

Amendment No. 813

Assembly Amendment to Senate Bill No. 383	(BDR 54-1150)
Proposed by: Assembly Committee on Commerce and Labor	
Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes	

ASSEMBLY ACTION			Initial and Date	SENATE ACTION			Initial and Date		
Adopted	☐	Lost	☐	_____	Adopted	☐	Lost	☐	_____
Concurred In	☐	Not	☐	_____	Concurred In	☐	Not	☐	_____
Receded	☐	Not	☐	_____	Receded	☐	Not	☐	_____

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.

BJF



Date: 5/21/2017

S.B. No. 383—Revises provisions governing financial planners. (BDR 54-1150)



SENATE BILL NO. 383—SENATOR FORD

MARCH 20, 2017

Referred to Committee on Commerce, Labor and Energy

SUMMARY—Revises provisions governing financial planners. (BDR 54-1150)

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 financial planners; ~~revising the definition of “financial planner” for certain purposes;~~ imposing a fiduciary duty on broker-dealers, sales representatives and investment advisers who for compensation advise other persons concerning the investment of money; authorizing the Administrator of the Securities Division of the Office of the Secretary of State to adopt regulations concerning such fiduciary duty; providing penalties; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law: (1) defines a “financial planner” as a person who for compensation, among other activities, advises others as to the investment of money, but excludes certain persons from the definition; (2) provides that a financial planner has the duty of a fiduciary toward a client; and (3) provides for civil liability of a financial planner under certain circumstances. (Chapter 628A of NRS) **Section 1** of this bill revises the definition of financial planner to remove the exclusions for a broker-dealer ~~and~~ a sales representative and an investment adviser, thereby making such persons subject to the provisions of existing law governing financial planners. Section 1.3 of this bill provides that the requirement for a financial planner to maintain certain insurance or a surety bond does not apply to broker-dealers, sales representatives and investment advisers included in the definition of “financial planner” pursuant to section 1.

Existing law provides that certain persons defined as a financial planner must be licensed as insurance consultants for certain purposes related to viatical settlements. (NRS 688C.212) **Section 2** of this bill maintains the existing definition of financial planner for such purposes.

Existing law generally provides that the Administrator of the Securities Division of the Office of the Secretary of State licenses and regulates broker-dealers, sales representatives, investment advisers and representatives of investment advisers. (Chapter 90 of NRS) If a person violates a provision of law administered by the Administrator, the Administrator may impose certain sanctions on that person, including, without limitation, the imposition of a civil penalty of not more than \$25,000 for a willful violation of such a provision of law. (NRS 90.630, 90.640) Section 1.7 of this bill: (1) enacts a provision to enable the Administrator to enforce the fiduciary duty imposed on broker-dealers, sales representatives, investment advisers and representatives of investment advisers pursuant to section 1; and (2) authorizes the Administrator to adopt regulations defining or excluding acts, practices or courses of

business as violations of that fiduciary duty and prescribing means to prevent violations of that fiduciary duty.

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

Section 1. NRS 628A.010 is hereby amended to read as follows:

628A.010 As used in this chapter, unless the context otherwise requires:

1. "Client" means a person who receives advice from a financial planner.

2. "Compensation" means a fee for services provided by a financial planner to a client or a commission or other remuneration derived by a financial planner from a person other than the client as the result of the purchase of a good or service by the client.

3. "Financial planner" means a person who for compensation advises others upon the investment of money or upon provision for income to be needed in the future, or who holds himself or herself out as qualified to perform either of these functions, but does not include:

(a) An attorney and counselor at law admitted by the Supreme Court of this State;

(b) A certified public accountant or a public accountant licensed pursuant to NRS 628.190 to 628.310, inclusive, or 628.350; or

~~(c) A broker-dealer or sales representative licensed pursuant to NRS 90.310 or exempt under NRS 90.320; or~~

~~(d) An investment adviser licensed pursuant to NRS 90.330 or exempt under NRS 90.340; or~~

~~(e) A producer of insurance licensed pursuant to chapter 683A of NRS or an insurance consultant licensed pursuant to chapter 683C of NRS,~~

↳ whose advice upon investment or provision of future income is incidental to the practice of his or her profession or business.

Sec. 1.3. NRS 628A.040 is hereby amended to read as follows:

628A.040 ~~1.1~~

1. Except as otherwise provided in subsection 2, a financial planner shall maintain insurance covering liability for errors or omissions, or a surety bond to compensate clients for losses actionable pursuant to this chapter, in an amount of \$1,000,000 or more.

2. The provisions of subsection 1 do not apply to:

(a) A broker-dealer or sales representative licensed pursuant to NRS 90.310 or exempt under NRS 90.320; or

(b) An investment adviser licensed pursuant to NRS 90.330 or exempt under NRS 90.340.

Sec. 1.7. Chapter 90 of NRS is hereby amended by adding thereto a new section to read as follows:

1. A broker-dealer, sales representative, investment adviser or representative of an investment adviser shall not violate the fiduciary duty toward a client imposed by NRS 628A.020.

2. The Administrator may by regulation:

(a) Define or exclude an act, practice or course of business of a broker-dealer, sales representative, investment adviser or representative of an investment adviser as a violation of the fiduciary duty toward a client imposed by NRS 628A.020; and

(b) Prescribe means reasonably designed to prevent broker-dealers, sales representatives, investment advisers and representatives of investment advisers from engaging in acts, practices and courses of business defined as a violation of such fiduciary duty.

Sec. 2. NRS 688C.212 is hereby amended to read as follows:

688C.212 1. A financial planner ~~1, as defined in subsection 3 of NRS 628A.010,~~ who, on behalf of a viator and for a fee, commission or other valuable consideration not paid by a provider or purchaser of viatical settlements, offers or attempts to negotiate a viatical settlement between the viator and one or more providers or brokers of viatical settlements must be licensed as an insurance consultant pursuant to NRS 683C.020.

2. As used in this section, "financial planner" means a person who for compensation advises others upon the investment of money or upon provision for income to be needed in the future, or who holds himself or herself out as qualified to perform either of these functions, but does not include:

(a) An attorney and counselor at law admitted by the Supreme Court of this State;

(b) A certified public accountant or a public accountant licensed pursuant to NRS 628.190 to 628.310, inclusive, or 628.350;

(c) A broker-dealer or sales representative licensed pursuant to NRS 90.310 or exempt under NRS 90.320;

(d) An investment adviser licensed pursuant to NRS 90.330 or exempt under NRS 90.340; or

(e) A producer of insurance licensed pursuant to chapter 683A of NRS or an insurance consultant licensed pursuant to chapter 683C of NRS,
↳ whose advice upon investment or provision of future income is incidental to the practice of his or her profession or business.

Sec. 3. This act becomes effective on July 1, 2017.