

ASSEMBLY BILL NO. 283—ASSEMBLYMAN CONKLIN

MARCH 15, 2011

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions relating to mortgage loans. (BDR 54-830)

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 mortgage loans; revising provisions governing the requirement for certain mortgage agents, mortgage bankers, mortgage brokers and other employees to register with the Nationwide Mortgage Licensing System and Registry; revising provisions governing continuing education requirements for certain licensees; providing certain investors who deposit money with a mortgage broker with an exemption from criminal and civil liability for the acts or omissions of the mortgage broker; revising provisions governing the employment or association of mortgage agents; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

1 The federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008  
2 requires that a person who originates residential mortgage loans be licensed as a  
3 loan originator and requires that such a loan originator be registered with the  
4 Nationwide Mortgage Licensing System and Registry. (12 U.S.C. § 5103) Existing  
5 law in Nevada prescribes the requirements for a license as a mortgage agent,  
6 mortgage banker, mortgage broker or a qualified employee who is a residential  
7 mortgage loan originator, which include, without limitation, registration with the  
8 Nationwide Mortgage Licensing System and Registry. (NRS 645B.0137,  
9 645E.200) **Section 6** of this bill provides that such a person is not required to  
10 register or renew with the Nationwide Mortgage Licensing System and Registry, or  
11 provide reports of financial condition to the Registry, if: (1) the person is not a  
12 residential mortgage loan originator or the supervisor of a residential mortgage loan  
13 originator; and (2) the person is not required to register pursuant to the federal Act.  
14 **Section 6** also provides that such a person who voluntarily registers or renews with  
15 the Registry shall comply with all requirements of the federal Act.



\* A B 2 8 3 R 1 \*

16 Under existing law, the Commissioner of Mortgage Lending is required to  
17 adopt such regulations as necessary to carry out the provisions of the federal Act.  
18 (NRS 645F.293) **Section 7** of this bill provides that the regulations must not require  
19 registration of a person who is exempt pursuant to **section 6**.

20 **Sections 1, 2 and 4** of this bill revise provisions governing continuing  
21 education requirements for persons who are exempt pursuant to **section 6** and who  
22 have not voluntarily registered or renewed with the Registry. **Section 3** of this bill  
23 exempts certain investors who deposit money with a mortgage broker from criminal  
24 and civil liability for the acts or omissions of the mortgage broker. **Section 5** of this  
25 bill revises provisions governing the employment of or association with a mortgage  
26 agent by a mortgage broker, mortgage banker or person who holds a certificate of  
27 exemption issued by the Commissioner of Mortgage Lending. **Section 8** of this bill  
28 repeals certain provisions governing mortgage bankers which are included within  
29 the amendatory provisions of **section 5**.

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

1 **Section 1.** NRS 645B.0138 is hereby amended to read as  
2 follows:

3 645B.0138 1. A course of continuing education that is  
4 required pursuant to this chapter must meet the requirements set  
5 forth by the Commissioner by regulation.

6 2. The Commissioner shall adopt regulations:

7 (a) Relating to the requirements for courses of continuing  
8 education, including, without limitation, regulations relating to the  
9 providers and instructors of such courses, records kept for such  
10 courses, approval and revocation of approval of such courses,  
11 monitoring of such courses and disciplinary action taken regarding  
12 such courses.

13 (b) Allowing for the participation of representatives of the  
14 mortgage lending industry pertaining to the creation of regulations  
15 regarding such courses.

16 (c) Ensuring compliance with the requirements for registration  
17 with the Registry and any other applicable federal law.

18 ***3. The regulations adopted by the Commissioner pursuant to***  
19 ***subsection 2 must not require a mortgage agent, mortgage banker***  
20 ***or mortgage broker or an employee of a mortgage banker or***  
21 ***mortgage broker who, pursuant to subsection 1 of section 6 of this***  
22 ***act, is not required to register or renew with the Registry and who***  
23 ***has not voluntarily registered or renewed with the Registry to***  
24 ***complete any continuing education relating to residential***  
25 ***mortgage loans.***

26 **Sec. 2.** NRS 645B.051 is hereby amended to read as follows:

27 645B.051 1. Except as otherwise provided in ~~[this section,]~~  
28 ***subsection 2***, in addition to the requirements set forth in NRS  
29 645B.050, to renew a license as a mortgage broker:



1 (a) If the licensee is a natural person, the licensee must submit to  
2 the Commissioner satisfactory proof that the licensee attended at  
3 least 10 hours of certified courses of continuing education during  
4 the 12 months immediately preceding the date on which the license  
5 expires.

6 (b) If the licensee is not a natural person, the licensee must  
7 submit to the Commissioner satisfactory proof that each natural  
8 person who supervises the daily business of the licensee attended at  
9 least 10 hours of certified courses of continuing education during  
10 the 12 months immediately preceding the date on which the license  
11 expires.

12 2. ~~[The Commissioner may provide by regulation that if a  
13 person attends more than 10 hours of certified courses of continuing  
14 education during a 12-month period, the extra hours may be used to  
15 satisfy the requirement for the immediately following 12-month  
16 period and for that immediately following 12-month period only.]~~

17 *In lieu of the continuing education requirements set forth in  
18 paragraph (a) or (b) of subsection 1, a licensee or any natural  
19 person who supervises the daily business of the licensee who,  
20 pursuant to subsection 1 of section 6 of this act, is not required to  
21 register or renew with the Registry and who has not voluntarily  
22 registered or renewed with the Registry must submit to the  
23 Commissioner satisfactory proof that he or she attended at least 5  
24 hours of certified courses of continuing education during the 12  
25 months immediately preceding the date on which the license  
26 expires. The hours of continuing education required by this  
27 subsection must include:*

28 (a) *At least 3 hours relating to the laws and regulations of this  
29 State; and*

30 (b) *At least 2 hours relating to ethics.*

31 3. As used in this section, "certified course of continuing  
32 education" means a course of continuing education which relates to  
33 the mortgage industry or mortgage transactions and which meets the  
34 requirements set forth by the Commissioner by regulation pursuant  
35 to NRS 645B.0138.

36 **Sec. 3.** NRS 645B.175 is hereby amended to read as follows:

37 645B.175 1. Except as otherwise provided in this section, all  
38 money received by a mortgage broker and his or her mortgage  
39 agents from an investor to acquire ownership of or a beneficial  
40 interest in a loan secured by a lien on real property must:

41 (a) Be deposited in:

42 (1) An insured depository financial institution; or

43 (2) An escrow account which is controlled by a person who  
44 is independent of the parties and subject to instructions regarding  
45 the account which are approved by the parties.



1 (b) Be kept separate from money:

2 (1) Belonging to the mortgage broker in an account  
3 appropriately named to indicate that the money does not belong to  
4 the mortgage broker.

5 (2) Received pursuant to subsection 4.

6 2. Except as otherwise provided in this section, the amount  
7 held in trust pursuant to subsection 1 must be released:

8 (a) Upon completion of the loan, including proper recordation of  
9 the respective interests or release, or upon completion of the transfer  
10 of the ownership or beneficial interest therein, to the debtor or the  
11 debtor's designee less the amount due the mortgage broker for the  
12 payment of any fee or service charge;

13 (b) If the loan or the transfer thereof is not consummated, to  
14 each investor who furnished the money held in trust; or

15 (c) Pursuant to any instructions regarding the escrow account.

16 3. The amount held in trust pursuant to subsection 1 must not  
17 be released to the debtor or the debtor's designee unless:

18 (a) The amount released is equal to the total amount of money  
19 which is being loaned to the debtor for that loan, less the amount  
20 due the mortgage broker for the payment of any fee or service  
21 charge; and

22 (b) The mortgage broker has provided a written instruction to a  
23 title agent or title insurer requiring that a lender's policy of title  
24 insurance or appropriate title endorsement, which names as an  
25 insured each investor who owns a beneficial interest in the loan, be  
26 issued for the real property securing the loan.

27 4. Except as otherwise provided in this section, all money paid  
28 to a mortgage broker and his or her mortgage agents by a person in  
29 full or in partial payment of a loan secured by a lien on real  
30 property, must:

31 (a) Be deposited in:

32 (1) An insured depository financial institution; or

33 (2) An escrow account which is controlled by a person who  
34 is subject to instructions regarding the account which are approved  
35 by the parties.

36 (b) Be kept separate from money:

37 (1) Belonging to the mortgage broker in an account  
38 appropriately named to indicate that it does not belong to the  
39 mortgage broker.

40 (2) Received pursuant to subsection 1.

41 5. Except as otherwise provided in this section, the amount  
42 held in trust pursuant to subsection 4:

43 (a) Must be released, upon the deduction and payment of any fee  
44 or service charge due the mortgage broker, to each investor who



1 owns a beneficial interest in the loan in exact proportion to the  
2 beneficial interest that the investor owns in the loan; and

3 (b) Must not be released, in any proportion, to an investor who  
4 owns a beneficial interest in the loan, unless the amount described in  
5 paragraph (a) is also released to every other investor who owns a  
6 beneficial interest in the loan.

7 6. An investor may waive, in writing, the right to receive one  
8 or more payments, or portions thereof, that are released to other  
9 investors in the manner set forth in subsection 5. A mortgage broker  
10 or mortgage agent shall not act as the attorney-in-fact or the agent of  
11 an investor with respect to the giving of a written waiver pursuant to  
12 this subsection. Any such written waiver applies only to the  
13 payment or payments, or portions thereof, that are included in the  
14 written waiver and does not affect the right of the investor to:

15 (a) Receive the waived payment or payments, or portions  
16 thereof, at a later date; or

17 (b) Receive all other payments in full and in accordance with the  
18 provisions of subsection 5.

19 7. Upon reasonable notice, any mortgage broker described in  
20 this section shall:

21 (a) Account to any investor or debtor who has paid to the  
22 mortgage broker or his or her mortgage agents money that is  
23 required to be deposited in a trust account pursuant to this section;  
24 and

25 (b) Account to the Commissioner for all money which the  
26 mortgage broker and his or her mortgage agents have received from  
27 each investor or debtor and which the mortgage broker is required to  
28 deposit in a trust account pursuant to this section.

29 8. Money received by a mortgage broker and his or her  
30 mortgage agents pursuant to this section from a person who is not  
31 associated with the mortgage broker may be held in trust for not  
32 more than 45 days before an escrow account must be opened in  
33 connection with the loan. If, within this 45-day period, the loan or  
34 the transfer therefor is not consummated, the money must be  
35 returned within 24 hours. If the money is so returned, it may not be  
36 reinvested with the mortgage broker for at least 15 days.

37 9. If a mortgage broker or a mortgage agent receives any  
38 money pursuant to this section, the mortgage broker or mortgage  
39 agent, after the deduction and payment of any fee or service charge  
40 due the mortgage broker, shall not release the money to:

41 (a) Any person who does not have a contractual or legal right to  
42 receive the money; or

43 (b) Any person who has a contractual right to receive the money  
44 if the mortgage broker or mortgage agent knows or, in light of all  
45 the surrounding facts and circumstances, reasonably should know



1 that the person's contractual right to receive the money violates any  
2 provision of this chapter or a regulation adopted pursuant to this  
3 chapter.

4 10. If a mortgage broker maintains any accounts described in  
5 subsection 1 or subsection 4, the mortgage broker shall, in addition  
6 to the annual financial statement audited pursuant to NRS  
7 645B.085, submit to the Commissioner each 6 calendar months a  
8 financial statement concerning those trust accounts.

9 11. The Commissioner shall adopt regulations concerning the  
10 form and content required for financial statements submitted  
11 pursuant to subsection 10.

12 *12. Any duty, responsibility or obligation of a mortgage*  
13 *broker pursuant to this chapter is not delegable or transferable to*  
14 *an investor, and, if an investor only provides money to acquire*  
15 *ownership of or a beneficial interest in a loan secured by a lien on*  
16 *real property, no criminal or civil liability may be imposed on the*  
17 *investor for any act or omission of a mortgage broker.*

18 **Sec. 4.** NRS 645B.430 is hereby amended to read as follows:

19 645B.430 1. A license as a mortgage agent issued pursuant to  
20 NRS 645B.410 expires 1 year after the date the license is issued,  
21 unless it is renewed. To renew a license as a mortgage agent, the  
22 holder of the license must submit to the Commissioner each year, on  
23 or before the date the license expires:

24 (a) An application for renewal;

25 (b) Except as otherwise provided in this section, satisfactory  
26 proof that the holder of the license as a mortgage agent attended at  
27 least 10 hours of certified courses of continuing education during  
28 the 12 months immediately preceding the date on which the license  
29 expires; and

30 (c) A renewal fee set by the Commissioner of not more than  
31 \$170.

32 2. *In lieu of the continuing education requirement set forth*  
33 *in paragraph (b) of subsection 1, the holder of a license as a*  
34 *mortgage agent who, pursuant to subsection 1 of section 6 of this*  
35 *act, is not required to register or renew with the Registry and who*  
36 *has not voluntarily registered or renewed with the Registry must*  
37 *submit to the Commissioner satisfactory proof that he or she*  
38 *attended at least 5 hours of certified courses of continuing*  
39 *education during the 12 months immediately preceding the date*  
40 *on which the license expires. The hours of continuing education*  
41 *required by this subsection must include:*

42 (a) *At least 3 hours relating to the laws and regulations of this*  
43 *State; and*

44 (b) *At least 2 hours relating to ethics.*



1       **3.** If the holder of the license as a mortgage agent fails to  
2 submit any item required pursuant to subsection 1 *or* 2 to the  
3 Commissioner each year on or before the date the license expires,  
4 the license is cancelled. The Commissioner may reinstate a  
5 cancelled license if the holder of the license submits to the  
6 Commissioner:

7       (a) An application for renewal;

8       (b) The fee required to renew the license pursuant to this  
9 section; and

10       (c) A reinstatement fee of \$75.

11       ~~3.~~ **4.** To be issued a duplicate copy of a license as a mortgage  
12 agent, a person must make a satisfactory showing of its loss and pay  
13 a fee of \$10.

14       ~~4.~~ **5.** To change the mortgage broker with whom the  
15 mortgage agent is associated, a person must pay a fee of \$10.

16       ~~5.~~ **6.** Money received by the Commissioner pursuant to this  
17 section is in addition to any fee that must be paid to the Registry and  
18 must be deposited in the Fund for Mortgage Lending created by  
19 NRS 645F.270.

20       ~~6. The Commissioner may provide by regulation that any~~  
21 ~~hours of a certified course of continuing education attended during a~~  
22 ~~12-month period, but not needed to satisfy a requirement set forth in~~  
23 ~~this section for the 12-month period in which the hours were taken,~~  
24 ~~may be used to satisfy a requirement set forth in this section for a~~  
25 ~~later 12-month period.]~~

26       7. As used in this section, “certified course of continuing  
27 education” has the meaning ascribed to it in NRS 645B.051.

28       **Sec. 5.** NRS 645B.450 is hereby amended to read as follows:

29       645B.450 1. A person licensed as a mortgage agent pursuant  
30 to the provisions of NRS 645B.410 may not be associated with or  
31 employed by more than one *licensed or registered* mortgage broker  
32 *or mortgage banker or person who holds a certificate of exemption*  
33 *pursuant to NRS 645B.016* at the same time.

34       2. A mortgage broker, *mortgage banker or person who holds*  
35 *a certificate of exemption pursuant to NRS 645B.016* shall not  
36 associate with or employ a person as a mortgage agent or authorize  
37 a person to be associated with the mortgage broker, *mortgage*  
38 *banker or person who holds a certificate of exemption pursuant to*  
39 *NRS 645B.016* as a mortgage agent if the mortgage agent is not  
40 licensed with the Division pursuant to NRS 645B.410. *Before*  
41 *allowing a mortgage agent to act on its behalf, a mortgage broker,*  
42 *mortgage banker or person who holds a certificate of exemption*  
43 *pursuant to NRS 645B.016, must:*

44       (a) *Enter its sponsorship of the mortgage agent with the*  
45 *Registry; or*



1 *(b) If the mortgage agent is not required to be registered with*  
2 *the Registry, notify the Division of its sponsorship of the mortgage*  
3 *agent.*

4 3. If a mortgage agent terminates his or her association or  
5 employment with a mortgage broker , *mortgage banker or person*  
6 *who holds a certificate of exemption pursuant to NRS 645B.016*  
7 for any reason, the mortgage broker , *mortgage banker or person*  
8 *who holds a certificate of exemption pursuant to NRS 645B.016*  
9 shall, not later than the third business day following the date of  
10 termination:

11 (a) ~~[(Deliver)]~~ *Remove its sponsorship of the mortgage agent*  
12 *from the Registry; or*

13 *(b) If the mortgage agent is not required to be registered with*  
14 *the Registry, deliver to the Division and to the mortgage agent [or*  
15 ~~send by certified mail to]~~ *at the last known residence address of the*  
16 *mortgage agent a written statement which [advises the mortgage*  
17 ~~agent that the termination is being reported to the Division; and~~

18 ~~—(b) Deliver or send by certified mail to the Division:~~

19 ~~—(1) The license or license number of the mortgage agent;~~

20 ~~—(2) A written statement of the circumstances surrounding the~~  
21 ~~termination; and~~

22 ~~—(3) A copy of the written statement that the mortgage broker~~  
23 ~~delivers or mails to the mortgage agent pursuant to paragraph (a).]~~  
24 *includes the name, address and license number of the mortgage*  
25 *agent and a statement of the circumstances of the termination.*

26 **Sec. 6.** Chapter 645F of NRS is hereby amended by adding  
27 thereto a new section to read as follows:

28 1. *A mortgage agent, mortgage banker or mortgage broker or*  
29 *an employee of a mortgage banker or mortgage broker is not*  
30 *required to register or renew with the Registry, or provide reports*  
31 *of financial condition to the Registry, if the mortgage agent,*  
32 *mortgage banker, mortgage broker or employee:*

33 *(a) Is not a residential mortgage loan originator or the*  
34 *supervisor of a residential mortgage loan originator; and*

35 *(b) Is not required to register pursuant to the provisions of the*  
36 *federal Secure and Fair Enforcement for Mortgage Licensing Act*  
37 *of 2008.*

38 2. *A mortgage agent, mortgage banker or mortgage broker or*  
39 *an employee of a mortgage banker or mortgage broker who,*  
40 *pursuant to subsection 1, is not required to register or renew with*  
41 *the Registry and who voluntarily registers or renews with the*  
42 *Registry shall comply with all requirements of the federal Secure*  
43 *and Fair Enforcement for Mortgage Licensing Act of 2008, and*  
44 *any regulations adopted pursuant thereto.*





1 **3. As used in this section, “residential mortgage loan**  
2 **originator” has the meaning ascribed to it in NRS 645B.01325.**

3 **Sec. 7.** NRS 645F.293 is hereby amended to read as follows:

4 645F.293 1. The Commissioner shall adopt regulations to  
5 carry out the provisions of the federal Secure and Fair Enforcement  
6 for Mortgage Licensing Act of 2008.

7 2. The regulations must include, without limitation:

8 (a) A method by which to allow for reporting regularly  
9 violations of the relevant provisions of chapter 645B or 645E of  
10 NRS, enforcement actions and other relevant information to the  
11 Registry; and

12 (b) A process whereby a person may challenge information  
13 reported to the Registry by the Commissioner.

14 **3. The regulations must not require a mortgage agent,**  
15 **mortgage banker or mortgage broker or an employee of a**  
16 **mortgage banker or mortgage broker to register with the Registry**  
17 **if the mortgage agent, mortgage banker, mortgage broker or**  
18 **employee is exempt from registration pursuant to subsection 1 of**  
19 **section 6 of this act.**

20 **Sec. 8.** NRS 645E.292 is hereby repealed.

21 **Sec. 9.** This act becomes effective upon passage and approval.

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**TEXT OF REPEALED SECTION**

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**645E.292 Duties of mortgage banker upon termination of mortgage agent.** If a mortgage agent terminates his or her association or employment with a mortgage banker for any reason, the mortgage banker shall, not later than 3 business days following knowledge of the date of termination:

1. Deliver to the mortgage agent or send by certified mail to the last known residence address of the mortgage agent a written statement which advises the mortgage agent that the termination is being reported to the Division; and

2. Deliver or send by certified mail to the Division:

(a) The license or license number of the mortgage agent;

(b) A written statement of the circumstances surrounding the termination; and

(c) A copy of the written statement that the mortgage banker delivers or mails to the mortgage agent pursuant to subsection 1.







