

Amendment No. 230

Assembly Amendment to Assembly Bill No. 51	(BDR 7-449)
Proposed by: Assembly Committee on Judiciary	
Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes	

ASSEMBLY ACTION			Initial and Date	SENATE ACTION			Initial and Date		
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

MKM/DY



Date: 4/8/2015

A.B. No. 51—Revises provisions relating to securities. (BDR 7-449)



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 ~~broker-dealers and investment advisers to provide training to~~ certain persons to complete training concerning ~~identifying the~~ identification of the suspected exploitation of an older person or vulnerable person; requiring ~~certain persons who work for~~ 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 ~~provide~~ complete training ~~to certain persons~~ 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 ~~receive~~ complete the training, when the training must be ~~provided~~ completed and the content of the training. ~~Section 8 further requires those persons to report incidents that reasonably appear to be exploitation of an older person or vulnerable person.~~ **Section 9** requires each broker-dealer and investment adviser to designate a person to whom ~~such~~ reports ~~must~~ 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 ~~and~~, investment adviser, sales representative, representative of an investment adviser and officer or employee of a broker-dealer or investment adviser shall provide complete training concerning the identification and reporting of the suspected exploitation of an older person or vulnerable person ~~to each sales representative, representative of the investment adviser and officer and employee of the broker dealer or investment adviser who may~~ if he or she;*

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

(b) ~~Review or approval~~ 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) ~~Offer~~ 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 ~~provided as soon as reasonably practicable, but~~ completed not later than 6 months after the sales*

1 *representative, representative of the investment adviser or officer or employee is*
2 *employed by ~~the~~ a broker-dealer or investment adviser ~~for~~ and every 2 years*
3 *thereafter.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (a) Except as otherwise provided in subsection 5, report the known or
2 suspected exploitation of the vulnerable person to a law enforcement agency; and
3 (b) Make such a report as soon as reasonably practicable.

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

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

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

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

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

22 Sec. 10. 1. The Administrator may adopt, by regulation or order, any
23 filing requirements, registration exemptions and licensing requirements which
24 are consistent with the Jumpstart Our Business Startups Act, Public Law 112-
25 106, and any regulation adopted pursuant thereto by the United States Securities
26 and Exchange Commission, including, without limitation, regulations relating to
27 the creation and oversight of funding portals.

28 2. As used in this section, "funding portal" has the meaning ascribed to it
29 in section 3(a)(80) of the Securities Exchange Act of 1934, as amended, 15 U.S.C.
30 §§ 78a et seq.

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

32 90.630 1. If the Administrator reasonably believes, whether or not based
33 upon an investigation conducted under NRS 90.620, that:

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

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

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

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

(a) Issue an order against the person to cease and desist;
(b) Censure the person if he or she is a licensed broker-dealer, sales representative, investment adviser or representative of an investment adviser;
(c) Bar or suspend the person from association with a licensed broker-dealer or investment adviser in this State;

(d) Issue an order against an applicant, licensed person or other person who willfully violates this chapter, imposing 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 paragraph, not to exceed \$50,000 for each violation; or*

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

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

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

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

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

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

6. If a sanction is imposed pursuant to this section, 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:

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

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

5 (c) An order denying, suspending or revoking the effectiveness of registration
6 or an order to cease and desist issued by the Administrator pursuant to this chapter,
7  is guilty of a category B felony and shall be punished by imprisonment in the
8 state prison for a minimum term of not less than 1 year and a maximum term of not
9 more than 20 years, or by a fine of not more than \$500,000, or by both fine and
10 imprisonment, for each violation. In addition to any other penalty, the court shall
11 order the person to pay restitution and may order the person to repay the costs of
12 investigation and prosecution incurred by the Division and the Office of the
13 Attorney General. *If the violation was committed against an older person or*
14 *vulnerable person, any restitution and costs of investigation and prosecution*
15 *imposed by the court must be in an amount equal to twice the amount that would*
16 *otherwise have been imposed by the court.* Money recovered for reimbursement of
17 the costs of investigation and prosecution must be deposited in the State General
18 Fund for credit to the Secretary of State's Operating General Fund Budget Account.

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

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

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