

ASSEMBLY BILL NO. 397—ASSEMBLYMAN BROWER

MARCH 16, 2001

Referred to Committee on Judiciary

SUMMARY—Provides for admissibility in evidence of certain statements made by unavailable declarants. (BDR 4-997)

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 evidence; providing for the admissibility of statements made by an unavailable declarant concerning the infliction or threat of physical injury upon the declarant under certain circumstances; 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 51 of NRS is hereby amended by adding thereto a
2 new section to read as follows:
3 ***1. Except as otherwise provided in subsection 3, a statement is not***
4 ***excluded by the hearsay rule if:***
5 ***(a) The statement of the declarant describes or explains a threat of or***
6 ***actual physical injury, inflicted upon him;***
7 ***(b) The statement was made at or near the time of the threat or***
8 ***infliction of physical injury upon the declarant;***
9 ***(c) The statement of the declarant was made in writing, recorded***
10 ***electronically or made to a law enforcement officer;***
11 ***(d) The declarant is unavailable as a witness; and***
12 ***(e) The court finds that the time, content and circumstances of the***
13 ***statement provide sufficient circumstantial guarantees of***
14 ***trustworthiness. In determining trustworthiness the court shall consider,***
15 ***without limitation, whether:***
16 ***(1) The statement was prepared in anticipation of litigation or for***
17 ***trial in which the declarant is an interested party;***
18 ***(2) The declarant has a bias or motive for fabricating the statement***
19 ***and the extent of any such bias or motive; and***
20 ***(3) The statement is corroborated by admissible evidence other than***
21 ***statements that are admissible only pursuant to this section.***



1 2. *A statement is admissible pursuant to this section only if the*
2 *person offering the statement makes known to the adverse party his*
3 *intention to offer the statement and the details of the statement*
4 *sufficiently in advance of the proceedings to provide the adverse party*
5 *with a fair opportunity to prepare for the statement.*
6 3. *A statement is not admissible pursuant to this section if it was*
7 *made more than 5 years before the filing of the action or proceeding in*
8 *which the statement is offered as evidence.*
9 **Sec. 2.** NRS 51.315 is hereby amended to read as follows:
10 51.315 1. A statement is not excluded by the hearsay rule if:
11 (a) Its nature and the special circumstances under which it was made
12 offer strong assurances of accuracy; and
13 (b) The declarant is unavailable as a witness.
14 2. The provisions of NRS 51.325 to 51.355, inclusive, *and section 1 of*
15 *this act*, are illustrative and not restrictive of the exception provided by this
16 section.
17 **Sec. 3.** 1. The amendatory provisions of this act apply to a civil
18 action or proceeding filed on or after October 1, 2001.
19 2. The amendatory provisions of this act do not apply to a criminal
20 action in which an indictment has been found or a complaint or information
21 has been filed before October 1, 2001.

