

Amendment No. 327

Senate Amendment to Senate Bill No. 32	(BDR 7-417)
Proposed by: Senate Committee on Judiciary	
Amends: Summary: Yes 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.

VG/NCA



Date: 4/17/2017

S.B. No. 32—Makes various changes to provisions governing investment advisers and securities. (BDR 7-417)



SENATE BILL NO. 32—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE LIEUTENANT GOVERNOR)

PREFILED NOVEMBER 16, 2016

Referred to Committee on Judiciary

SUMMARY—Makes various changes to provisions governing ~~[investment advisers and]~~ securities. (BDR 7-417)

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 securities; ~~[exempting certain investment advisers from the requirement to hold a license; requiring the exempted investment advisers to file reports and pay fees;]~~ revising the exemption from registration and filing requirements for certain transactions involving securities; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

~~[—Existing law prohibits a person from transacting business in this State as an investment adviser unless the person is licensed as an investment adviser or exempt from licensing. (NRS 90.330) Section 4 of this bill exempts certain investment advisers from the requirement to be licensed under state law if the investment adviser, as a result of acting as an investment adviser solely to certain venture capital funds or certain private funds, is exempt from registration with the Securities and Exchange Commission under federal law or regulations. Section 2 of this bill requires such an investment adviser to file certain reports with the Administrator of the Securities Division of the Office of the Secretary of State, pay a fee and, if the investment adviser advises certain kinds of funds, meet certain additional requirements.]~~

Existing law prohibits a person from selling or offering to sell a security in this State unless the security is registered or the security or transaction is exempt from registration under chapter 90 of NRS. (NRS 90.460) Existing law generally exempts a transaction pursuant to an offer to sell securities of an issuer if there are not more than 25 purchasers in this State during any 12 consecutive months and certain other conditions are satisfied. (NRS 90.530) **Section 5** of this bill revises this exemption to apply to a sale or offer to sell such securities and increases the maximum number of purchasers in this State from 25 to 35 during any 12 consecutive months.

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

1 **Section 1.** ~~[Chapter 90 of NRS is hereby amended by adding thereto the~~
2 ~~provisions set forth as sections 2 and 3 of this act.]~~ **(Deleted by amendment.)**

3 **Sec. 2.** ~~[1. Except as otherwise provided in section 3 of this act, an~~
4 ~~investment adviser is exempt from licensing under NRS 90.330 pursuant to~~
5 ~~paragraph (b) of subsection 1 of NRS 90.340 only if the investment adviser:~~

6 ~~— (a) Is not disqualified and is not affiliated with an entity that is disqualified~~
7 ~~from claiming an exemption for a sale of securities pursuant to 17 C.F.R. §~~
8 ~~230.506(d)(1);~~

9 ~~— (b) Files with the Administrator, using the Investment Adviser Registration~~
10 ~~Depository, a copy of each report, and all amendments thereto, that the~~
11 ~~investment adviser is required to file with the Securities and Exchange~~
12 ~~Commission pursuant to 17 C.F.R. § 275.204-4;~~

13 ~~— (c) Pays all fees that the investment adviser would owe pursuant to NRS~~
14 ~~90.360 if he or she were licensed as an investment adviser in this State;~~

15 ~~— (d) For an investment adviser who advises at least one fund described by 15~~
16 ~~U.S.C. 80a-3(e)(1) which is not a venture capital fund, as defined in 17 C.F.R. §~~
17 ~~275.203(l) 1;~~

18 ~~— (1) Advises only funds described by 15 U.S.C. 80a-3(e)(1) which are not~~
19 ~~venture capital funds, as defined in 17 C.F.R. § 275.203(l) 1, that are beneficially~~
20 ~~owned entirely by persons who, after deducting the value of the primary residence~~
21 ~~of the person from the net worth of the person, are qualified clients, as defined in~~
22 ~~17 C.F.R. § 275.205-3, at the time such persons became owners of the fund;~~

23 ~~— (2) Discloses to each beneficial owner of a fund described by 15 U.S.C.~~
24 ~~80a-3(e)(1) which is not a venture capital fund, as defined in 17 C.F.R. §~~
25 ~~275.203(l) 1, at the time the person acquires beneficial ownership;~~

26 ~~— (I) All services, if any, that the investment adviser provides to each~~
27 ~~beneficial owner;~~

28 ~~— (II) All duties, if any, that the investment adviser owes to each~~
29 ~~beneficial owner; and~~

30 ~~— (III) Any other material information affecting the rights or~~
31 ~~responsibilities of each beneficial owner; and~~

32 ~~— (3) Annually obtains an audited financial statement of each fund~~
33 ~~described by 15 U.S.C. 80a-3(e)(1) which is not a venture capital fund, as defined~~
34 ~~in 17 C.F.R. § 275.203(l) 1, and delivers a copy of the audited financial statement~~
35 ~~to each beneficial owner of the fund;~~

36 ~~— 2. As used in this section:~~

37 ~~— (a) “Investment Adviser Registration Depository” has the meaning ascribed~~
38 ~~to it in NRS 90.350;~~

39 ~~— (b) “Value of the primary residence” means the amount that is determined~~
40 ~~by subtracting from the fair market value of the property constituting the primary~~
41 ~~residence of a person the amount of any debt secured by the property not~~
42 ~~exceeding the fair market value of the property.]~~ **(Deleted by amendment.)**

43 **Sec. 3.** ~~[An investment adviser who has filed and maintains a completed~~
44 ~~and current registration with the Securities and Exchange Commission:~~

45 ~~— 1. Is not exempt from licensing under NRS 90.330 pursuant to paragraph~~
46 ~~(b) of subsection 1 of NRS 90.340; and~~

47 ~~— 2. Shall comply with the requirements of subsection 2 of NRS 90.350.]~~
48 **(Deleted by amendment.)**

Sec. 4. ~~[NRS 90.340 is hereby amended to read as follows:~~

~~90.340 1. The following persons are exempt from licensing under NRS 90.340:~~

~~(a) An investment adviser who is [registered];~~

~~(1) Registered or is not required to be registered as an investment adviser under the Investment Advisers Act of 1940 if:~~

~~[(1)] (I) Its only clients in this State are other investment advisers, broker-dealers or financial or institutional investors;~~

~~[(2)] (II) The investment adviser has no place of business in this State and directs business communications in this State to a person who is an existing client of the investment adviser and whose principal place of residence is not in this State; or~~

~~[(3)] (III) The investment adviser has no place of business in this State and during any 12 consecutive months it does not direct business communications in this State to more than five present or prospective clients other than those specified in [subparagraph (1).] sub-subparagraph (I), whether or not the person or client to whom the communication is directed is present in this State; or~~

~~(2) Except as otherwise provided in section 3 of this act, exempt from registration with the Securities and Exchange Commission pursuant to 15 U.S.C. § 80b-3(d) or 17 C.F.R. § 275.203(m)-1 if the investment adviser satisfies the requirements of section 2 of this act;~~

~~(b) A representative of an investment adviser who is employed by an investment adviser who is exempt from licensing pursuant to paragraph (a);~~

~~(c) A sales representative licensed pursuant to NRS 90.310 who:~~

~~(1) Has passed the following examinations administered by the Financial Industry Regulatory Authority:~~

~~(I) The Uniform Investment Adviser Law Examination, designated as the Series 65 examination; or~~

~~(II) The Uniform Combined State Law Examination designated as the Series 66 examination and the General Securities Registered Representative Examination, designated as the Series 7 examination; or~~

~~(2) On January 1, 1996, has been continuously licensed in this State as a sales representative for 5 years or more; and~~

~~(d) Other investment advisers and representatives of investment advisers the Administrator by regulation or order exempts.~~

~~2. The Administrator may, by order or rule, waive the examinations required by subparagraph (1) of paragraph (c) of subsection 1 for an applicant or a class of applicants if the Administrator determines that the examination is not necessary for the protection of investors because of the training and experience of the applicant or class of applicants.] (Deleted by amendment.)~~

Sec. 5. NRS 90.530 is hereby amended to read as follows:

90.530 The following transactions are exempt from NRS 90.460 and 90.560:

1. An isolated nonissuer transaction, whether or not effected through a broker-dealer.

2. A nonissuer transaction in an outstanding security if the issuer of the security has a class of securities subject to registration under section 12 of the Securities Exchange Act of 1934, 15 U.S.C. § 78l, and has been subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. §§ 78m and 78o(d), for not less than 90 days next preceding the transaction, or has filed and maintained with the Administrator for not less than 90 days preceding the transaction information, in such form as the Administrator, by regulation, specifies, substantially comparable to the information the issuer would be required to file under section 12(b) or 12(g) of the Securities Exchange Act of

1934, 15 U.S.C. §§ 781(b) and 781(g), were the issuer to have a class of its securities registered under section 12 of the Securities Exchange Act of 1934, 15 U.S.C. § 781, and paid a fee of \$300 with the filing.

3. A nonissuer transaction by a sales representative licensed in this State, in an outstanding security if:

(a) The security is sold at a price reasonably related to the current market price of the security at the time of the transaction;

(b) The security does not constitute all or part of an unsold allotment to, or subscription or participation by, a broker-dealer as an underwriter of the security;

(c) At the time of the transaction, a recognized securities manual designated by the Administrator by regulation or order contains the names of the issuer's officers and directors, a statement of the financial condition of the issuer as of a date within the preceding 18 months, and a statement of income or operations for each of the last 2 years next preceding the date of the statement of financial condition, or for the period as of the date of the statement of financial condition if the period of existence is less than 2 years;

(d) The issuer of the security has not undergone a major reorganization, merger or acquisition within the preceding 30 days which is not reflected in the information contained in the manual; and

(e) At the time of the transaction, the issuer of the security has a class of equity security listed on the New York Stock Exchange, American Stock Exchange or other exchange designated by the Administrator, or on the National Market System of the National Association of Securities Dealers Automated Quotation System. The requirements of this paragraph do not apply if:

(1) The security has been outstanding for at least 180 days;

(2) The issuer of the security is actually engaged in business and is not developing the issuer's business, in bankruptcy or in receivership; and

(3) The issuer of the security has been in continuous operation for at least 5 years.

4. A nonissuer transaction in a security that has a fixed maturity or a fixed interest or dividend provision if there has been no default during the current fiscal year or within the 3 preceding years, or during the existence of the issuer, and any predecessors if less than 3 years, in the payment of principal, interest or dividends on the security.

5. A nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to purchase.

6. A transaction between the issuer or other person on whose behalf the offering of a security is made and an underwriter, or a transaction among underwriters.

7. A transaction in a bond or other evidence of indebtedness secured by a real estate mortgage, deed of trust, personal property security agreement, or by an agreement for the sale of real estate or personal property, if the entire mortgage, deed of trust or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit.

8. A transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian or conservator.

9. A transaction executed by a bona fide secured party without the purpose of evading this chapter.

10. An offer to sell or the sale of a security to a financial or institutional investor or to a broker-dealer.

11. Except as otherwise provided in this subsection, a ~~transaction pursuant to~~ sale or an offer to sell securities of an issuer if:

1 (a) The transaction is part of an issue in which there are not more than ~~25~~ 35
2 purchasers in this State, other than those designated in subsection 10, during any 12
3 consecutive months;

4 (b) No general solicitation or general advertising is used in connection with the
5 offer to sell or sale of the securities;

6 (c) No commission or other similar compensation is paid or given, directly or
7 indirectly, to a person, other than a broker-dealer licensed or not required to be
8 licensed under this chapter, for soliciting a prospective purchaser in this State; and

9 (d) One of the following conditions is satisfied:

10 (1) The seller reasonably believes that all the purchasers in this State, other
11 than those designated in subsection 10, are purchasing for investment; or

12 (2) Immediately before and immediately after the transaction, the issuer
13 reasonably believes that the securities of the issuer are held by 50 or fewer
14 beneficial owners, other than those designated in subsection 10, and the transaction
15 is part of an aggregate offering that does not exceed \$500,000 during any 12
16 consecutive months.

17 ➤ The Administrator by rule or order as to a security or transaction or a type of
18 security or transaction may withdraw or further condition the exemption set forth in
19 this subsection or waive one or more of the conditions of the exemption.

20 12. An offer to sell or sale of a preorganization certificate or subscription if:

21 (a) No commission or other similar compensation is paid or given, directly or
22 indirectly, for soliciting a prospective subscriber;

23 (b) No public advertising or general solicitation is used in connection with the
24 offer to sell or sale;

25 (c) The number of offers does not exceed 50;

26 (d) The number of subscribers does not exceed 10; and

27 (e) No payment is made by a subscriber.

28 13. An offer to sell or sale of a preorganization certificate or subscription
29 issued in connection with the organization of a depository institution if that
30 organization is under the supervision of an official or agency of a state or of the
31 United States which has and exercises the authority to regulate and supervise the
32 organization of the depository institution. For the purpose of this subsection, "under
33 the supervision of an official or agency" means that the official or agency by law
34 has authority to require disclosures to prospective investors similar to those
35 required under NRS 90.490, impound proceeds from the sale of a preorganization
36 certificate or subscription until organization of the depository institution is
37 completed, and require refund to investors if the depository institution does not
38 obtain a grant of authority from the appropriate official or agency.

39 14. A transaction pursuant to an offer to sell to existing security holders of the
40 issuer, including persons who at the time of the transaction are holders of
41 transferable warrants exercisable within not more than 90 days after their issuance,
42 convertible securities or nontransferable warrants, if:

43 (a) No commission or other similar compensation, other than a standby
44 commission, is paid or given, directly or indirectly, for soliciting a security holder
45 in this State; or

46 (b) The issuer first files a notice specifying the terms of the offer to sell,
47 together with a nonrefundable fee of \$300, and the Administrator does not by order
48 disallow the exemption within the next 5 full business days.

49 15. A transaction involving an offer to sell, but not a sale, of a security not
50 exempt from registration under the Securities Act of 1933, 15 U.S.C. §§ 77a et seq.,
51 if:

52 (a) A registration or offering statement or similar record as required under the
53 Securities Act of 1933, 15 U.S.C. §§ 77a et seq., has been filed, but is not effective;

1 (b) A registration statement, if required, has been filed under this chapter, but
2 is not effective; and

3 (c) No order denying, suspending or revoking the effectiveness of registration,
4 of which the offeror is aware, has been entered by the Administrator or the
5 Securities and Exchange Commission, and no examination or public proceeding
6 that may culminate in that kind of order is known by the offeror to be pending.

7 16. A transaction involving an offer to sell, but not a sale, of a security
8 exempt from registration under the Securities Act of 1933, 15 U.S.C. §§ 77a et seq.,
9 if:

10 (a) A registration statement has been filed under this chapter, but is not
11 effective; and

12 (b) No order denying, suspending or revoking the effectiveness of registration,
13 of which the offeror is aware, has been entered by the Administrator and no
14 examination or public proceeding that may culminate in that kind of order is known
15 by the offeror to be pending.

16 17. A transaction involving the distribution of the securities of an issuer to the
17 security holders of another person in connection with a merger, consolidation,
18 exchange of securities, sale of assets or other reorganization to which the issuer, or
19 its parent or subsidiary, and the other person, or its parent or subsidiary, are parties,
20 if:

21 (a) The securities to be distributed are registered under the Securities Act of
22 1933, 15 U.S.C. §§ 77a et seq., before the consummation of the transaction; or

23 (b) The securities to be distributed are not required to be registered under the
24 Securities Act of 1933, 15 U.S.C. §§ 77a et seq., written notice of the transaction
25 and a copy of the materials, if any, by which approval of the transaction will be
26 solicited, together with a nonrefundable fee of \$300, are given to the Administrator
27 at least 10 days before the consummation of the transaction and the Administrator
28 does not, by order, disallow the exemption within the next 10 days.

29 18. A transaction involving the offer to sell or sale of one or more promissory
30 notes each of which is directly secured by a first lien on a single parcel of real
31 estate, or a transaction involving the offer to sell or sale of participation interests in
32 the notes if the notes and participation interests are originated by a depository
33 institution and are offered and sold subject to the following conditions:

34 (a) The minimum aggregate sales price paid by each purchaser may not be less
35 than \$250,000;

36 (b) Each purchaser must pay cash either at the time of the sale or within 60
37 days after the sale; and

38 (c) Each purchaser may buy for the purchaser's own account only.

39 19. A transaction involving the offer to sell or sale of one or more promissory
40 notes directly secured by a first lien on a single parcel of real estate or participating
41 interests in the notes, if the notes and interests are originated by a mortgagee
42 approved by the Secretary of Housing and Urban Development under sections 203
43 and 211 of the National Housing Act, 12 U.S.C. §§ 1709 and 1715b, and are
44 offered or sold, subject to the conditions specified in subsection 18, to a depository
45 institution or insurance company, the Federal Home Loan Mortgage Corporation,
46 the Federal National Mortgage Association or the Government National Mortgage
47 Association.

48 20. A transaction between any of the persons described in subsection 19
49 involving a nonassignable contract to buy or sell the securities described in
50 subsection 18 if the contract is to be completed within 2 years and if:

51 (a) The seller of the securities pursuant to the contract is one of the parties
52 described in subsection 18 or 19 who may originate securities;

1 (b) The purchaser of securities pursuant to a contract is any other person
2 described in subsection 19; and

3 (c) The conditions described in subsection 18 are fulfilled.

4 21. A transaction involving one or more promissory notes secured by a lien
5 on real estate, or participating interests in those notes, by:

6 (a) A mortgage banker licensed pursuant to chapter 645E of NRS to engage in
7 those transactions; or

8 (b) A mortgage broker licensed pursuant to chapter 645B of NRS to engage in
9 those transactions.