

ASSEMBLY BILL NO. 51—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE SECRETARY OF STATE)

PREFILED DECEMBER 20, 2014

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to securities.
(BDR 7-449)

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 securities; requiring certain persons to complete training concerning identification of the suspected exploitation of an older person or vulnerable person; requiring broker-dealers and investment advisers to designate a person to whom a report of the suspected or known exploitation of an older person or vulnerable person may be made; authorizing the Administrator of the Securities Division of the Office of the Secretary of State to adopt regulations relating to the federal Jumpstart Our Business Startups Act; providing penalties; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law establishes the Uniform Securities Act which sets forth provisions governing the sale and purchase of securities in this State in a manner consistent with federal laws and regulations. (Chapter 90 of NRS) **Sections 2-9** of this bill require certain persons employed by broker-dealers and investment advisers to complete training concerning the identification and reporting of suspected exploitation of older persons and vulnerable persons. "Older persons" are defined in existing law as persons who are 60 years of age or older. "Vulnerable persons" are defined in existing law as persons who are 18 years of age or older who: (1) suffer from a condition of physical or mental incapacitation because of a development disability, organic brain damage or mental illness; or (2) have one or more physical or mental limitations that restrict the ability of the person to perform the normal activities of daily living. (NRS 200.5092) **Section 8** specifies which sales representatives, representatives of an investment adviser and officers and employees of broker-dealers or investment advisers must complete the training,



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when the training must be completed and the content of the training. **Section 9** requires each broker-dealer and investment adviser to designate a person to whom reports of suspected exploitation of an older person or vulnerable person may be made. The person so designated is then responsible for determining when a formal report must be reported to the appropriate agency.

Existing law authorizes the imposition or granting of certain actions and penalties against a person who has violated any provision of state law or a regulation or order of the Administrator of the Securities Division of the Office of the Secretary of State relating to securities, including civil penalties, restitution and costs of investigation and prosecution of such a violation. (NRS 90.630, 90.640, 90.650) **Sections 11-13** of this bill revise those provisions to include, if the violation was committed against an older person or vulnerable person, the imposition or granting of civil penalties, restitution and costs of investigation and prosecution in amounts equal to twice the amounts that would otherwise have been imposed or granted.

Section 10 of this bill authorizes the Administrator to adopt regulations consistent with the federal Jumpstart Our Business Startups Act (Pub. L. No. 112-106), including regulations relating to the creation and oversight of funding portals for the purchase of securities.

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

Section 1. Chapter 90 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 10, inclusive, of this act.

Sec. 2. *As used in sections 2 to 9, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 to 7, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 3. *“Designated reporter” means a person designated by a broker-dealer or investment adviser to receive reports of known or suspected exploitation of an older person or vulnerable person pursuant to section 9 of this act.*

Sec. 4. *“Exploitation” has the meaning ascribed to it in subsection 2 of NRS 200.5092.*

Sec. 5. *“Older person” has the meaning ascribed to it in subsection 5 of NRS 200.5092.*

Sec. 6. *“Reasonable cause to believe” has the meaning ascribed to it in NRS 200.50925.*

Sec. 7. *“Vulnerable person” has the meaning ascribed to it in subsection 7 of NRS 200.5092.*

Sec. 8. 1. *Each broker-dealer, investment adviser, sales representative, representative of an investment adviser and officer or employee of a broker-dealer or investment adviser shall complete training concerning the identification and reporting of the suspected exploitation of an older person or vulnerable person if he or she:*



(a) As part of his or her regular duties for a broker-dealer or investment adviser, comes into direct contact with an older person or vulnerable person;

(b) Reviews or approves the financial documents, records or transactions of an older person or vulnerable person in connection with the offer, sale or purchase of securities; or

(c) Offers advice as to the value or advisability of investing in, purchasing or selling securities to an older person or vulnerable person.

2. The training required pursuant to subsection 1 must be completed not later than 6 months after the sales representative, representative of the investment adviser or officer or employee is employed by a broker-dealer or investment adviser and every 2 years thereafter.

3. The training required pursuant to subsection 1 must include, without limitation:

(a) An explanation of the conduct which constitutes exploitation of an older person or vulnerable person;

(b) The manner in which exploitation of an older person or vulnerable person may be recognized;

(c) Information concerning the manner in which reports of exploitation of an older person or vulnerable person are investigated; and

(d) Instruction concerning when and how to report known or suspected exploitation of an older person or vulnerable person.

4. A sales representative, representative of an investment adviser or officer or employee of a broker-dealer or investment adviser who has observed or has knowledge of an incident that is directly related to a transaction or matter which is within his or her scope of practice and which reasonably appears to be exploitation of an older person or vulnerable person may report the known or suspected exploitation to a designated reporter pursuant to section 9 of this act.

Sec. 9. 1. Each broker-dealer and investment adviser shall designate a person or persons to whom a sales representative, representative of the investment adviser or officer or employee of the broker-dealer or investment adviser may report known or suspected exploitation of an older person or vulnerable person.

2. If a sales representative, representative of an investment adviser or officer or employee of a broker-dealer or investment adviser reports known or suspected exploitation of an older person to a designated reporter and, based on such a report or based on his or her own observations or knowledge, the designated reporter knows or has reasonable cause to believe that an older person has been exploited, the designated reporter shall:



(a) Except as otherwise provided in subsection 3, report the known or suspected exploitation of the older person to:

(1) The local office of the Aging and Disability Services Division of the Department of Health and Human Services;

(2) A police department or sheriff's office;

(3) The county's office for protective services, if one exists in the county where the suspected exploitation occurred; or

(4) A toll-free telephone service designated by the Aging and Disability Services Division; and

(b) Make such a report as soon as reasonably practicable.

3. If the designated reporter knows or has reasonable cause to believe that the exploitation of the older person involves an act or omission of the Aging and Disability Services Division, another division of the Department of Health and Human Services or a law enforcement agency, the designated reporter shall make the report to an agency other than the agency alleged to have committed the act or omission.

4. If a sales representative, representative of an investment adviser or officer or employee of a broker-dealer or investment adviser reports known or suspected exploitation of a vulnerable person to a designated reporter and, based on such a report or based on his or her own observations or knowledge, the designated reporter knows or has reasonable cause to believe that a vulnerable person has been exploited, the designated reporter shall:

(a) Except as otherwise provided in subsection 5, report the known or suspected exploitation of the vulnerable person to a law enforcement agency; and

(b) Make such a report as soon as reasonably practicable.

5. If the designated reporter knows or has reasonable cause to believe that the exploitation of the vulnerable person involves an act or omission of a law enforcement agency, the designated reporter shall make the report to a law enforcement agency other than the agency alleged to have committed the act or omission.

6. In accordance with the provisions of subsection 3 of NRS 239A.070, in making a report pursuant to this section, a designated reporter may:

(a) Disclose any fact or information that forms the basis of the determination that the designated reporter knows or has reasonable cause to believe that an older person or vulnerable person has been exploited, including, without limitation, the identity of any person believed to be involved in the exploitation of the older person or vulnerable person; and



(b) Provide any financial records or other documentation relating to the exploitation of the older person or vulnerable person.

7. A sales representative, representative of an investment adviser or officer or employee of a broker-dealer or investment adviser and the designated reporter are entitled to the immunity from liability set forth in NRS 200.5096 for making a report in good faith.

Sec. 10. 1. The Administrator may adopt, by regulation or order, any filing requirements, registration exemptions and licensing requirements which are consistent with the Jumpstart Our Business Startups Act, Public Law 112-106, and any regulation adopted pursuant thereto by the United States Securities and Exchange Commission, including, without limitation, regulations relating to the creation and oversight of funding portals.

2. As used in this section, "funding portal" has the meaning ascribed to it in section 3(a)(80) of the Securities Exchange Act of 1934, as amended, 15 U.S.C. §§ 78a et seq.

Sec. 11. NRS 90.630 is hereby amended to read as follows:

90.630 1. If the Administrator reasonably believes, whether or not based upon an investigation conducted under NRS 90.620, that:

(a) The sale of a security is subject to registration under this chapter and the security is being offered or has been offered or sold by the issuer or another person in violation of NRS 90.460; or

(b) A person is acting as a broker-dealer or investment adviser in violation of NRS 90.310 or 90.330,

➤ the Administrator, in addition to any specific power granted under this chapter and subject to compliance with the requirements of NRS 90.820, may issue, without a prior hearing, a summary order against the person engaged in the prohibited activities, directing the person to desist and refrain from further activity until the security is registered or the person is licensed under this chapter. The summary order to cease and desist must state the section of this chapter or regulation or order of the Administrator under this chapter which the Administrator reasonably believes has been or is being violated.

2. If the Administrator reasonably believes, whether or not based upon an investigation conducted under NRS 90.620, that a person has violated this chapter or a regulation or order of the Administrator under this chapter, the Administrator, in addition to any specific power granted under this chapter, after giving notice by registered or certified mail and conducting a hearing in an administrative proceeding, unless the right to notice and hearing is waived by the person against whom the sanction is imposed, may:



1 (a) Issue an order against the person to cease and desist;
2 (b) Censure the person if he or she is a licensed broker-dealer,
3 sales representative, investment adviser or representative of an
4 investment adviser;

5 (c) Bar or suspend the person from association with a licensed
6 broker-dealer or investment adviser in this State;

7 (d) Issue an order against an applicant, licensed person or other
8 person who willfully violates this chapter, imposing a civil penalty
9 of not more than \$25,000 for each violation ~~or~~ *or , if the violation*
10 *was committed against an older person or vulnerable person, a*
11 *civil penalty equal to twice the amount of the civil penalty that*
12 *would otherwise have been imposed pursuant to this paragraph,*
13 *not to exceed \$50,000 for each violation; or*

14 (e) Initiate one or more of the actions specified in NRS 90.640.

15 3. If the person to whom the notice is addressed pursuant to
16 subsection 2 does not request a hearing within 45 days after receipt
17 of the notice, the person waives the right to a hearing and the
18 Administrator shall issue a permanent order. If a hearing is
19 requested, the Administrator shall set the matter for hearing not less
20 than 15 days nor more than 60 days after the Administrator receives
21 the request for a hearing. The Administrator shall promptly notify
22 the parties by registered or certified mail of the time and place set
23 for the hearing.

24 4. Imposition of the sanctions under this section is limited as
25 follows:

26 (a) If the Administrator revokes the license of a broker-dealer,
27 sales representative, investment adviser or representative of an
28 investment adviser or bars a person from association with a licensed
29 broker-dealer or investment adviser under this section or NRS
30 90.420, the imposition of that sanction precludes imposition of a
31 civil penalty under subsection 2; and

32 (b) The imposition by the Administrator of one or more
33 sanctions under subsection 2 with respect to a specific violation
34 precludes the Administrator from later imposing any other sanctions
35 under paragraphs (a) to (d), inclusive, of subsection 2 with respect to
36 the violation.

37 5. For the purposes of determining any sanction to be imposed
38 pursuant to paragraphs (a) to (d), inclusive, of subsection 2, the
39 Administrator shall consider, among other factors, the frequency
40 and persistence of the conduct constituting a violation of this
41 chapter, or a regulation or order of the Administrator under this
42 chapter, the number of persons adversely affected by the conduct
43 and the resources of the person committing the violation.

44 6. If a sanction is imposed pursuant to this section,
45 reimbursement for the costs of the proceeding, including



investigative costs and attorney's fees incurred, may be ordered and recovered by the Administrator. Money recovered for reimbursement of the investigative costs and attorney's fees must be deposited in the State General Fund for credit to the Secretary of State's Operating General Fund Budget Account.

7. As used in this section:

(a) "Exploitation" has the meaning ascribed to it in subsection 2 of NRS 200.5092.

(b) "Older person" has the meaning ascribed to it in subsection 5 of NRS 200.5092.

(c) "Vulnerable person" has the meaning ascribed to it in subsection 7 of NRS 200.5092.

Sec. 12. NRS 90.640 is hereby amended to read as follows:

90.640 1. Upon a showing by the Administrator that a person has violated or is about to violate this chapter, or a regulation or order of the Administrator under this chapter, the appropriate district court may grant or impose one or more of the following appropriate legal or equitable remedies:

(a) Upon a showing that a person has violated this chapter, or a regulation or order of the Administrator under this chapter, the court may singly or in combination:

(1) Issue a temporary restraining order, permanent or temporary prohibitory or mandatory injunction or a writ of prohibition or mandamus;

(2) Impose a civil penalty of not more than \$25,000 for each violation ~~or~~ *or, if the violation was committed against an older person or vulnerable person, a civil penalty equal to twice the amount of the civil penalty that would otherwise have been imposed pursuant to this subparagraph, not to exceed \$50,000 for each violation;*

(3) Issue a declaratory judgment;

(4) Order restitution to investors ~~or~~ *which, if the violation was committed against an older person or vulnerable person, must be in an amount equal to twice the amount of restitution that would otherwise have been ordered pursuant to this subparagraph;*

(5) Provide for the appointment of a receiver or conservator for the defendant or the defendant's assets;

(6) Order payment of the Division's investigative costs ~~or~~ *which, if the violation was committed against an older person or vulnerable person, must be in an amount equal to twice the amount of the Division's investigative costs that would otherwise have been ordered for payment pursuant to this subparagraph; or*

(7) Order such other relief as the court deems just.



(b) Upon a showing that a person is about to violate this chapter, or a regulation or order of the Administrator under this chapter, a court may issue:

- (1) A temporary restraining order;
- (2) A temporary or permanent injunction; or
- (3) A writ of prohibition or mandamus.

2. In determining the appropriate relief to grant, the court shall consider enforcement actions taken and sanctions imposed by the Administrator under NRS 90.630 in connection with the transactions constituting violations of this chapter or a regulation or order of the Administrator under this chapter. If a remedial action is imposed pursuant to this section, the costs of the proceeding, including investigative costs and attorney's fees, may be recovered by the Administrator.

3. The court shall not require the Administrator to post a bond in an action under this section.

4. Upon a showing by the administrator or securities agency of another state that a person has violated the securities act of that state or a regulation or order of the administrator or securities agency of that state, the appropriate district court may grant, in addition to any other legal or equitable remedies, one or more of the following remedies:

(a) Appointment of a receiver, conservator or ancillary receiver or conservator for the defendant or the defendant's assets located in this State; or

(b) Other relief as the court deems just.

5. As used in this section:

(a) "Exploitation" has the meaning ascribed to it in subsection 2 of NRS 200.5092.

(b) "Older person" has the meaning ascribed to it in subsection 5 of NRS 200.5092.

(c) "Vulnerable person" has the meaning ascribed to it in subsection 7 of NRS 200.5092.

Sec. 13. NRS 90.650 is hereby amended to read as follows:

90.650 1. A person who willfully violates:

(a) A provision of this chapter, except NRS 90.600 ~~H~~ **and sections 2 to 9, inclusive, of this act** or who violates NRS 90.600 knowing that the statement made is false or misleading in any material respect;

(b) A regulation adopted pursuant to this chapter; or

(c) An order denying, suspending or revoking the effectiveness of registration or an order to cease and desist issued by the Administrator pursuant to this chapter,

➤ is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less



1 than 1 year and a maximum term of not more than 20 years, or by a
2 fine of not more than \$500,000, or by both fine and imprisonment,
3 for each violation. In addition to any other penalty, the court shall
4 order the person to pay restitution and may order the person to repay
5 the costs of investigation and prosecution incurred by the Division
6 and the Office of the Attorney General. *If the violation was*
7 *committed against an older person or vulnerable person, any*
8 *restitution and costs of investigation and prosecution imposed by*
9 *the court must be in an amount equal to twice the amount that*
10 *would otherwise have been imposed by the court.* Money recovered
11 for reimbursement of the costs of investigation and prosecution must
12 be deposited in the State General Fund for credit to the Secretary of
13 State's Operating General Fund Budget Account.

14 2. A person convicted of violating a regulation or order under
15 this chapter may be fined, but must not be imprisoned, if the person
16 proves lack of knowledge of the regulation or order.

17 3. This chapter does not limit the power of the State to punish a
18 person for conduct which constitutes a crime under other law.

19 **Sec. 14.** This act becomes effective on July 1, 2015.

