LIEUTENANT GOVERNOR'S OFFICE

ENTREPRENEURSHIP TASK FORCE

October 19, 2016 - 9:00 a.m.

MEETING LOCATION
InNEVation Center
3rd Floor Classroom
6795 S Edmond Street
Las Vegas, NV 89118

NOTICE OF PUBLIC MEETING

THIS MEETING IS IN COMPLIANCE WITH THE "NEVADA OPEN MEETING LAW" AND HAS BEEN PROPERLY NOTICED AND POSTED AT THE FOLLOWING LOCATIONS:

State Capitol Building, Carson City, Nevada
Grant Sawyer Building, Las Vegas, Nevada
Legislative Counsel Bureau, Carson City and Las Vegas, Nevada
Nevada State Library, Carson City, Nevada
Nevada Commission on Tourism, Carson City, Nevada
Websites www.ltgov.nv.gov and www.notice.nv.gov

- Action may be taken on those items denoted "For Possible Action".
- Items on this agenda may be taken in a different order than listed.
- Two or more agenda items may be combined for consideration.
- An item may be removed from this agenda or discussion relating to an item on this agenda may be delayed at any time.
- Public comment will be allowed at the beginning and at the end of the meeting. Because of time considerations, the period for public comment by each speaker may be limited to 3 minutes at the discretion of the chair, and speakers are urged to avoid repetition of comments made by previous speakers.
- Meetings are audio-recorded as part of the public record. Speakers are requested to identify themselves before speaking.

AGENDA

1. **Call to Order and Opening Remarks**

    a. Call to Order and Confirmation of Proper Posting
    b. Establish quorum and Opening Remarks/Introductions

2. **Public Comment**

Public comment is welcomed. A period of public comment will be allowed at the beginning and at the end of the meeting. Because of time considerations, the period for public comment by each speaker may be limited to three (3) minutes and speakers are urged to avoid repetition of comments made by previous speakers.

3. **Discussion on Role, Organization, Structure of Task Force, Mission Statement**

4. **Task Force Member Comments**

5. **Discussion and Prioritization of Bill Draft Request Topics for the 2017 Legislative Session - (Discussion maybe limited to 10 minutes per topic)**

    a. Prohibiting non-compete clauses
    b. Ending state requirement for venture capitalist to register as investment advisors
    c. Addressing occupational licensing

6. **Direction on Entrepreneurship Task Force Next Steps**

    a. Long term goals
    b. Time and date of next meeting

7. **Closing Remarks**

8. **Public Comment**

    Public comment is welcomed. A period of public comment will be allowed at the beginning and at the end of the meeting. Because of time considerations, the period for public comment by each speaker may be limited to three (3) minutes and speakers are urged to avoid repetition of comments made by previous speakers.

9. **Adjournment - For Possible Action**

The public may acquire this agenda and supporting materials, pursuant to NRS 241.020(2) by contacting **Cathy Erskine**, Office of the Lieutenant Governor, (775) 684-7111 or via email to cjerskine@ltgov.nv.gov Materials are available at the Office of the Lieutenant Governor, 101 N. Carson Street Suite 2, Carson City, Nevada and on www.ltgov.nv.gov

Persons with disabilities who require special accommodations or assistance at the meeting should **Cathy Erskine**, Office of the Lieutenant Governor, (775) 684-7111 or cjerskine@ltgov.nv.gov prior to the meeting.

Agenda Item 5
Discussion and Prioritization of Bill Draft Request Topics for the 2017 Legislative Session

5a. Prohibiting Non-Compete Clauses

I. Legislative intent is to:
   a. Promote labor mobility with free movements of individuals in and out of jobs
   b. Liberate entrepreneurs - Allow employees to easily leave employment to pursue a talent/idea and start a new business without having to wait out the length of a non-compete agreement
   c. Prohibit non-compete agreements for employees and independent contractors for private sector startup companies if they meet the following definition/criteria:
      i. A startup company is an incorporated legal entity of not more than 5 years, which meets a minimum of 3 of the following criteria:
         1. Annual profits of less than $5 million
         2. Annual revenues of less than $50 million
         3. Less than 50 direct employees
         4. Market capitalization of less than $100 million
   d. Establish statutory damages for violation of non-disclosure agreement (criminal)
      i. Increasing fine from "no more than $10,000" to "$100,000 per occurrence or per violation"

5b. Remove State-Level Registration Requirement for Venture Capitalists

I. Legislative intent is to:
   a. Eliminate the requirement for venture capitalist and/or private fund advisors from registering as an investment advisor
   b. Increase number of purchasers from 25 to 35 (limited offering provision)

5c. Address current laws regarding occupational licensing

I. On July 21, 2016, the Governor's Office has submitted:
   a. BDR 54-229 - Revises general provisions governing state agencies, boards and commissions that regulate occupations and professions.

II. Other BDR's submitted:
   a. BDR 20-42 - Revises provisions governing the regulation of professions and occupations. (Submitted by Assemblyman Gardner)
   b. BDR 299 - Makes various changes relating to occupational licensing boards. (Submitted by Assemblyman Gardner)
   c. BDR 185 - Prohibits professional licensing boards from taking disciplinary action against licensees because of the licensees' professional involvement with marijuana. (Submitted by Senator Segerblom)
   d. BDR 54-218 - Revises provisions governing professional licensing.(Submitted by Assemblyman Jones)
   e. BDR 34-342 - Revises provisions relating to requirements for the initial licensing of teachers. (Submitted by Clark County School District)

III. Other concepts:
   a. Potential exemptions for new residents (assist spouses and families of entrepreneurs relocating to Nevada)
   b. Out-of-state reciprocity
   c. Grace periods for new residents to operate while obtaining necessary licensure/ accreditation required in Nevada

Non-Compete Relative NRS

NRS 613.200 Prevention of employment of person who has been discharged or who terminates employment unlawful; criminal and administrative penalties; exception.

1. Except as otherwise provided in this section, any person, association, company or corporation within this State, or any agent or officer on behalf of the person, association, company or corporation, who willfully does anything intended to prevent any person who for any cause left or was discharged from his, her or its employ from obtaining employment elsewhere in this State is guilty of a gross misdemeanor and shall be punished by a fine of not more than $5,000.

2. In addition to any other remedy or penalty, the Labor Commissioner may impose against each culpable party an administrative penalty of not more than $5,000 for each such violation.

3. If a fine or an administrative penalty is imposed pursuant to this section, the costs of the proceeding, including investigative costs and attorney's fees, may be recovered by the Labor Commissioner.

4. The provisions of this section do not prohibit a person, association, company, corporation, agent or officer from negotiating, executing and enforcing an agreement with an employee of the person, association, company or corporation which, upon termination of the employment, prohibits the employee from:

(a) Pursuing a similar vocation in competition with or becoming employed by a competitor of the person, association, company or corporation; or

(b) Disclosing any trade secrets, business methods, lists of customers, secret formulas or processes or confidential information learned or obtained during the course of his or her employment with the person, association, company or corporation,

if the agreement is supported by valuable consideration and is otherwise reasonable in its scope and duration.

[1911 C&P § 514; RL § 6779; NCL § 10461] — (NRS A 1967, 635; 1993, 901; 1995, 1039; 2003, 797)

NRS 600A.010 Short title. This chapter may be cited as the Uniform Trade Secrets Act.
(Added to NRS by 1987, 19)

NRS 600A.030 Definitions. As used in this chapter, unless the context otherwise requires:

1. "Improper means" includes, without limitation:

(a) Theft;

(b) Bribery;

(c) Misrepresentation;

(d) Willful breach or willful inducement of a breach of a duty to maintain secrecy;

(e) Willful breach or willful inducement of a breach of a duty imposed by common law, statute, contract, license, protective order or other court or administrative order; and

(f) Espionage through electronic or other means.

2. "Misappropriation" means:

(a) Acquisition of the trade secret of another by a person by improper means;

(b) Acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or

(c) Disclosure or use of a trade secret of another without express or implied consent by a person who:

(1) Used improper means to acquire knowledge of the trade secret;

(2) At the time of disclosure or use, knew or had reason to know that his or her knowledge of the trade secret was:

(I) Derived from or through a person who had used improper means to acquire it;

(II) Acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or

(III) Derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or

(3) Before a material change of his or her position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.

3. "Owner" means the person who holds legal or equitable title to a trade secret.

4. "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

5. "Trade secret" means information, including, without limitation, a formula, pattern, compilation, program, device, method, technique, product, system, process, design, prototype, procedure, computer programming instruction or code that:

(a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by the public or any other persons who can obtain commercial or economic value from its disclosure or use; and

(b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(Added to NRS by 1987, 20; A 1993, 2802; 1999, 2101)

Venture Capitalist - Relative NRS Chapters

NRS 90.240 "Financial or institutional investor" defined. "Financial or institutional investor" means any of the following, whether acting for itself or others in a fiduciary capacity other than as an agent:

1. A depository institution;
2. An insurance company;
3. A separate account of an insurance company;
4. An investment company as defined in the Investment Company Act of 1940;
5. An employee pension, profit-sharing, or benefit plan if the plan has total assets in excess of $5,000,000 or its investment decisions are made by a named fiduciary, as defined in the Employee Retirement Income Security Act of 1974, that is either a broker-dealer registered under the Securities Exchange Act of 1934, an investment adviser registered or exempt from registration under the Investment Advisers Act of 1940, a depository institution, or an insurance company; and
6. Any other institutional buyer.

(Added to NRS by 1987, 2150; A 1989, 160)

NRS 90.330 Licensing of investment advisers and representatives of investment advisers.

1. It is unlawful for any person to transact business in this State as an investment adviser or as a representative of an investment adviser unless licensed or exempt from licensing under this chapter.

2. It is unlawful for an investment adviser to employ, to engage in any activity in this State, any person who is suspended or barred from association with a broker-dealer or investment adviser by the Administrator. An investment adviser does not violate this subsection unless the investment adviser knows or in the exercise of reasonable care should know of the suspension or bar. Upon request from an investment adviser and for good cause shown, the Administrator, by order, may waive the prohibition of this subsection with respect to a person suspended or barred.

(Added to NRS by 1987, 2154; A 1989, 160; 1995, 1442)

NRS 90.340 Exempt investment advisers and representatives of investment advisers.

1. The following persons are exempt from licensing under NRS 90.330:

(a) An investment adviser who is registered or is not required to be registered as an investment adviser under the Investment Advisers Act of 1940 if:

(1) Its only clients in this State are other investment advisers, broker-dealers or financial or institutional investors;

(2) The investment adviser has no place of business in this State and directs business communications in this State to a person who is an existing client of the investment adviser and whose principal place of residence is not in this State; or

(3) The investment adviser has no place of business in this State and during any 12 consecutive months it does not direct business communications in this State to more than five present or prospective clients other than those specified in subparagraph (1), whether or not the person or client to whom the communication is directed is present in this State;

(b) A representative of an investment adviser who is employed by an investment adviser who is exempt from licensing pursuant to paragraph (a);

(c) A sales representative licensed pursuant to NRS 90.310 who:

(1) Has passed the following examinations administered by the Financial Industry Regulatory Authority:

(I) The Uniform Investment Adviser Law Examination, designated as the Series 65 examination; or

(II) The Uniform Combined State Law Examination designated as the Series 66 examination and the General Securities Registered Representative Examination, designated as the Series 7 examination; or

(2) On January 1, 1996, has been continuously licensed in this State as a sales representative for 5 years or more; and

(d) Other investment advisers and representatives of investment advisers the Administrator by regulation or order exempts.

2. The Administrator may, by order or rule, waive the examinations required by subparagraph (1) of paragraph (c) of subsection 1 for an applicant or a class of applicants if the Administrator determines that the examination is not necessary for the protection of investors because of the training and experience of the applicant or class of applicants.

(Added to NRS by 1987, 2155; A 1989, 160; 1995, 1443; 2009, 2556)

Limited Offering Exemptions

NRS 90.530 Exempt transactions. The following transactions are exempt from NRS 90.460 and 90.560:

[...]

11. Except as otherwise provided in this subsection, a transaction pursuant to an offer to sell securities of an issuer if:

(a) The transaction is part of an issue in which there are not more than 25 purchasers in this State, other than those designated in subsection 10, during any 12 consecutive months;

(b) No general solicitation or general advertising is used in connection with the offer to sell or sale of the securities;

(c) No commission or other similar compensation is paid or given, directly or indirectly, to a person, other than a broker-dealer licensed or not required to be licensed under this chapter, for soliciting a prospective purchaser in this State; and

(d) One of the following conditions is satisfied:

(1) The seller reasonably believes that all the purchasers in this State, other than those designated in subsection 10, are purchasing for investment; or

(2) Immediately before and immediately after the transaction, the issuer reasonably believes that the securities of the issuer are held by 50 or fewer beneficial owners, other than those designated in subsection 10, and the transaction is part of an aggregate offering that does not exceed $500,000 during any 12 consecutive months.

[...]

NASAA Registration Exemption for Investment Advisers to Private Funds Model Rule

*Adopted December 16, 2011; Amended October 08, 2013**

I. TEXT OF MODEL RULE

Rule XXX. Registration exemption for investment advisers to private funds.

(a) ***Definitions***. For purposes of this regulation, the following definitions shall apply:

(1) "Value of primary residence" means the fair market value of a person's primary residence, subtracted by the amount of debt secured by the property up to its fair market value.

(2) "Private fund adviser" means an investment adviser who provides advice solely to one or more qualifying private funds.

(3) "Qualifying private fund" means a private fund that meets the definition of a qualifying private fund in SEC Rule 203(m)-1, 17 C.F.R. 275.203(m)-1.

(4) "3(c)(1) fund" means a qualifying private fund that is eligible for the exclusion from the definition of an investment company under section 3(c)(1) of the Investment Company Act of 1940, 15 U.S.C. 80a-3(c)(1).

(5) "Venture capital fund" means a private fund that meets the definition of a venture capital fund in SEC Rule 203(l)-1, 17 C.F.R. § 275.203(l)-1.

(b) ***Exemption for private fund advisers.*** Subject to the additional requirements of paragraph (c) below, a private fund adviser shall be exempt from the registration requirements of Section XXX [403 of USA 2002] if the private fund adviser satisfies each of the following conditions:

(1) neither the private fund adviser nor any of its advisory affiliates are subject to an event that would disqualify an issuer under Rule 506(d)(1) of SEC Regulation D, 17 C.F.R. § 230.506(d)(1);

(2) the private fund adviser files with the state each report and amendment thereto that an exempt reporting adviser is required to file with the Securities and Exchange Commission pursuant to SEC Rule 204-4, 17 C.F.R. § 275.204-4; and

(3) the private fund adviser pays the fees specified in Section XXX [410 of USA 2002].

(c) ***Additional requirements for private fund advisers to certain 3(c)(1) funds***. In order to qualify for the exemption described in paragraph (b) of this regulation, a private fund adviser who advises at least one (3)(c)(1) fund that is not a venture capital fund shall, in addition to satisfying each of the conditions specified in paragraphs (b)(1) through (b)(3), comply with the following requirements:

* *Amendments Adopted at NASAA's Annual Conference (Salt Lake City, UT)*

(1) The private fund adviser shall advise only those 3(c)(1) funds (other than venture capital funds) whose outstanding securities (other than short-term paper) are beneficially owned entirely by persons who, after deducting the value of the primary residence from the person's net worth, would each meet the definition of a qualified client in SEC Rule 205-3, 17 C.F.R. § 275.205-3, at the time the securities are purchased from the issuer;

(2) At the time of purchase, the private fund adviser shall disclose the following in writing to each beneficial owner of a 3(c)(1) fund that is not a venture capital fund:

(A) all services, if any, to be provided to individual beneficial owners;

(B) all duties, if any, the investment adviser owes to the beneficial owners; and

(C) any other material information affecting the rights or responsibilities of the beneficial owners.

(3) The private fund adviser shall obtain on an annual basis audited financial statements of each 3(c)(1) fund that is not a venture capital fund, and shall deliver a copy of such audited financial statements to each beneficial owner of the fund.

(d) ***Federal covered investment advisers***. If a private fund adviser is registered with the Securities and Exchange Commission, the adviser shall not be eligible for this exemption and shall comply with the state notice filing requirements applicable to federal covered investment advisers in Section XXX [405 of USA 2002].

(e) ***Investment adviser representatives***. A person is exempt from the registration requirements of Section XXX [404 of USA 2002] if he or she is employed by or associated with an investment adviser that is exempt from registration in this state pursuant to this regulation and does not otherwise act as an investment adviser representative.

(f) ***Electronic filing***. The report filings described in paragraph (b)(2) above shall be made electronically through the IARD. A report shall be deemed filed when the report and the fee required by Section XXX [410 of USA 2002] are filed and accepted by the IARD on the state's behalf.

(g) ***Transition***. An investment adviser who becomes ineligible for the exemption provided by this rule must comply with all applicable laws and rules requiring registration or notice filing within ninety (90) days from the date the investment adviser's eligibility for this exemption ceases.
*(h) Waiver Authority with Respect to Statutory Disqualification.*Paragraph (b)(1) shall not apply upon a showing of good cause and without prejudice to any other action of the [state securities regulator], if the [Administrator] determines that it is not necessary under the circumstances that an exemption be denied.

[(i) ***Grandfathering for investment advisers to 3(c)(1) funds with non-qualified clients****. An investment adviser to a 3(c)(1) fund (other than a venture capital fund) that has one or more beneficial owners who are not qualified clients as described in subparagraph (c)(1) is eligible for the exemption contained in paragraph (b) of this regulation if the following conditions are satisfied:*

(1) the subject fund existed prior to the effective date of this regulation;

(2) as of the effective date of this regulation, the subject fund ceases to accept beneficial owners who are not qualified clients, as described in subparagraph (c)(1) of this regulation;

(3) the investment adviser discloses in writing the information described in paragraph (c)(2) to all beneficial owners of the fund; and

(4) as of the effective date of this regulation, the investment adviser delivers audited financial statements as required by paragraph (c)(3).]

II. COMMENTARY

1. Section (a). Section (a) defines key terms in the model rule. The definitions are structured such that the types of private funds covered under the rule will include funds excluded from the definition of investment company under Sections 3(c)(1) and 3(c)(7) of the Investment Company Act, along with other private funds that would satisfy the statutory requirements found in these exclusions.

2. Section (b). Section (b) explains that in order to claim the exemption from registration, the adviser and its affiliates must not be subject to a "bad boy" disqualification. This section of the rule also explains that the exemption is contingent upon the adviser filing a report with the state securities administrator. This report is identical to the one required by the SEC for advisers to venture capital funds and private funds with less than $150 million in assets under management. Changes to Form ADV and to IARD have been implemented that will accommodate the filing of the report with state regulators. The report will consist of the following items on Part 1A of Form ADV: Items 1 (Identifying Information), 2.B. (SEC Reporting by Exempt Reporting Advisers), 3 (Form of Organization), 6 (Other Business Activities), 7 (Financial Industry Affiliations and Private Fund Reporting), 10 (Control Persons), and 11 (Disclosure Information). In addition, the corresponding sections of Schedules A, B, C, and D must be completed.

3. Section (c). Section (c) and its subparts place additional conditions upon advisers to 3(c)(1) funds. Specifically, in order to qualify for the exemption from investment adviser registration, the 3(c)(1) fund must be comprised entirely of "qualified clients" under SEC Rule 205-3. This means that individual investors must have either $1 million in investments managed by the adviser or at least $2 million in net worth. The model rule states that the value of the primary residence is not included in calculating net worth. The value of the primary residence will be an estimate of the fair market value made at the time the net worth calculation is conducted. Section (c) also requires the adviser to deliver annual audited financial statements to the investors in the fund, and it requires the adviser to make other specific disclosures to those investors.

4. Section (d). This section simply notes that advisers registered with the SEC are not eligible for the exemption. They are treated the same as other federal covered advisers.

5. Section (e). The rule establishes an exemption from registration for investment advisers. Therefore, this section explains that the investment adviser representatives employed by the advisers would not be required to register.

6. Section (f). Section (f) requires the reports filed by the advisers to be filed with the state through IARD. The rule recognizes that a state may charge a fee for this report, but in most instances a statutory change would likely be required to implement the fee.

7. Section (g). When an exempt reporting adviser loses the exemption by, for instance, adding a client that does not meet the financial requirements under the rule, the adviser would be required to register. This paragraph gives the adviser 90 days in which to complete that registration.

8. Section (h). Section (h) is an optional "grandfathering" provision that would allow advisers to private funds currently exempt under state law to remain exempt provided that the adviser files the reports required under the rule, does not accept new investors that will not meet the financial requirements imposed by the rule, and provides the required disclosures to the investors.

Additional Resources

- Kaufmann Index Startup Activity State Trends 2016
- Kauffman Entrepreneurship Policy Digest - Rethinking Non-Competes July 2014
- GSR v Atlantis Opinion 16-22640
- Occupational Licensing: A Framework for Policymakers July 2015
- Startup Communities-Building an Entrepreneurial Ecosystem in Your City by Brad Feld
- Occupational and Professional Licensing Policy and Program Report by Nevada Legislative Counsel Bureau April 2016