

SENATE BILL NO. 315—SENATOR NOLAN

MARCH 24, 2005

Referred to Committee on Commerce and Labor

SUMMARY—Provides for regulation of certain business brokers and revises provisions governing disclosures in certain real estate transactions. (BDR 54-1135)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility.  
Effect on the State: Yes.

~

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to real estate; providing for the regulation of certain business brokers; providing for the establishment of certain fees relating to such regulation; revising provisions governing disclosures in certain real estate transactions; providing a penalty; and providing other matters properly relating thereto.

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

1     **Section 1.** Chapter 645 of NRS is hereby amended by adding  
2 thereto the provisions set forth as sections 2 to 5, inclusive, of this  
3 act.

4     **Sec. 2.** *“Business broker” means a person who, while acting*  
5 *as a real estate broker, real estate broker-salesman or real estate*  
6 *salesman for another and for compensation or with the intention*  
7 *or expectation of receiving compensation:*

- 8         1. *Sells, exchanges, options or purchases a business;*  
9         2. *Negotiates or offers, attempts or agrees to negotiate the*  
10        *sale, exchange, option or purchase of a business; or*  
11        3. *Lists or solicits prospective purchasers of a business.*

12     **Sec. 3.** 1. *A person who is licensed as a real estate broker,*  
13 *real estate broker-salesman or real estate salesman pursuant to*



1 *this chapter may apply to the Real Estate Division for a permit to*  
2 *engage in business as a business broker.*

3 2. *An applicant for a permit must:*

4 (a) *Provide proof satisfactory to the Real Estate Division that*  
5 *he has successfully completed at least 24 hours of classroom*  
6 *instruction relating to business brokerage; and*

7 (b) *Comply with any other requirements for the issuance of a*  
8 *permit established by the Commission.*

9 3. *A permit expires on the same date as the license of the*  
10 *holder of the permit expires. A permit may be renewed at the time*  
11 *that a person licensed pursuant to this chapter applies for renewal*  
12 *of his license.*

13 4. *An applicant for the renewal of a permit must:*

14 (a) *Provide proof satisfactory to the Real Estate Division that*  
15 *he has successfully completed at least 3 hours of continuing*  
16 *education required for the renewal of his license pursuant to NRS*  
17 *645.575 in an approved educational course, seminar or conference*  
18 *relating to business brokerage.*

19 (b) *Comply with any other requirements for renewal of a*  
20 *permit established by the Commission.*

21 5. *The Commission shall adopt such regulations as are*  
22 *necessary to carry out the provisions of this section. The*  
23 *regulations must include, without limitation, provisions that*  
24 *establish:*

25 (a) *Requirements for the issuance or renewal of a permit.*

26 (b) *Fees for:*

27 (1) *The issuance or renewal of a permit;*

28 (2) *The cost of any examination required of an applicant*  
29 *for a permit, including, without limitation, any costs which are*  
30 *necessary for the administration of an examination; and*

31 (3) *The cost of any investigation of an applicant for a*  
32 *permit.*

33 (c) *Standards of education for the approval of a course of*  
34 *instruction to qualify an applicant for the issuance or renewal of a*  
35 *permit.*

36 **Sec. 4. 1. To engage in business as a business broker in**  
37 **this State:**

38 (a) *A partnership shall designate one of its members;*

39 (b) *A corporation shall designate one of its officers or*  
40 *employees;*

41 (c) *A limited-liability company shall designate its manager;*  
42 *and*

43 (d) *A real estate broker who conducts business as a sole*  
44 *proprietor shall designate himself or a person who is licensed*  
45 *under the real estate broker,*



1   ↳ to submit an application for a permit pursuant to section 3 of  
2 this act. The partnership, corporation, limited-liability company or  
3 sole proprietor shall not engage in business as a business broker  
4 unless the person so designated has been issued such a permit.

5   2. If the person designated to apply for a permit meets the  
6 qualifications for a permit set forth in section 3 of this act, the  
7 Real Estate Division shall issue to that person a permit to engage  
8 in business as a business broker on behalf of the partnership,  
9 corporation, limited-liability company or sole proprietor.

10   3. A person to whom such a permit has been issued may act  
11 as a business broker pursuant to the permit only on behalf of the  
12 partnership, corporation, limited-liability company or sole  
13 proprietor, and not on his own behalf. If that person ceases to be  
14 connected or associated with the partnership, corporation, limited-  
15 liability company or sole proprietor, the partnership, corporation,  
16 limited-liability company or sole proprietor shall designate  
17 another person who meets the qualifications for a permit set forth  
18 in section 3 of this act to hold the permit on behalf of the  
19 partnership, corporation, limited-liability company or sole  
20 proprietor.

21   4. Any member, officer or employee of a partnership,  
22 corporation, limited-liability company or sole proprietor, other  
23 than the person designated as the business broker pursuant to  
24 subsection 1, who wishes to engage in business as a business  
25 broker must apply in his own name for a permit. Pursuant to such  
26 a permit, the member, officer or employee of a partnership,  
27 corporation, limited-liability company or sole proprietor may act  
28 as a business broker only as an officer, agent or employee of the  
29 partnership, corporation, limited-liability company or sole  
30 proprietor, and not on his own behalf.

31   **Sec. 5. 1.** If a real estate broker does not hold a permit to  
32 engage in business as a business broker but intends to have the  
33 activities of a business broker conducted at an office, the real  
34 estate broker must:

35   (a) Appoint a person, who has the qualifications required by  
36 this section, as the designated business broker for the office to  
37 supervise the activities of a business broker conducted at the  
38 office; and

39   (b) Submit notice of the appointment to the Division.

40   2. The designated business broker for an office must be a  
41 natural person who:

42   (a) Holds a license as a real estate broker or real estate broker-  
43 salesman;

44   (b) Holds a permit to engage in business as a business broker;  
45 and



1 (c) *Has 2 years active experience, within the 4 years*  
2 *immediately preceding the date of the appointment, in conducting*  
3 *the activities of a business broker in the United States as a licensed*  
4 *real estate broker, real estate broker-salesman or real estate*  
5 *salesman.*

6 3. *While acting as the designated business broker for an*  
7 *office, the person:*

8 (a) *Must comply with all applicable provisions of this chapter;*  
9 *and*

10 (b) *Is subject to all the remedies and penalties provided for in*  
11 *this chapter.*

12 **Sec. 6.** NRS 645.0005 is hereby amended to read as follows:

13 645.0005 As used in this chapter, unless the context otherwise  
14 requires, the words and terms defined in NRS 645.001 to 645.040,  
15 inclusive, *and section 2 of this act* have the meanings ascribed to  
16 them in those sections.

17 **Sec. 7.** NRS 645.005 is hereby amended to read as follows:

18 645.005 “Brokerage agreement” means an oral or written  
19 contract between a client and a broker in which the broker agrees to  
20 accept valuable consideration from the client or another person for  
21 assisting, soliciting or negotiating the sale, purchase, option, rental  
22 or lease of real property ~~[ ]~~, *or the sale, exchange, option or*  
23 *purchase of a business.* The term does not include a property  
24 management agreement.

25 **Sec. 8.** NRS 645.030 is hereby amended to read as follows:

26 645.030 1. “Real estate broker” means a person who, for  
27 another and for compensation or with the intention or expectation of  
28 receiving compensation:

29 (a) Sells, exchanges, options, purchases, rents ~~[ ]~~ or leases, or  
30 negotiates or offers, attempts or agrees to negotiate the sale,  
31 exchange, option, purchase, rental ~~[ ]~~ or lease of, or lists or solicits  
32 prospective purchasers, lessees or renters of, any ~~[business or]~~ real  
33 estate or the improvements thereon or any modular homes or other  
34 housing offered or conveyed with any interest in real estate;

35 (b) Engages in or offers to engage in the business of claiming,  
36 demanding, charging, receiving, collecting or contracting for the  
37 collection of an advance fee in connection with any employment  
38 undertaken to promote the sale or lease of business opportunities or  
39 real estate by advance fee listing advertising or other offerings to  
40 sell, lease, exchange or rent property; ~~[or]~~

41 (c) Engages in or offers to engage in the business of property  
42 management ~~[ ]~~; *or*

43 (d) *Engages in or offers to engage in the business of business*  
44 *brokerage.*



1 2. Any person who, for another and for compensation, aids,  
2 assists, solicits or negotiates the procurement, sale, purchase, rental  
3 or lease of public lands is a real estate broker within the meaning of  
4 this chapter.

5 3. The term does not include a person who is employed by a  
6 licensed real estate broker to accept reservations on behalf of a  
7 person engaged in the business of the rental of lodging for 31 days  
8 or less, if the employee does not perform any tasks related to the  
9 sale or other transfer of an interest in real estate.

10 **Sec. 9.** NRS 645.230 is hereby amended to read as follows:

11 645.230 1. It is unlawful for any person, limited-liability  
12 company, partnership, association or corporation to engage in the  
13 business of, act in the capacity of, advertise or assume to act as, a:

14 (a) Real estate broker, real estate broker-salesman or real estate  
15 salesman within the State of Nevada without first obtaining the  
16 appropriate license from the Real Estate Division as provided for in  
17 this chapter;

18 (b) Property manager within the State of Nevada without first  
19 obtaining from the Real Estate Division as provided for in this  
20 chapter a license as a real estate broker, real estate broker-salesman  
21 or real estate salesman and a permit to engage in property  
22 management; ~~for~~

23 (c) Designated property manager within the State of Nevada  
24 without complying with the provisions of NRS 645.6055 ~~for~~;

25 *(d) Business broker within the State of Nevada without first*  
26 *obtaining from the Real Estate Division as provided for in this*  
27 *chapter a license as a real estate broker, real estate broker-*  
28 *salesman or real estate salesman and a permit to engage in*  
29 *business as a business broker issued pursuant to the provisions of*  
30 *section 3 of this act; or*

31 *(e) Designated business broker within the State of Nevada*  
32 *without complying with the provisions of section 5 of this act.*

33 2. The Real Estate Division may prefer a complaint for a  
34 violation of this section before any court of competent jurisdiction  
35 and may assist in presenting the law or facts upon any trial for a  
36 violation of this section.

37 3. The district attorney of each county shall prosecute all  
38 violations of this section in their respective counties in which  
39 violations occur, unless prosecuted by the Attorney General. Upon  
40 the request of the Administrator, the Attorney General shall  
41 prosecute any violation of this section in lieu of the district attorney.

42 **Sec. 10.** NRS 645.252 is hereby amended to read as follows:

43 645.252 A licensee who acts as an agent in a real estate  
44 transaction:



- 1       1. Shall disclose to each party to the real estate transaction as  
2 soon as is practicable:
- 3       (a) Any material and relevant facts, data or information which  
4 he knows, or which by the exercise of reasonable care and diligence  
5 he should have known, relating to the property which is the subject  
6 of the transaction.
- 7       (b) Each source from which he will receive compensation as a  
8 result of the transaction.
- 9       (c) That he is a principal to the transaction or has an interest in a  
10 principal to the transaction.
- 11       (d) Except as otherwise provided in NRS 645.253, that he is  
12 acting for more than one party to the transaction. If a licensee makes  
13 such a disclosure, he must obtain the written consent of each party  
14 to the transaction for whom he is acting before he may continue to  
15 act in his capacity as an agent. The written consent must include:
- 16           (1) A description of the real estate transaction.
- 17           (2) A statement that the licensee is acting for two or more  
18 parties to the transaction who have adverse interests and that in  
19 acting for these parties, the licensee has a conflict of interest.
- 20           (3) A statement that the licensee will not disclose any  
21 confidential information for 1 year after the revocation or  
22 termination of any brokerage agreement entered into with a party to  
23 the transaction, unless he is required to do so by a court of  
24 competent jurisdiction or he is given written permission to do so by  
25 that party.
- 26           (4) A statement that a party is not required to consent to the  
27 licensee acting on his behalf.
- 28           (5) A statement that the party is giving his consent without  
29 coercion and understands the terms of the consent given.
- 30       (e) Any changes in his relationship to a party to the transaction.
- 31       2. Shall exercise reasonable skill and care with respect to all  
32 parties to the real estate transaction.
- 33       3. Shall provide ~~[to each party to the real estate transaction]~~ the  
34 appropriate form prepared by the Division pursuant to NRS 645.193  
35 ~~[ ]~~ to:
- 36       (a) *Each party for whom the licensee is acting as an agent in*  
37 *the real estate transaction; and*
- 38       (b) *Each unrepresented party to the real estate transaction, if*  
39 *any.*
- 40       4. Unless otherwise agreed upon in writing, owes no duty to:
- 41       (a) Independently verify the accuracy of a statement made by an  
42 inspector certified pursuant to chapter 645D of NRS or another  
43 appropriate licensed or certified expert.
- 44       (b) Conduct an independent inspection of the financial condition  
45 of a party to a real estate transaction.



1       **Sec. 11.** 1. Notwithstanding the provisions of sections 3 and  
2 9 of this act to the contrary, a person licensed as a real estate broker,  
3 real estate broker-salesman or real estate salesman on or before  
4 October 1, 2005, may lawfully engage in business as a business  
5 broker in this State until January 1, 2007, without a permit issued  
6 pursuant to section 3 of this act.

7       2. A licensee who is initially exempt from the requirements of  
8 sections 3 and 9 of this act pursuant to subsection 1 may satisfy the  
9 educational requirements of paragraph (a) of subsection 2 of section  
10 3 of this act if, on or before January 1, 2007, the licensee obtains a  
11 passing score on a test on the principles of business brokerage  
12 established or adopted by the Real Estate Commission pursuant to  
13 subsection 3 and administered by the Real Estate Division of the  
14 Department of Business and Industry.

15       3. The Real Estate Commission shall, on or before July 1,  
16 2006, establish or adopt a test on the principles of business  
17 brokerage to be administered by the Real Estate Division pursuant  
18 to subsection 2.



