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*Secretary of State*

STATE OF NEVADA



**DIANA J. FOLEY**

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Securities Division*

**SCOTT W. ANDERSON**

*Chief Deputy Secretary of State*

OFFICE OF THE  
SECRETARY OF STATE

September 8, 2017

## Notice of Workshop to Solicit Comments on Proposed Regulations

### And Agenda

#### **Notice of Workshop**

The Office of the Secretary of State, Securities Division, 555 East Washington Avenue, Suite 5200, Las Vegas, Nevada 89101, is holding a workshop relating to regulations pertaining to laws set forth in Nevada Revised Statutes, Chapters 90 and Chapter 628A, and Chapter 90 of the Nevada Administrative Code. The workshop has been set for Friday, October 6, 2017, at 9:00 a.m. at the Grant Sawyer State Office Building, 555 East Washington Avenue, Room 4412. The purpose of the workshop is to solicit comments from interested persons on the laws adopted through Senate Bill 383 ("SB383")q, which among other things, imposes a fiduciary duty on broker dealers and investments advisers. The below agenda for that day includes the general topics that may be addressed in the proposed regulations.

A copy of SB383 which modified Chapters 90 and 628A of the Nevada Revised Statutes, and a copy of NRS 628A prior to the bill adoption, are all attached. NAC Chapter 90 in its current form can be found at the following web address: <https://www.leg.state.nv.us/NAC/NAC-090.html>. These materials may also be obtained at the workshop or by contacting Eli Beauchamp, 555 East Washington Avenue, Suite 5200, 702-486-2440. A reasonable fee for copying may be charged.

#### **LAS VEGAS OFFICE**

555 E. Washington Avenue, Suite 5200

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Notice of Workshop to Solicit Comments on Proposed Regulations  
September 8, 2017  
Page2

This Notice of Workshop to Solicit Comments on Proposed Regulations has been sent to all persons on the Securities Division's mailing list for administrative regulations and posted at the following locations:

**Nevada Secretary of State's Office, Main Lobby**  
555 East Washington, Suite 5200, Las Vegas, NV 89101

**Nevada Secretary of State's Office  
Commercial Recordings Main Lobby**  
202 North Carson Street, Carson City, NV 89701

**Nevada State Legislative Building**  
401 South Carson Street, Carson City, Nevada 89701

**Grant Sawyer Building, Lobby**  
555 East Washington, Las Vegas, NV 89101

**Nevada State Library**  
100 North Stewart Street, Carson City, NV 89701

**The State Capitol**  
101 North Carson Street, Carson City, NV 89701

**State of Nevada Website**  
<http://nv.gov/>

**Nevada Secretary of State Website, Fiduciary Page**  
<http://www.nvsos.gov/sos/licensing/securities/new-fiduciary-duty>

**Nevada Secretary of State Website**  
<http://www.nvsos.gov/sos>

PLEASE NOTE: WRITTEN REQUESTS FOR NOTICE OF ADMINISTRATIVE  
RULEMAKING LAPSE AFTER SIX MONTHS

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**AGENDA**

1. **Call to Order**
2. **Public Comment**
3. **Discussion/for possible action regarding State Administrative Regulations**
  - A. Application of fiduciary duty to broker dealers, sales representatives of broker dealers, sales representatives of the issuer, investment advisers, representatives of investment advisers
  - B. Identification of duties encompassed within the Fiduciary Duty
  - C. Definitions of terms
  - D. Identification of conduct consistent with the Fiduciary Duty
  - E. Identification of conduct violating the Fiduciary Duty
  - F. Conduct or registrants potentially exempt from the Fiduciary Duty
  - G. Modifications of the current Nevada Administrative Code, Chapter 90
4. **Discussion/for possible action on- Issues Experienced regarding SB383 after its effective date on 7-01-17**
5. **Public comment**
6. **Adjournment**

Notice of Workshop to Solicit Comments on Proposed Regulations  
September 8, 2017  
Page4

NOTE: The Nevada Secretary of State's Office, Securities Division may take the above matters out of order, may consolidate the above matters for consideration, and reserves the right to remove or delay any of the above matters on the Agenda. Commenters may be limited to 3 minutes. Members of the public are encouraged to submit written comments for record at [fiduciaryduty@sos.nv.gov](mailto:fiduciaryduty@sos.nv.gov).

Date: September 8, 2017.

Respectfully,



Diana J. Foley  
Deputy Secretary of State for Securities

**LAS VEGAS OFFICE**  
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CHAPTER.....

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:**

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, 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.



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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-NR8-90:310-or-exempt-under-NR8-90:320;~~

~~—(d)—An-in:estment-adviser-licensed-pursuant-to-NR8-90:330-or-exempt-under-NR8-90:340;-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 ~~(At~~

**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 *J.* A financial planner [~~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.



## CHAPTER 628A - FINANCIAL PLANNERS

<a href="#">NRS 628A.010</a>	<b>Definitions.</b>
<a href="#">NRS 628A.020</a>	<b>Duties of financial planner.</b>
<a href="#">NRS 628A.030</a>	<b>Liability of financial planner.</b>
<a href="#">NRS 628A.040</a>	<b>Financial planner required to maintain insurance for liability or surety bond.</b>

**NRS 628A.010 Definitions.** 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](#);
  - (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.

(Added to NRS by [1993, 1372](#); A [1995, 1453, 1635](#); [1997, 530](#); [2001, 2256](#))

**NRS 628A.020 Duties of financial planner.** A financial planner has the duty of a fiduciary toward a client. A financial planner shall disclose to a client, at the time advice is given, any gain the financial planner may receive, such as profit or commission, if the advice is followed. A financial planner shall make diligent inquiry of each client to ascertain initially, and keep currently informed concerning, the client's financial circumstances and obligations and the client's present and anticipated obligations to and goals for his or her family.

(Added to NRS by [1993, 1372](#))

**NRS 628A.030 Liability of financial planner.**

1. If loss results from following a financial planner's advice under any of the circumstances listed in subsection 2, the client may recover from the financial planner in a civil action the amount of the economic loss and all costs of litigation and attorney's fees.
2. The circumstances giving rise to liability of a financial planner are that the financial planner:
  - (a) Violated any element of his or her fiduciary duty;
  - (b) Was grossly negligent in selecting the course of action advised, in the light of all the client's circumstances known to the financial planner; or
  - (c) Violated any law of this State in recommending the investment or service.

(Added to NRS by [1993, 1372](#))

**NRS 628A.040 Financial planner required to maintain insurance for liability or surety bond.** 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.

(Added to NRS by [1993, 1372](#))