as an exchange facilitator* by the Division if the applicant is a natural person who:

(a) Fails to submit the statement required pursuant to subsection 1; or

(b) Indicates on the statement submitted pursuant to subsection 1 that he is subject to a court order for the support of a child and is not in compliance with the order or a plan approved by the district attorney or other public agency enforcing the order for the repayment of the amount owed pursuant to the order.

4. If an applicant indicates on the statement submitted pursuant to subsection 1 that he is subject to a court order for the support of a child and is not in compliance with the order or a plan approved by the district attorney or other public agency enforcing the order for the repayment of the amount owed pursuant to the order, the Division shall advise the applicant to contact the district attorney or other public agency enforcing the order to determine the actions that the applicant may take to satisfy the arrearage.



Sec. 46. NRS 645.6069 is hereby amended to read as follows:

645.6069 1. If the Division receives a copy of a court order issued pursuant to NRS 425.540 that provides for the suspension of all professional, occupational and recreational licenses, certificates and permits issued to a person who is ~~[registered with the Division as a qualified intermediary.]~~ *licensed as an exchange facilitator*, the Division shall deem the ~~[registration]~~ *license* issued to that person to be suspended at the end of the 30th day after the date on which the court order was issued unless the Division receives a letter issued by the district attorney or other public agency pursuant to NRS 425.550 to the person who is ~~[registered as a qualified intermediary]~~ *licensed as an exchange facilitator* stating that the person has complied with the subpoena or warrant or has satisfied the arrearage pursuant to NRS 425.560.

2. The Division shall reinstate the ~~[registration of a qualified intermediary]~~ *license of an exchange facilitator* that has been suspended by a district court pursuant to NRS 425.540 if the Division receives a letter issued by the district attorney or other public agency pursuant to NRS 425.550 to the person whose ~~[registration]~~ *license* was suspended stating that the person whose ~~[registration]~~ *license* was suspended has complied with the subpoena or warrant or has satisfied the arrearage pursuant to NRS 425.560.

Sec. 47. NRS 645.607 is hereby amended to read as follows:

645.607 1. If the ~~[intermediary]~~ *exchange facilitator* is a corporation qualified to do business in this State, every officer, ~~[and]~~ director *and exchange facilitator officer designated pursuant to section 12 of this act* of the corporation who does business in this State must be ~~[registered.]~~ *licensed*. No other employee is required to ~~[register.]~~ *be licensed*.

2. *If the exchange facilitator is not a natural person or a publicly traded company, each shareholder, member or other owner who owns 10 percent or more of the voting stock, shares or other ownership interest of the exchange facilitator must be licensed.*

Sec. 48. NRS 645.6075 is hereby amended to read as follows:

645.6075 A ~~[qualified intermediary shall inform]~~ *licensee shall:*

1. *Maintain a principal place of business in this State or maintain a registered agent in this State;*

2. *Inform* the Division in writing ~~[of]~~ *within 10 working days after* any change in ~~[his address or]~~ *the address or* telephone number ~~[.]~~ *of his principal place of business or his registered*



agent, and provide any other information required by the Division; and

3. Inform all clients within 10 working days after:

(a) A change in any of the officers, directors, employees or owners of the licensee who are required to obtain a license pursuant to section 12 or 47 of this act; or

(b) The licensee or any person described in paragraph (a) acquires a new license, has his license suspended or revoked or otherwise relinquishes, loses or has any other change in the status of his license.

Sec. 49. NRS 645.608 is hereby amended to read as follows:

645.608 1. Except as otherwise provided in subsection 2, ~~[a qualified intermediary]~~ *an exchange facilitator* shall ~~[post with the Division a bond]~~ *maintain one or more fidelity bonds in a total amount of not less than \$1,000,000* executed by ~~[the intermediary as principal, and by a corporation qualified pursuant to the laws of this State as a surety. The bond must be payable to the State of Nevada and conditioned upon the payment of all money due to the State and the clients of the intermediary. The Division shall, by regulation, establish the minimum amount required for the bond.]~~ *an insurer authorized to do business in this State and approved by the Division.*

2. In lieu of such a bond ~~[an intermediary]~~, *a licensee* may deposit with the Division under such terms and conditions as the Division may prescribe, a like amount of lawful money of the United States or any other form of security authorized by NRS 100.065. If security is provided in the form of a savings certificate, certificate of deposit or investment certificate, the certificate must state that the amount is unavailable for withdrawal except upon order of the Division.

3. A licensee shall provide proof of the bond required pursuant to this section, including, without limitation, the name and address of the insurer, to a client.

4. Any person claiming against a bond or deposit required by this section may bring an action in a court of competent jurisdiction on the bond or deposit for damages to the extent covered by the bond [4] or deposit. A person who brings an action on a bond or deposit shall notify the Division in writing upon filing the action.

~~[4.]~~ *5. Upon receiving a request from a person for whose benefit a bond or deposit is required, the Division shall notify him:*

(a) That a bond is in effect or that a deposit has been made, and the amount of [the bond;] either; and

(b) If there is an action against the bond, of the title, court and case number of the action and the amount sought by the plaintiff.



~~[5.]~~ 6. If ~~[a surety]~~ *an insurer or, in the case of a deposit, the Division* wishes to make *a* payment without awaiting action by a court, the amount of the bond *or deposit* must be reduced to the extent of any payment made by the ~~[surety]~~ *insurer or the Division* in good faith under the bond ~~[.]~~ *or deposit*. Any payment must be based on written claims received by the ~~[surety]~~ *insurer or the Division* before any action is taken by a court.

~~[6.]~~ 7. Claims against a bond *or deposit* have equal priority, and if the bond *or deposit* is insufficient to pay all claims in full, they must be paid on a pro rata basis. Partial payment of claims is not full payment, and any claimant may bring an action against the ~~[intermediary]~~ *licensee* for the unpaid balance.

Sec. 50. NRS 645.6085 is hereby amended to read as follows:

645.6085 The Division shall deposit any money it receives from a civil penalty imposed pursuant to NRS 205.960 *and section 38 of this act* with the State Treasurer for credit to a separate account in the State General Fund. The Division shall expend at least 75 percent of the money so received to pay administrative costs related to:

1. The ~~[registration of intermediaries;]~~ *licensing of exchange facilitators;* and

2. Any program it develops to supply information regarding ~~[intermediaries]~~ *exchange facilitators* to the public.

➤ Any remaining money may be used by the Division to reimburse residents of Nevada for financial losses caused by the illegal conduct of an ~~[intermediary.]~~ *exchange facilitator*.

Sec. 51. NRS 205.960 is hereby amended to read as follows:

205.960 1. It is unlawful for a person to enter into an agreement to act as ~~[an]~~ *a qualified* intermediary ~~[to hold the money of another person pursuant to an exchange of property which is or is purported to be tax free pursuant to 26 U.S.C. § 1031]~~ *, as defined in 26 C.F.R. § 1.1031(k)-1(g)(4), for a client whose relinquished property is located in this State* unless:

(a) ~~[The intermediary is a qualified intermediary as defined in 26 C.F.R. § 1.1031(k)-1(g);]~~ *The proceeds from the disposition of the relinquished property are deposited into a qualified escrow account or qualified trust as defined in 26 C.F.R. § 1.1031(k)-1(g)(3).*

(b) ~~[The money is deposited in a qualified escrow account as defined in 26 C.F.R. § 1.1031(k)-1(g); and~~

~~—(c)]~~ *The money is held in such a manner that it may not be withdrawn from the qualified escrow account or qualified trust without the written approval of the intermediary and the person for whom he is holding the money.] client.*



2. A person who violates the provisions of this section is guilty of a category D felony and shall be punished as provided in NRS 193.130.

3. In addition to any other penalty imposed, the court shall order a person who violates subsection 1 to pay a civil penalty of not less than \$10,000. The money so collected:

(a) Must not be deducted from any penal fine imposed by the court;

(b) Must be stated separately on the court's docket; and

(c) Must be remitted forthwith to the ~~[Administrator of the Real Estate Division of the Department of Business and Industry.]~~ *Commissioner of Financial Institutions.*

Sec. 52. (Deleted by amendment.)

Sec. 52.5. NRS 692A.265 is hereby repealed.

Sec. 53. A regulation adopted by the Real Estate Division of the Department of Business and Industry pursuant to NRS 645.606 to 645.6085, inclusive, remains in effect as a regulation of the Division of Financial Institutions of the Department of Business and Industry until amended or repealed by the Division of Financial Institutions.

Sec. 54. As soon as is practicable after passage and approval of this act, the Legislative Counsel will transfer all the regulations created under NRS 645.606 to 645.6085, inclusive, and sections 3 to 40, inclusive, of this act to the chapter of NAC that corresponds with the new chapter of NRS in which NRS 645.606 to 645.6085, inclusive, and sections 3 to 40, inclusive, of this act are transferred.

Sec. 55. 1. This section and sections 2 to 44, inclusive, and 46 to 54, inclusive, of this act become effective on July 1, 2007.

2. Section 44 of this act expires by limitation on the date on which the provisions of 42 U.S.C. § 666 requiring each state to establish procedures under which the state has authority to withhold or suspend, or to restrict the use of professional, occupational and recreational licenses of persons who:

(a) Have failed to comply with a subpoena or warrant relating to a proceeding to determine the paternity of a child or to establish or enforce an obligation for the support of a child; or

(b) Are in arrears in the payment for the support of one or more children,

➤ are repealed by the Congress of the United States.

3. Section 45 of this act becomes effective on the date on which the provisions of 42 U.S.C. § 666 requiring each state to establish procedures under which the state has authority to withhold or suspend, or to restrict the use of professional, occupational and recreational licenses of persons who:



(a) Have failed to comply with a subpoena or warrant relating to a proceeding to determine the paternity of a child or to establish or enforce an obligation for the support of a child; or

(b) Are in arrears in the payment for the support of one or more children,

↪ are repealed by the Congress of the United States.

4. Sections 45 and 46 of this act expire by limitation on the date 2 years after the date on which the provisions of 42 U.S.C. § 666 requiring each state to establish procedures under which the state has authority to withhold or suspend, or to restrict the use of professional, occupational and recreational licenses of persons who:

(a) Have failed to comply with a subpoena or warrant relating to a proceeding to determine the paternity of a child or to establish or enforce an obligation for the support of a child; or

(b) Are in arrears in the payment for the support of one or more children,

↪ are repealed by the Congress of the United States.

