

(REPRINTED WITH ADOPTED AMENDMENTS)
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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 or upon a person to whom the declarant is related by blood or marriage 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 made by*
4 *an alleged victim of an act that constitutes domestic violence pursuant to*
5 *NRS 33.018 is not excluded by the hearsay rule if:*
6 (a) *The statement of the declarant describes or explains:*
7 (1) *A threat of physical injury to or the infliction of physical injury*
8 *upon the declarant; or*
9 (2) *A threat of physical injury to or the infliction of physical injury*
10 *upon a person to whom the declarant is related by blood or marriage;*
11 (b) *The statement was made at or near the time of the threat or*
12 *infliction of physical injury upon the declarant;*
13 (c) *The statement of the declarant was made in writing, recorded*
14 *electronically or made to a law enforcement officer;*
15 (d) *The declarant is unavailable as a witness; and*
16 (e) *The court finds that the time, content and circumstances of the*
17 *statement provide sufficient circumstantial guarantees of*
18 *trustworthiness. In determining trustworthiness the court shall consider,*
19 *without limitation, whether:*
20 (1) *The statement was prepared in anticipation of litigation or for*
21 *trial in which the declarant is an interested party;*



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

