

ASSEMBLY BILL NO. 283—ASSEMBLYMAN CONKLIN

MARCH 15, 2011

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions relating to mortgage loans.
(BDR 54-830)

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

~

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

AN ACT relating to mortgage loans; revising provisions governing the requirement for certain mortgage agents, mortgage bankers, mortgage brokers and other employees to register with the Nationwide Mortgage Licensing System and Registry; revising provisions governing continuing education requirements for certain licensees; providing certain investors who deposit money with a mortgage broker with an exemption from criminal and civil liability for the acts or omissions of the mortgage broker; revising provisions governing the employment or association of mortgage agents; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 The federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008
2 requires that a person who originates residential mortgage loans be licensed as a
3 loan originator and requires that such a loan originator be registered with the
4 Nationwide Mortgage Licensing System and Registry. (12 U.S.C. § 5103) Existing
5 law in Nevada prescribes the requirements for a license as a mortgage agent,
6 mortgage banker, mortgage broker or a qualified employee who is a residential
7 mortgage loan originator, which include, without limitation, registration with the
8 Nationwide Mortgage Licensing System and Registry. (NRS 645B.0137,
9 645E.200) **Section 6** of this bill provides that such a person is not required to
10 register or renew with the Nationwide Mortgage Licensing System and Registry, or
11 provide reports of financial condition to the Registry, if: (1) the person is not a
12 residential mortgage loan originator or the supervisor of a residential mortgage loan
13 originator; and (2) the person is not required to register pursuant to the federal Act.
14 **Section 6** also provides that such a person who voluntarily registers or renews with
15 the Registry shall comply with all requirements of the federal Act.



* A B 2 8 3 R 1 *

Under existing law, the Commissioner of Mortgage Lending is required to adopt such regulations as necessary to carry out the provisions of the federal Act. (NRS 645F.293) **Section 7** of this bill provides that the regulations must not require registration of a person who is exempt pursuant to **section 6**.

Sections 1, 2 and 4 of this bill revise provisions governing continuing education requirements for persons who are exempt pursuant to **section 6** and who have not voluntarily registered or renewed with the Registry. **Section 3** of this bill exempts certain investors who deposit money with a mortgage broker from criminal and civil liability for the acts or omissions of the mortgage broker. **Section 5** of this bill revises provisions governing the employment of or association with a mortgage agent by a mortgage broker, mortgage banker or person who holds a certificate of exemption issued by the Commissioner of Mortgage Lending. **Section 8** of this bill repeals certain provisions governing mortgage bankers which are included within the amendatory provisions of **section 5**.

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

Section 1. NRS 645B.0138 is hereby amended to read as follows:

645B.0138 1. A course of continuing education that is required pursuant to this chapter must meet the requirements set forth by the Commissioner by regulation.

2. The Commissioner shall adopt regulations:

(a) Relating to the requirements for courses of continuing education, including, without limitation, regulations relating to the providers and instructors of such courses, records kept for such courses, approval and revocation of approval of such courses, monitoring of such courses and disciplinary action taken regarding such courses.

(b) Allowing for the participation of representatives of the mortgage lending industry pertaining to the creation of regulations regarding such courses.

(c) Ensuring compliance with the requirements for registration with the Registry and any other applicable federal law.

3. The regulations adopted by the Commissioner pursuant to subsection 2 must not require a mortgage agent, mortgage banker or mortgage broker or an employee of a mortgage banker or mortgage broker who, pursuant to subsection 1 of section 6 of this act, is not required to register or renew with the Registry and who has not voluntarily registered or renewed with the Registry to complete any continuing education relating to residential mortgage loans.

Sec. 2. NRS 645B.051 is hereby amended to read as follows:

645B.051 1. Except as otherwise provided in ~~this section,~~ ***subsection 2,*** in addition to the requirements set forth in NRS 645B.050, to renew a license as a mortgage broker:



(a) If the licensee is a natural person, the licensee must submit to the Commissioner satisfactory proof that the licensee attended at least 10 hours of certified courses of continuing education during the 12 months immediately preceding the date on which the license expires.

(b) If the licensee is not a natural person, the licensee must submit to the Commissioner satisfactory proof that each natural person who supervises the daily business of the licensee attended at least 10 hours of certified courses of continuing education during the 12 months immediately preceding the date on which the license expires.

~~2. [The Commissioner may provide by regulation that if a person attends more than 10 hours of certified courses of continuing education during a 12-month period, the extra hours may be used to satisfy the requirement for the immediately following 12-month period and for that immediately following 12-month period only.]~~

In lieu of the continuing education requirements set forth in paragraph (a) or (b) of subsection 1, a licensee or any natural person who supervises the daily business of the licensee who, pursuant to subsection 1 of section 6 of this act, is not required to register or renew with the Registry and who has not voluntarily registered or renewed with the Registry must submit to the Commissioner satisfactory proof that he or she attended at least 5 hours of certified courses of continuing education during the 12 months immediately preceding the date on which the license expires. The hours of continuing education required by this subsection must include:

(a) At least 3 hours relating to the laws and regulations of this State; and

(b) At least 2 hours relating to ethics.

3. As used in this section, "certified course of continuing education" means a course of continuing education which relates to the mortgage industry or mortgage transactions and which meets the requirements set forth by the Commissioner by regulation pursuant to NRS 645B.0138.

Sec. 3. NRS 645B.175 is hereby amended to read as follows:

645B.175 1. Except as otherwise provided in this section, all money received by a mortgage broker and his or her mortgage agents from an investor to acquire ownership of or a beneficial interest in a loan secured by a lien on real property must:

(a) Be deposited in:

(1) An insured depository financial institution; or

(2) An escrow account which is controlled by a person who is independent of the parties and subject to instructions regarding the account which are approved by the parties.



* A B 2 8 3 R 1 *

(b) Be kept separate from money:

(1) Belonging to the mortgage broker in an account appropriately named to indicate that the money does not belong to the mortgage broker.

(2) Received pursuant to subsection 4.

2. Except as otherwise provided in this section, the amount held in trust pursuant to subsection 1 must be released:

(a) Upon completion of the loan, including proper recordation of the respective interests or release, or upon completion of the transfer of the ownership or beneficial interest therein, to the debtor or the debtor's designee less the amount due the mortgage broker for the payment of any fee or service charge;

(b) If the loan or the transfer thereof is not consummated, to each investor who furnished the money held in trust; or

(c) Pursuant to any instructions regarding the escrow account.

3. The amount held in trust pursuant to subsection 1 must not be released to the debtor or the debtor's designee unless:

(a) The amount released is equal to the total amount of money which is being loaned to the debtor for that loan, less the amount due the mortgage broker for the payment of any fee or service charge; and

(b) The mortgage broker has provided a written instruction to a title agent or title insurer requiring that a lender's policy of title insurance or appropriate title endorsement, which names as an insured each investor who owns a beneficial interest in the loan, be issued for the real property securing the loan.

4. Except as otherwise provided in this section, all money paid to a mortgage broker and his or her mortgage agents by a person in full or in partial payment of a loan secured by a lien on real property, must:

(a) Be deposited in:

(1) An insured depository financial institution; or

(2) An escrow account which is controlled by a person who is subject to instructions regarding the account which are approved by the parties.

(b) Be kept separate from money:

(1) Belonging to the mortgage broker in an account appropriately named to indicate that it does not belong to the mortgage broker.

(2) Received pursuant to subsection 1.

5. Except as otherwise provided in this section, the amount held in trust pursuant to subsection 4:

(a) Must be released, upon the deduction and payment of any fee or service charge due the mortgage broker, to each investor who



* A B 2 8 3 R 1 *

owns a beneficial interest in the loan in exact proportion to the beneficial interest that the investor owns in the loan; and

(b) Must not be released, in any proportion, to an investor who owns a beneficial interest in the loan, unless the amount described in paragraph (a) is also released to every other investor who owns a beneficial interest in the loan.

6. An investor may waive, in writing, the right to receive one or more payments, or portions thereof, that are released to other investors in the manner set forth in subsection 5. A mortgage broker or mortgage agent shall not act as the attorney-in-fact or the agent of an investor with respect to the giving of a written waiver pursuant to this subsection. Any such written waiver applies only to the payment or payments, or portions thereof, that are included in the written waiver and does not affect the right of the investor to:

(a) Receive the waived payment or payments, or portions thereof, at a later date; or

(b) Receive all other payments in full and in accordance with the provisions of subsection 5.

7. Upon reasonable notice, any mortgage broker described in this section shall:

(a) Account to any investor or debtor who has paid to the mortgage broker or his or her mortgage agents money that is required to be deposited in a trust account pursuant to this section; and

(b) Account to the Commissioner for all money which the mortgage broker and his or her mortgage agents have received from each investor or debtor and which the mortgage broker is required to deposit in a trust account pursuant to this section.

8. Money received by a mortgage broker and his or her mortgage agents pursuant to this section from a person who is not associated with the mortgage broker may be held in trust for not more than 45 days before an escrow account must be opened in connection with the loan. If, within this 45-day period, the loan or the transfer therefor is not consummated, the money must be returned within 24 hours. If the money is so returned, it may not be reinvested with the mortgage broker for at least 15 days.

9. If a mortgage broker or a mortgage agent receives any money pursuant to this section, the mortgage broker or mortgage agent, after the deduction and payment of any fee or service charge due the mortgage broker, shall not release the money to:

(a) Any person who does not have a contractual or legal right to receive the money; or

(b) Any person who has a contractual right to receive the money if the mortgage broker or mortgage agent knows or, in light of all the surrounding facts and circumstances, reasonably should know



* A B 2 8 3 R 1 *

1 that the person's contractual right to receive the money violates any
2 provision of this chapter or a regulation adopted pursuant to this
3 chapter.

4 10. If a mortgage broker maintains any accounts described in
5 subsection 1 or subsection 4, the mortgage broker shall, in addition
6 to the annual financial statement audited pursuant to NRS
7 645B.085, submit to the Commissioner each 6 calendar months a
8 financial statement concerning those trust accounts.

9 11. The Commissioner shall adopt regulations concerning the
10 form and content required for financial statements submitted
11 pursuant to subsection 10.

12 *12. Any duty, responsibility or obligation of a mortgage*
13 *broker pursuant to this chapter is not delegable or transferable to*
14 *an investor, and, if an investor only provides money to acquire*
15 *ownership of or a beneficial interest in a loan secured by a lien on*
16 *real property, no criminal or civil liability may be imposed on the*
17 *investor for any act or omission of a mortgage broker.*

18 **Sec. 4.** NRS 645B.430 is hereby amended to read as follows:

19 645B.430 1. A license as a mortgage agent issued pursuant to
20 NRS 645B.410 expires 1 year after the date the license is issued,
21 unless it is renewed. To renew a license as a mortgage agent, the
22 holder of the license must submit to the Commissioner each year, on
23 or before the date the license expires:

24 (a) An application for renewal;

25 (b) Except as otherwise provided in this section, satisfactory
26 proof that the holder of the license as a mortgage agent attended at
27 least 10 hours of certified courses of continuing education during
28 the 12 months immediately preceding the date on which the license
29 expires; and

30 (c) A renewal fee set by the Commissioner of not more than
31 \$170.

32 2. *In lieu of the continuing education requirement set forth*
33 *in paragraph (b) of subsection 1, the holder of a license as a*
34 *mortgage agent who, pursuant to subsection 1 of section 6 of this*
35 *act, is not required to register or renew with the Registry and who*
36 *has not voluntarily registered or renewed with the Registry must*
37 *submit to the Commissioner satisfactory proof that he or she*
38 *attended at least 5 hours of certified courses of continuing*
39 *education during the 12 months immediately preceding the date*
40 *on which the license expires. The hours of continuing education*
41 *required by this subsection must include:*

42 (a) *At least 3 hours relating to the laws and regulations of this*
43 *State; and*

44 (b) *At least 2 hours relating to ethics.*



* A B 2 8 3 R 1 *

3. If the holder of the license as a mortgage agent fails to submit any item required pursuant to subsection 1 *or* 2 to the Commissioner each year on or before the date the license expires, the license is cancelled. The Commissioner may reinstate a cancelled license if the holder of the license submits to the Commissioner:

- (a) An application for renewal;
- (b) The fee required to renew the license pursuant to this section; and
- (c) A reinstatement fee of \$75.

~~3.4~~ 4. To be issued a duplicate copy of a license as a mortgage agent, a person must make a satisfactory showing of its loss and pay a fee of \$10.

~~4.4~~ 5. To change the mortgage broker with whom the mortgage agent is associated, a person must pay a fee of \$10.

~~5.4~~ 6. Money received by the Commissioner pursuant to this section is in addition to any fee that must be paid to the Registry and must be deposited in the Fund for Mortgage Lending created by NRS 645F.270.

~~6. The Commissioner may provide by regulation that any hours of a certified course of continuing education attended during a 12-month period, but not needed to satisfy a requirement set forth in this section for the 12-month period in which the hours were taken, may be used to satisfy a requirement set forth in this section for a later 12-month period.~~

7. As used in this section, "certified course of continuing education" has the meaning ascribed to it in NRS 645B.051.

Sec. 5. NRS 645B.450 is hereby amended to read as follows:

645B.450 1. A person licensed as a mortgage agent pursuant to the provisions of NRS 645B.410 may not be associated with or employed by more than one *licensed or registered mortgage broker or mortgage banker or person who holds a certificate of exemption pursuant to NRS 645B.016* at the same time.

2. A mortgage broker, *mortgage banker or person who holds a certificate of exemption pursuant to NRS 645B.016* shall not associate with or employ a person as a mortgage agent or authorize a person to be associated with the mortgage broker, *mortgage banker or person who holds a certificate of exemption pursuant to NRS 645B.016* as a mortgage agent if the mortgage agent is not licensed with the Division pursuant to NRS 645B.410. *Before allowing a mortgage agent to act on its behalf, a mortgage broker, mortgage banker or person who holds a certificate of exemption pursuant to NRS 645B.016, must:*

(a) Enter its sponsorship of the mortgage agent with the Registry; or



* A B 2 8 3 R 1 *

1 (b) *If the mortgage agent is not required to be registered with*
2 *the Registry, notify the Division of its sponsorship of the mortgage*
3 *agent.*

4 3. If a mortgage agent terminates his or her association or
5 employment with a mortgage broker , *mortgage banker or person*
6 *who holds a certificate of exemption pursuant to NRS 645B.016*
7 for any reason, the mortgage broker , *mortgage banker or person*
8 *who holds a certificate of exemption pursuant to NRS 645B.016*
9 shall, not later than the third business day following the date of
10 termination:

11 (a) ~~[(Deliver)]~~ *Remove its sponsorship of the mortgage agent*
12 *from the Registry; or*

13 (b) *If the mortgage agent is not required to be registered with*
14 *the Registry, deliver to the Division and to the mortgage agent* ~~for~~
15 ~~send by certified mail to~~ *at the last known residence address of the*
16 mortgage agent a written statement which ~~advises the mortgage~~
17 ~~agent that the termination is being reported to the Division; and~~

18 ~~—(b) Deliver or send by certified mail to the Division:~~

19 ~~—(1) The license or license number of the mortgage agent;~~

20 ~~—(2) A written statement of the circumstances surrounding the~~
21 ~~termination; and~~

22 ~~—(3) A copy of the written statement that the mortgage broker~~
23 ~~delivers or mails to the mortgage agent pursuant to paragraph (a).]~~
24 *includes the name, address and license number of the mortgage*
25 *agent and a statement of the circumstances of the termination.*

26 **Sec. 6.** Chapter 645F of NRS is hereby amended by adding
27 thereto a new section to read as follows:

28 1. *A mortgage agent, mortgage banker or mortgage broker or*
29 *an employee of a mortgage banker or mortgage broker is not*
30 *required to register or renew with the Registry, or provide reports*
31 *of financial condition to the Registry, if the mortgage agent,*
32 *mortgage banker, mortgage broker or employee:*

33 (a) *Is not a residential mortgage loan originator or the*
34 *supervisor of a residential mortgage loan originator; and*

35 (b) *Is not required to register pursuant to the provisions of the*
36 *federal Secure and Fair Enforcement for Mortgage Licensing Act*
37 *of 2008.*

38 2. *A mortgage agent, mortgage banker or mortgage broker or*
39 *an employee of a mortgage banker or mortgage broker who,*
40 *pursuant to subsection 1, is not required to register or renew with*
41 *the Registry and who voluntarily registers or renews with the*
42 *Registry shall comply with all requirements of the federal Secure*
43 *and Fair Enforcement for Mortgage Licensing Act of 2008, and*
44 *any regulations adopted pursuant thereto.*



* A B 2 8 3 R 1 *

1 **3. As used in this section, "residential mortgage loan**
2 **originator" has the meaning ascribed to it in NRS 645B.01325.**

3 **Sec. 7.** NRS 645F.293 is hereby amended to read as follows:

4 645F.293 1. The Commissioner shall adopt regulations to
5 carry out the provisions of the federal Secure and Fair Enforcement
6 for Mortgage Licensing Act of 2008.

7 2. The regulations must include, without limitation:

8 (a) A method by which to allow for reporting regularly
9 violations of the relevant provisions of chapter 645B or 645E of
10 NRS, enforcement actions and other relevant information to the
11 Registry; and

12 (b) A process whereby a person may challenge information
13 reported to the Registry by the Commissioner.

14 **3. The regulations must not require a mortgage agent,**
15 **mortgage banker or mortgage broker or an employee of a**
16 **mortgage banker or mortgage broker to register with the Registry**
17 **if the mortgage agent, mortgage banker, mortgage broker or**
18 **employee is exempt from registration pursuant to subsection 1 of**
19 **section 6 of this act.**

20 **Sec. 8.** NRS 645E.292 is hereby repealed.

21 **Sec. 9.** This act becomes effective upon passage and approval.

TEXT OF REPEALED SECTION

645E.292 Duties of mortgage banker upon termination of mortgage agent. If a mortgage agent terminates his or her association or employment with a mortgage banker for any reason, the mortgage banker shall, not later than 3 business days following knowledge of the date of termination:

1. Deliver to the mortgage agent or send by certified mail to the last known residence address of the mortgage agent a written statement which advises the mortgage agent that the termination is being reported to the Division; and

2. Deliver or send by certified mail to the Division:

(a) The license or license number of the mortgage agent;

(b) A written statement of the circumstances surrounding the termination; and

(c) A copy of the written statement that the mortgage banker delivers or mails to the mortgage agent pursuant to subsection 1.

