

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.

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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 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; clarifying that certain investors who deposit money with a mortgage broker are exempt 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.



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 1.5, 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. **Sections 1 and 3** of this bill clarify that certain investors who deposit money with a mortgage broker are exempt 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. The Legislature hereby finds and declares that:

1. It is the intent of the Legislature to encourage investment in real property in this State;

2. It is the intent of the Legislature to ensure the integrity of transactions relating to investments in real property and the proper regulation of the actions of persons who facilitate such transactions, including, without limitation, mortgage brokers; and

3. It is the intent of the Legislature in enacting the amendatory provisions of NRS 645B.175, as amended by section 3 of this act, to clarify that the scope of the protection afforded to an investor under the existing provisions of chapter 645B of NRS includes protections from the imposition of any duty, responsibility, obligation or liability of a mortgage broker on an investor who only provides money to acquire, through the actions of a mortgage broker, ownership of or a beneficial interest in a loan secured by a lien on real property.

Sec. 1.5. 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:



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

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

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

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

10 645B.175 1. Except as otherwise provided in this section, all
11 money received by a mortgage broker and his or her mortgage
12 agents from an investor to acquire ownership of or a beneficial
13 interest in a loan secured by a lien on real property must:

14 (a) Be deposited in:

15 (1) An insured depository financial institution; or

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

19 (b) Be kept separate from money:

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

23 (2) Received pursuant to subsection 4.

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

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

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

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

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

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

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



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

5 (a) Be deposited in:

6 (1) An insured depository financial institution; or

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

10 (b) Be kept separate from money:

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

14 (2) Received pursuant to subsection 1.

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

17 (a) Must be released, upon the deduction and payment of any fee
18 or service charge due the mortgage broker, to each investor who
19 owns a beneficial interest in the loan in exact proportion to the
20 beneficial interest that the investor owns in the loan; and

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

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

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

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

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

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

43 (b) Account to the Commissioner for all money which the
44 mortgage broker and his or her mortgage agents have received from



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1 each investor or debtor and which the mortgage broker is required to
2 deposit in a trust account pursuant to this section.

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

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

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

17 (b) Any person who has a contractual right to receive the money
18 if the mortgage broker or mortgage agent knows or, in light of all
19 the surrounding facts and circumstances, reasonably should know
20 that the person's contractual right to receive the money violates any
21 provision of this chapter or a regulation adopted pursuant to this
22 chapter.

23 10. If a mortgage broker maintains any accounts described in
24 subsection 1 or subsection 4, the mortgage broker shall, in addition
25 to the annual financial statement audited pursuant to NRS
26 645B.085, submit to the Commissioner each 6 calendar months a
27 financial statement concerning those trust accounts.

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

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

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

38 645B.430 1. A license as a mortgage agent issued pursuant to
39 NRS 645B.410 expires 1 year after the date the license is issued,
40 unless it is renewed. To renew a license as a mortgage agent, the
41 holder of the license must submit to the Commissioner each year, on
42 or before the date the license expires:

43 (a) An application for renewal;

44 (b) Except as otherwise provided in this section, satisfactory
45 proof that the holder of the license as a mortgage agent attended at



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1 least 10 hours of certified courses of continuing education during
2 the 12 months immediately preceding the date on which the license
3 expires; and

4 (c) A renewal fee set by the Commissioner of not more than
5 \$170.

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

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

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

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

25 (a) An application for renewal;

26 (b) The fee required to renew the license pursuant to this
27 section; and

28 (c) A reinstatement fee of \$75.

29 ~~{3-}~~ 4. To be issued a duplicate copy of a license as a mortgage
30 agent, a person must make a satisfactory showing of its loss and pay
31 a fee of \$10.

32 ~~{4-}~~ 5. To change the mortgage broker with whom the
33 mortgage agent is associated, a person must pay a fee of \$10.

34 ~~{5-}~~ 6. Money received by the Commissioner pursuant to this
35 section is in addition to any fee that must be paid to the Registry and
36 must be deposited in the Fund for Mortgage Lending created by
37 NRS 645F.270.

38 ~~{6- The Commissioner may provide by regulation that any~~
39 ~~hours of a certified course of continuing education attended during a~~
40 ~~12-month period, but not needed to satisfy a requirement set forth in~~
41 ~~this section for the 12-month period in which the hours were taken,~~
42 ~~may be used to satisfy a requirement set forth in this section for a~~
43 ~~later 12-month period.}~~

44 7. As used in this section, "certified course of continuing
45 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*

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

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

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

(b) *If the mortgage agent is not required to be registered with the Registry, deliver to the Division and to the mortgage agent* ~~for send by certified mail to~~ *at 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~~

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

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

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

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



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

3 **1. A mortgage agent, mortgage banker or mortgage broker or**
4 **an employee of a mortgage banker or mortgage broker is not**
5 **required to register or renew with the Registry, or provide reports**
6 **of financial condition to the Registry, if the mortgage agent,**
7 **mortgage banker, mortgage broker or employee:**

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

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

13 **2. A mortgage agent, mortgage banker or mortgage broker or**
14 **an employee of a mortgage banker or mortgage broker who,**
15 **pursuant to subsection 1, is not required to register or renew with**
16 **the Registry and who voluntarily registers or renews with the**
17 **Registry shall comply with all requirements of the federal Secure**
18 **and Fair Enforcement for Mortgage Licensing Act of 2008, and**
19 **any regulations adopted pursuant thereto.**

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

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

23 645F.293 1. The Commissioner shall adopt regulations to
24 carry out the provisions of the federal Secure and Fair Enforcement
25 for Mortgage Licensing Act of 2008.

26 2. The regulations must include, without limitation:

27 (a) A method by which to allow for reporting regularly
28 violations of the relevant provisions of chapter 645B or 645E of
29 NRS, enforcement actions and other relevant information to the
30 Registry; and

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

33 **3. The regulations must not require a mortgage agent,**
34 **mortgage banker or mortgage broker or an employee of a**
35 **mortgage banker or mortgage broker to register with the Registry**
36 **if the mortgage agent, mortgage banker, mortgage broker or**
37 **employee is exempt from registration pursuant to subsection 1 of**
38 **section 6 of this act.**

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

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



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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.

