

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; 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 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. (Deleted by amendment.)

Sec. 3. (Deleted by amendment.)

Sec. 4. (Deleted by amendment.)

Sec. 5. (Deleted by amendment.)

Sec. 6. (Deleted by amendment.)

Sec. 7. (Deleted by amendment.)

Sec. 8. (Deleted by amendment.)

Sec. 9. (Deleted by amendment.)

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



1 person has violated this chapter or a regulation or order of the
2 Administrator under this chapter, the Administrator, in addition to
3 any specific power granted under this chapter, after giving notice by
4 registered or certified mail and conducting a hearing in an
5 administrative proceeding, unless the right to notice and hearing is
6 waived by the person against whom the sanction is imposed, may:

7 (a) Issue an order against the person to cease and desist;

8 (b) Censure the person if he or she is a licensed broker-dealer,
9 sales representative, investment adviser or representative of an
10 investment adviser;

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

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

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

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

30 4. Imposition of the sanctions under this section is limited as
31 follows:

32 (a) If the Administrator revokes the license of a broker-dealer,
33 sales representative, investment adviser or representative of an
34 investment adviser or bars a person from association with a licensed
35 broker-dealer or investment adviser under this section or NRS
36 90.420, the imposition of that sanction precludes imposition of a
37 civil penalty under subsection 2; and

38 (b) The imposition by the Administrator of one or more
39 sanctions under subsection 2 with respect to a specific violation
40 precludes the Administrator from later imposing any other sanctions
41 under paragraphs (a) to (d), inclusive, of subsection 2 with respect to
42 the violation.

43 5. For the purposes of determining any sanction to be imposed
44 pursuant to paragraphs (a) to (d), inclusive, of subsection 2, the
45 Administrator shall consider, among other factors, the frequency



1 and persistence of the conduct constituting a violation of this
2 chapter, or a regulation or order of the Administrator under this
3 chapter, the number of persons adversely affected by the conduct
4 and the resources of the person committing the violation.

5 6. If a sanction is imposed pursuant to this section,
6 reimbursement for the costs of the proceeding, including
7 investigative costs and attorney's fees incurred, may be ordered and
8 recovered by the Administrator. Money recovered for
9 reimbursement of the investigative costs and attorney's fees must be
10 deposited in the State General Fund for credit to the Secretary of
11 State's Operating General Fund Budget Account.

12 **7. As used in this section:**

13 *(a) "Exploitation" has the meaning ascribed to it in subsection*
14 *2 of NRS 200.5092.*

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

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

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

20 90.640 1. Upon a showing by the Administrator that a person
21 has violated or is about to violate this chapter, or a regulation or
22 order of the Administrator under this chapter, the appropriate district
23 court may grant or impose one or more of the following appropriate
24 legal or equitable remedies:

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

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

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

37 (3) Issue a declaratory judgment;

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

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



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

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

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

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

