

SENATE BILL NO. 47—COMMITTEE ON
COMMERCE, LABOR, AND ENERGY

(ON BEHALF OF THE DIVISION OF MORTGAGE LENDING)

PREFILED DECEMBER 20, 2012

Referred to Committee on Commerce, Labor, and Energy

SUMMARY—Makes various changes to provisions governing the regulation of the mortgage industry. (BDR 54-361)

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

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

AN ACT relating to mortgage lending; defining certain terms and revising certain definitions relating to mortgage lending; revising provisions exempting certain nonprofit agencies and organizations from the licensing requirements of mortgage brokers and mortgage agents; revising provisions governing the renewal of a license as a mortgage agent; revising provisions prohibiting certain acts by mortgage brokers and mortgage agents; revising provisions exempting certain attorneys from the licensing requirements of foreclosure consultants and foreclosure purchasers; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law does not define the term “employee” with respect to a mortgage agent who is required to be employed by certain persons under certain circumstances. (Chapter 645B of NRS) **Section 1** of this bill defines the term “employee” in the same manner that the term is defined under federal law in the context of mortgage lending. (12 C.F.R. § 1008 et seq.) **Sections 3 and 4** of this bill revise the definitions of the terms “licensee” and “residential mortgage loan originator” for the purposes of the statutory provisions governing the licensing and regulation of mortgage brokers and mortgage agents. (NRS 645B.0123, 645B.01325)

Existing law exempts certain nonprofit agencies and organizations from the statutory provisions governing mortgage brokers and mortgage agents. (NRS 645B.015) **Section 5** of this bill requires such nonprofit agencies and organizations



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to maintain tax exempt status under section 501(c)(3) of the Internal Revenue Code of 1986.

Existing law prohibits a mortgage agent from providing any services of a mortgage agent unless he or she meets certain criteria. (NRS 645B.400) **Section 6** of this bill clarifies the employment, association and sponsorship requirements that a mortgage agent must satisfy under certain circumstances.

Existing law establishes procedures for the renewal of a license as a mortgage agent. (NRS 645B.430) **Section 7** of this bill clarifies the circumstances under which the Commissioner of Mortgage Lending may renew a license.

Sections 8-10 of this bill revise existing law to provide that a mortgage agent must be under the control, in addition to the reasonable supervision, of mortgage brokers and mortgage bankers who employ the mortgage agent. (NRS 645B.460, 645B.670, 645E.291) **Sections 8 and 10** also remove the discretion of a mortgage broker or a mortgage banker to establish written or oral policies and procedures for mortgage agents, and instead require the establishment of written policies and procedures. **Section 9** also: (1) prohibits a mortgage broker from paying any remuneration to a mortgage agent under certain circumstances; and (2) prohibits a mortgage agent from receiving any remuneration for his or her services as a mortgage agent under certain circumstances.

Existing law exempts certain attorneys from being licensed as a foreclosure consultant or foreclosure purchaser. (NRS 645F.380) **Section 11** of this bill provides that such attorneys must be licensed to practice law in this State and not be engaged in a practice comprised primarily of providing a covered service to his or her clients.

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

Section 1. Chapter 645B of NRS is hereby amended by adding thereto a new section to read as follows:

"Employee" means a natural person:

1. Whose manner and means of performance of work are subject to the right of control of, or are controlled by, another person; and

2. Whose compensation for federal income tax purposes is reported, or required to be reported, on Form W-2 issued by the controlling person.

Sec. 2. NRS 645B.010 is hereby amended to read as follows:

645B.010 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 645B.0104 to 645B.0135, inclusive, ***and section 1 of this act*** have the meanings ascribed to them in those sections.

Sec. 3. NRS 645B.0123 is hereby amended to read as follows:

645B.0123 "Licensee" means a person who is licensed ***or required to be licensed*** as a mortgage broker pursuant to this chapter. The term does not include a person issued a license as a mortgage agent pursuant to NRS 645B.410 ***H who is acting properly within the scope of that license.***



1 **Sec. 4.** NRS 645B.01325 is hereby amended to read as
2 follows:

3 645B.01325 “Residential mortgage loan originator” means a
4 natural person who takes a residential mortgage loan application or
5 offers or negotiates terms of a residential mortgage loan for
6 compensation or other pecuniary gain. The term does not include:

7 1. A *loan processor, underwriter or other natural* person who
8 performs clerical or ministerial tasks as an employee at the direction
9 of and subject to the supervision and instruction of a person licensed
10 or exempt from licensing under this chapter, unless the person who
11 performs such clerical or ministerial tasks is an independent
12 contractor; or

13 2. A person solely involved in extensions of credit relating to
14 timeshare plans, as that term is defined in 11 U.S.C. § 101(53D).

15 **Sec. 5.** NRS 645B.015 is hereby amended to read as follows:

16 645B.015 Except as otherwise provided in NRS 645B.016, the
17 Secure and Fair Enforcement for Mortgage Licensing Act of 2008,
18 12 U.S.C. §§ 5101 et seq., and any regulations adopted pursuant
19 thereto and other applicable law, the provisions of this chapter do
20 not apply to:

21 1. Any person doing business under the laws of this State, any
22 other state or the United States relating to banks, savings banks,
23 trust companies, savings and loan associations, industrial loan
24 companies, credit unions, thrift companies or insurance companies,
25 including, without limitation, a subsidiary or a holding company of
26 such a bank, company, association or union.

27 2. A real estate investment trust, as defined in 26 U.S.C. § 856,
28 unless the business conducted in this State is not subject to
29 supervision by the regulatory authority of the other jurisdiction, in
30 which case licensing pursuant to this chapter is required.

31 3. An employee benefit plan, as defined in 29 U.S.C. §
32 1002(3), if the loan is made directly from money in the plan by the
33 plan’s trustee.

34 4. An attorney at law rendering services in the performance of
35 his or her duties as an attorney at law.

36 5. A real estate broker rendering services in the performance of
37 his or her duties as a real estate broker.

38 6. Any person doing any act under an order of any court.

39 7. Any one natural person, or husband and wife, who provides
40 money for investment in commercial loans secured by a lien on real
41 property, on his or her own account, unless such a person makes a
42 loan secured by a lien on real property using his or her own money
43 and assigns all or a part of his or her interest in the loan to another
44 person, other than his or her spouse or child, within 3 years after the



1 date on which the loan is made or the deed of trust is recorded,
2 whichever occurs later.

3 8. A natural person who only offers or negotiates terms of a
4 residential mortgage loan:

5 (a) With or on behalf of an immediate family member of the
6 person; or

7 (b) Secured by a dwelling that served as the person's residence.

8 9. Agencies of the United States and of this State and its
9 political subdivisions, including the Public Employees' Retirement
10 System.

11 10. A seller of real property who offers credit secured by a
12 mortgage of the property sold.

13 11. A nonprofit agency or organization:

14 (a) Which provides self-help housing for a borrower who has
15 provided part of the labor to construct the dwelling securing the
16 borrower's loan;

17 (b) Which does not charge or collect origination fees in
18 connection with the origination of residential mortgage loans;

19 (c) Which only makes residential mortgage loans at an interest
20 rate of 0 percent per annum;

21 (d) Whose volunteers, if any, do not receive compensation for
22 their services in the construction of a dwelling; ~~and~~

23 (e) Which does not profit from the sale of a dwelling to a
24 borrower ~~and~~; and

25 *(f) Which maintains tax-exempt status under section 501(c)(3)*
26 *of the Internal Revenue Code of 1986, 26 U.S.C. § 501(c)(3).*

27 12. A housing counseling agency approved by the United
28 States Department of Housing and Urban Development.

29 **Sec. 6.** NRS 645B.400 is hereby amended to read as follows:

30 645B.400 A person shall not act as or provide any of the
31 services of a mortgage agent or otherwise engage in, carry on or
32 hold himself or herself out as engaging in or carrying on the
33 activities of a mortgage agent unless the person:

34 1. Has a license as a mortgage agent issued pursuant to
35 NRS 645B.410.

36 2. Is :

37 *(a) If the person is not a loan processor who is an independent*
38 *contractor, an employee of ~~for associated with~~ a mortgage broker*
39 *or mortgage banker ~~and~~; or*

40 *(b) An employee of or associated with a person who holds a*
41 *certificate of exemption pursuant to NRS 645B.016.*

42 3. If the person is required to register with the Registry ~~is~~ :

43 *(a) Is an employee of and whose sponsorship has been entered*
44 *with the Registry by a mortgage broker, mortgage banker or*



1 *person who holds a certificate of exemption pursuant to NRS*
2 *645B.016 as required by subsection 2 of NRS 645B.450; and*

3 *(b) Is* registered with and provides any identifying number
4 issued by the Registry.

5 **Sec. 7.** NRS 645B.430 is hereby amended to read as follows:

6 645B.430 1. A license as a mortgage agent issued pursuant to
7 NRS 645B.410 expires each year on December 31, unless it is
8 renewed. To renew a license as a mortgage agent, the holder of the
9 license must continue to meet the requirements of subsection 3 of
10 NRS 645B.410 and must submit to the Commissioner on or after
11 November 1 and on or before December 31 of each year, or on a
12 date otherwise specified by the Commissioner by regulation:

13 (a) An application for renewal;

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

19 (c) A renewal fee set by the Commissioner of not more than
20 \$170.

21 2. In lieu of the continuing education requirement set forth in
22 paragraph (b) of subsection 1, the holder of a license as a mortgage
23 agent who, pursuant to subsection 1 of NRS 645F.267, is not
24 required to register or renew with the Registry and who has not
25 voluntarily registered or renewed with the Registry must submit to
26 the Commissioner satisfactory proof that he or she attended at least
27 5 hours of certified courses of continuing education during the 12
28 months immediately preceding the date on which the license
29 expires. The hours of continuing education required by this
30 subsection must include:

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

33 (b) At least 2 hours relating to ethics.

34 3. If the holder of the license as a mortgage agent fails to
35 submit any item required pursuant to subsection 1 or 2 to the
36 Commissioner on or after November 1 and on or before
37 December 31 of any year, unless a different date is specified by the
38 Commissioner by regulation, the license is cancelled as of
39 December 31 of that year. The Commissioner may reinstate a
40 cancelled license if the holder of the license submits to the
41 Commissioner on or before February 28 of the following year:

42 (a) An application for renewal;

43 (b) The fee required to renew the license pursuant to this
44 section; and

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



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

5. 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 Account for Mortgage Lending created by NRS 645F.270.

6. The Commissioner may require a licensee to submit an item or pay a fee required by this section directly to the Division or, if the licensee is required to register or voluntarily registers with the Registry, to the Division through the Registry.

7. *Nothing in this section shall be construed as preventing the Commissioner from renewing the license of a mortgage agent who does not satisfy the criteria set forth in paragraph (e) of subsection 1 of NRS 645B.410 at the time of the application for renewal.*

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

Sec. 8. NRS 645B.460 is hereby amended to read as follows:

645B.460 1. A mortgage broker shall exercise reasonable supervision *and control* over the activities of his or her mortgage agents and must also be licensed as a mortgage agent if required pursuant to NRS 645B.405. Such reasonable supervision *and control* must include, as appropriate:

(a) The establishment of written ~~for—oral~~ policies and procedures for the mortgage agents;

(b) The establishment of a system to review, oversee and inspect the activities of the mortgage agents, including, without limitation:

(1) Transactions handled by the mortgage agents pursuant to this chapter;

(2) Communications between the mortgage agents and a party to such a transaction;

(3) Documents prepared by the mortgage agents that may have a material effect upon the rights or obligations of a party to such a transaction; and

(4) The handling by the mortgage agents of any fee, deposit or money paid to the mortgage broker or the mortgage agents or held in trust by the mortgage broker or the mortgage agents pursuant to this chapter; and

(c) The establishment of a system of reporting to the Division of any fraudulent activity engaged in by any of the mortgage agents.

2. The Commissioner shall allow a mortgage broker to take into consideration the total number of mortgage agents associated with or employed by the mortgage broker when the mortgage broker determines the form and extent of the policies and procedures for those mortgage agents and the system to review, oversee and inspect the activities of those mortgage agents.



3. The Commissioner may adopt regulations prescribing standards for determining whether a mortgage broker has exercised reasonable supervision *and control* over the activities of a mortgage agent pursuant to this section.

Sec. 9. NRS 645B.670 is hereby amended to read as follows:

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

1. For each violation committed by an applicant for a license issued pursuant to this chapter, whether or not the applicant is issued a license, the Commissioner may impose upon the applicant an administrative fine of not more than \$25,000 if the applicant:

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

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

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

2. For each violation committed by a mortgage broker, the Commissioner may impose upon the mortgage broker an administrative fine of not more than \$25,000, may suspend, revoke or place conditions upon the mortgage broker's license, or may do both, if the mortgage broker, whether or not acting as such:

(a) Is insolvent;

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

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

(d) Is in such financial condition that the mortgage broker cannot continue in business with safety to his or her customers;

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

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

(g) Has knowingly made or caused to be made to the Commissioner any false representation of material fact or has suppressed or withheld from the Commissioner any information which the mortgage broker possesses and which, if submitted by the



1 mortgage broker, would have rendered the mortgage broker
2 ineligible to be licensed pursuant to the provisions of this chapter;

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

5 (i) Has refused to permit an examination by the Commissioner
6 of his or her books and affairs or has refused or failed, within a
7 reasonable time, to furnish any information or make any report that
8 may be required by the Commissioner pursuant to the provisions of
9 this chapter or a regulation adopted pursuant to this chapter;

10 (j) Has been convicted of, or entered or agreed to enter a plea of
11 guilty or nolo contendere to, a felony in a domestic, foreign or
12 military court within the 7 years immediately preceding the date of
13 the application, or at any time if such felony involved an act of
14 fraud, dishonesty or a breach of trust, moral turpitude or money
15 laundering;

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

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

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

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

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

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

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

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

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

43 (1) Had been convicted of, or entered or agreed to enter a
44 plea of guilty or nolo contendere to, a felony in a domestic, foreign
45 or military court within the 7 years immediately preceding the date



1 of application, or at any time if such felony involved an act of fraud,
2 dishonesty or a breach of trust, moral turpitude or money
3 laundering; or

4 (2) Had a license or registration as a mortgage agent,
5 mortgage banker, mortgage broker or residential mortgage loan
6 originator revoked in this State or any other jurisdiction or had a
7 financial services license or registration revoked within the
8 immediately preceding 10 years;

9 (t) Has violated NRS 645C.557; ~~for~~

10 (u) Has failed to pay a tax as required pursuant to the provisions
11 of chapter 363A of NRS ~~§~~ ; or

12 (v) *Has, directly or indirectly, paid any commission, fees,*
13 *points or any other compensation as remuneration for the services*
14 *of a mortgage agent to a person other than a mortgage agent who:*

15 (1) *Is an employee of or associated with the mortgage*
16 *broker; or*

17 (2) *If the mortgage agent is required to register with the*
18 *Registry, is an employee of and whose sponsorship has been*
19 *entered with the Registry by the mortgage broker as required by*
20 *subsection 2 of NRS 645B.450.*

21 3. For each violation committed by a mortgage agent, the
22 Commissioner may impose upon the mortgage agent an
23 administrative fine of not more than \$25,000, may suspend, revoke
24 or place conditions upon the mortgage agent's license, or may do
25 both, if the mortgage agent, whether or not acting as such:

26 (a) Is grossly negligent or incompetent in performing any act for
27 which the mortgage agent is required to be licensed pursuant to the
28 provisions of this chapter;

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

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

35 (d) Has knowingly made or caused to be made to the
36 Commissioner any false representation of material fact or has
37 suppressed or withheld from the Commissioner any information
38 which the mortgage agent possesses and which, if submitted by the
39 mortgage agent, would have rendered the mortgage agent ineligible
40 to be licensed pursuant to the provisions of this chapter;

41 (e) Has been convicted of, or entered or agreed to enter a plea of
42 guilty or nolo contendere to, a felony in a domestic, foreign or
43 military court within the 7 years immediately preceding the date of
44 the application, or at any time if such felony involved an act of



1 fraud, dishonesty or a breach of trust, moral turpitude or money
2 laundering;

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

6 (g) Has commingled the money or other property of a client
7 with his or her own or has converted the money or property of
8 others to his or her own use;

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

11 (i) Has violated NRS 645C.557;

12 (j) Has repeatedly violated the policies and procedures of the
13 mortgage broker with whom the mortgage agent is associated or by
14 whom he or she is employed; ~~for~~

15 (k) *Has, directly or indirectly, received any commission, fees,*
16 *points or any other compensation as remuneration for his or her*
17 *services as a mortgage agent:*

18 *(1) From a person other than the mortgage broker with*
19 *whom the mortgage agent is associated or by whom he or she is*
20 *employed; or*

21 *(2) If the mortgage agent is required to be registered with*
22 *the Registry, from a person other than the mortgage broker by*
23 *whom the mortgage agent is employed and on whose behalf*
24 *sponsorship was entered as required by subsection 2 of NRS*
25 *645B.450; or*

26 (l) Has violated any provision of this chapter, a regulation
27 adopted pursuant to this chapter or an order of the Commissioner or
28 has assisted or offered to assist another person to commit such a
29 violation.

30 **Sec. 10.** NRS 645E.291 is hereby amended to read as follows:

31 645E.291 1. A mortgage banker shall exercise reasonable
32 supervision *and control* over the activities of his or her mortgage
33 agents and must also be licensed as a mortgage agent if required
34 pursuant to NRS 645E.290. Such reasonable supervision *and*
35 *control* must include, as appropriate:

36 (a) The establishment of written ~~for~~~~oral~~ policies and
37 procedures for the mortgage agents;

38 (b) The establishment of a system to review, oversee and inspect
39 the activities of the mortgage agents, including, without limitation:

40 (1) Transactions handled by the mortgage agents pursuant to
41 this chapter;

42 (2) Communications between the mortgage agents and a
43 party to such a transaction;



(3) Documents prepared by the mortgage agents that may have a material effect upon the rights or obligations of a party to such a transaction; and

(4) The handling by the mortgage agents of any fee, deposit or money paid to the mortgage banker or the mortgage agents or held in trust by the mortgage banker or the mortgage agents pursuant to this chapter; and

(c) The establishment of a system of reporting to the Division of any fraudulent activity engaged in by any of the mortgage agents.

2. The Commissioner shall allow a mortgage banker to take into consideration the total number of mortgage agents associated with or employed by the mortgage banker when the mortgage banker determines the form and extent of the policies and procedures for those mortgage agents and the system to review, oversee and inspect the activities of those mortgage agents.

3. The Commissioner may adopt regulations prescribing standards for determining whether a mortgage banker has exercised reasonable supervision *and control* over the activities of a mortgage agent pursuant to this section.

Sec. 11. NRS 645F.380 is hereby amended to read as follows:

645F.380 The provisions of NRS 645F.300 to 645F.450, inclusive, do not apply to, and the terms "foreclosure consultant" and "foreclosure purchaser" do not include:

1. An attorney at law *licensed to practice in this State* rendering services in the performance of his or her duties as an attorney at law, unless the attorney at law is rendering those services in the course and scope of his or her employment by or other affiliation with a person who is licensed or required to be licensed pursuant to NRS 645F.390 ~~§~~ *or is otherwise engaging in a practice that is comprised primarily of providing a covered service to his or her clients;*

2. A provider of debt-management services registered pursuant to chapter 676A of NRS while providing debt-management services pursuant to chapter 676A of NRS;

3. A person or the authorized agent of a person acting under the provisions of a program sponsored by the Federal Government, this State or a local government, including, without limitation, the Department of Housing and Urban Development, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association or the Federal Home Loan Bank System;

4. A person who holds or is owed an obligation secured by a mortgage or other lien on a residence in foreclosure if the person performs services in connection with this obligation or lien and the obligation or lien did not arise as the result of or as part of a proposed foreclosure reconveyance;



1 5. Any person doing business under the laws of this State or of
2 the United States relating to banks, trust companies, savings and
3 loan associations, industrial loan and thrift companies, regulated
4 lenders, credit unions, insurance companies, or a mortgagee which
5 is a United States Department of Housing and Urban Development
6 approved mortgagee and any subsidiary or affiliate of those persons,
7 and any agent or employee of those persons while engaged in the
8 business of those persons;

9 6. A person, other than a person who is licensed pursuant to
10 NRS 645F.390, who is licensed pursuant to chapter 692A or any
11 chapter of title 54 of NRS while acting under the authority of the
12 license;

13 7. A nonprofit agency or organization that offers credit
14 counseling or advice to a homeowner of a residence in foreclosure
15 or a person in default on a loan; or

16 8. A judgment creditor of the homeowner whose claim accrued
17 before the recording of the notice of the pendency of an action for
18 foreclosure against the homeowner pursuant to NRS 14.010 or the
19 recording of the notice of default and election to sell pursuant to
20 NRS 107.080.

21 **Sec. 12.** This act becomes effective upon passage and
22 approval.

