

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; 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:**

- 1 Existing law: (1) defines a “financial planner” as a person who for
- 2 compensation, among other activities, advises others as to the investment of money,
- 3 but excludes certain persons from the definition; (2) provides that a financial
- 4 planner has the duty of a fiduciary toward a client; and (3) provides for civil
- 5 liability of a financial planner under certain circumstances. (Chapter 628A of NRS)
- 6 **Section 1** of this bill revises the definition of financial planner to remove the
- 7 exclusions for a broker-dealer, a sales representative and an investment adviser,
- 8 thereby making such persons subject to the provisions of existing law governing
- 9 financial planners. **Section 1.3** of this bill provides that the requirement for a
- 10 financial planner to maintain certain insurance or a surety bond does not apply to
- 11 broker-dealers, sales representatives and investment advisers included in the
- 12 definition of “financial planner” pursuant to **section 1**.
- 13 Existing law provides that certain persons defined as a financial planner must
- 14 be licensed as insurance consultants for certain purposes related to viatical
- 15 settlements. (NRS 688C.212) **Section 2** of this bill maintains the existing definition
- 16 of financial planner for such purposes.
- 17 Existing law generally provides that the Administrator of the Securities
- 18 Division of the Office of the Secretary of State licenses and regulates broker-
- 19 dealers, sales representatives, investment advisers and representatives of investment
- 20 advisers. (Chapter 90 of NRS) If a person violates a provision of law administered



21 by the Administrator, the Administrator may impose certain sanctions on that  
22 person, including, without limitation, the imposition of a civil penalty of not more  
23 than \$25,000 for a willful violation of such a provision of law. (NRS 90.630,  
24 90.640) **Section 1.7** of this bill: (1) enacts a provision to enable the Administrator  
25 to enforce the fiduciary duty imposed on broker-dealers, sales representatives,  
26 investment advisers and representatives of investment advisers pursuant to **section**  
27 **1**; and (2) authorizes the Administrator to adopt regulations defining or excluding  
28 acts, practices or courses of business as violations of that fiduciary duty and  
29 prescribing means to prevent violations of that fiduciary duty.

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

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

3 628A.010 As used in this chapter, unless the context otherwise  
4 requires:

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

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

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

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

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

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

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

24 ~~—(e) A producer of insurance licensed pursuant to chapter 683A~~  
25 ~~of NRS or an insurance consultant licensed pursuant to chapter~~  
26 ~~683C of NRS,~~

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

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

31 628A.040 ~~IA~~

32 1. *Except as otherwise provided in subsection 2, a* financial  
33 planner shall maintain insurance covering liability for errors or



1 omissions, or a surety bond to compensate clients for losses  
2 actionable pursuant to this chapter, in an amount of \$1,000,000 or  
3 more.

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

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

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

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

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

14 **2. The Administrator may by regulation:**

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

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

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

25 688C.212 **1.** A financial planner ~~†, as defined in subsection 3~~  
26 ~~of NRS 628A.010,†~~ who, on behalf of a viator and for a fee,  
27 commission or other valuable consideration not paid by a provider  
28 or purchaser of viatical settlements, offers or attempts to negotiate a  
29 viatical settlement between the viator and one or more providers or  
30 brokers of viatical settlements must be licensed as an insurance  
31 consultant pursuant to NRS 683C.020.

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

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

39 **(b) A certified public accountant or a public accountant**  
40 **licensed pursuant to NRS 628.190 to 628.310, inclusive, or**  
41 **628.350;**

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

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



1        *(e) A producer of insurance licensed pursuant to chapter 683A*  
2        *of NRS or an insurance consultant licensed pursuant to chapter*  
3        *683C of NRS,*

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

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

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