

SENATE BILL NO. 198—SENATOR O’CONNELL

FEBRUARY 19, 2001

Referred to Committee on Government Affairs

SUMMARY—Establishes bill of rights for persons whose financial or other business records are subject to examination by regulatory governmental agencies. (BDR 19-53)

FISCAL NOTE: Effect on Local Government: Yes.
Effect on the State: Yes.

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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 governmental regulation; establishing a bill of rights for persons whose financial or other business records are subject to examination by regulatory governmental agencies; 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 239A of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2 to 11, inclusive, of this act.
3 **Sec. 2.** *As used in sections 2 to 11, inclusive, of this act, unless the*
4 *context otherwise requires, the words and terms defined in sections 3 to*
5 *7, inclusive, of this act have the meanings ascribed to them in those*
6 *sections.*
7 **Sec. 3.** *“Examination” includes any audit, investigation or other*
8 *inspection of the financial or other business records of a person.*
9 **Sec. 4.** *“Governmental agency” has the meaning ascribed to it in*
10 *NRS 239A.050.*
11 **Sec. 5.** *“Person” means any natural person, corporation,*
12 *partnership, association, trust, unincorporated organization or other*
13 *legal entity, except a governmental entity.*
14 **Sec. 6.** *“Regulatory agency” means any governmental agency,*
15 *except the department of taxation, that is authorized by law to conduct an*
16 *examination of the financial or other business records of a person.*
17 **Sec. 7.** *“Regulated person” means a person whose financial or other*
18 *business records are subject to examination by a regulatory agency.*
19 **Sec. 8.** *Section 9 of this act may be cited as the Business Records*
20 *Bill of Rights.*
21 **Sec. 9.** *The legislature hereby declares that, except as otherwise*
22 *provided by specific statute, each regulated person has the right:*



- 1 *1. To be treated by officers and employees of a regulatory agency*
2 *with courtesy, fairness, uniformity, consistency and common sense.*
- 3 *2. To a prompt response from a regulatory agency to each*
4 *communication from the regulated person regarding the maintenance or*
5 *examination of his financial or other business records.*
- 6 *3. To provide the minimum documentation and other information as*
7 *may reasonably be required by a regulatory agency to carry out its duties.*
- 8 *4. To written explanations of the common errors, oversights and*
9 *violations that regulated persons experience with their financial and*
10 *other business records and instructions on how to avoid such problems.*
- 11 *5. In any meeting with a regulatory agency regarding the financial*
12 *or other business records of the regulated person, including any*
13 *examination, conference, interview or hearing:*
 - 14 *(a) To an explanation by an officer, agent or employee of the*
15 *regulatory agency that describes the procedures to be followed and the*
16 *rights of the regulated person thereunder;*
 - 17 *(b) To self-representation or representation by anyone who is*
18 *otherwise authorized by law to represent the regulated person before the*
19 *regulatory agency;*
 - 20 *(c) To make an audio recording using the regulated person's*
21 *equipment and at the regulated person's expense; and*
 - 22 *(d) To receive a copy of any document or audio recording made by or*
23 *in the possession of the regulatory agency regarding the financial or*
24 *other business records of the regulated person, upon payment of the*
25 *actual cost to the regulatory agency of making the copy.*
- 26 *6. To a full explanation of the authority of a regulatory agency*
27 *relating to the examination of his financial or other business records,*
28 *including any procedures and notices for review and appeal that are*
29 *required for the protection of the regulated person. An explanation*
30 *which meets the requirements of this subsection must be included with*
31 *each notice to a regulated person that such an examination will be*
32 *conducted by a regulatory agency.*
- 33 *7. To simplified written instructions concerning the rights and*
34 *responsibilities of the regulated person regarding the maintenance and*
35 *examination of his financial and other business records.*
- 36 *8. To be free from the examination of his financial or other business*
37 *records by an officer, agent or employee of a regulatory agency for any*
38 *purpose that is not directly related to a regulatory function of the agency.*
- 39 *9. To be free from harassment and intimidation by an officer, agent*
40 *or employee of a regulatory agency for any reason.*
- 41 *10. To discuss any examination of his financial or other business*
42 *records by a regulatory agency, and any matters relating to the*
43 *examination, without restriction by the regulatory agency, with any*
44 *person or governmental entity.*
- 45 *11. To have any laws and regulations adopted pursuant thereto*
46 *relating to the maintenance or examination of the financial or other*
47 *business records of the regulated person construed in favor of the*
48 *regulated person if those laws or regulations are of doubtful validity or*
49 *effect, unless a specific provision of law is applicable.*



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1 **Sec. 10. 1. A regulatory agency shall adopt such regulations or**
2 **ordinances as are appropriate to carry out the provisions of the Business**
3 **Records Bill of Rights.**

4 **2. The chief executive officer of a regulatory agency shall cause:**
5 **(a) To be prepared in simple nontechnical terms a pamphlet setting**
6 **forth the provisions of the Business Records Bill of Rights and a**
7 **description of the applicable regulations or ordinances adopted pursuant**
8 **to subsection 1.**

9 **(b) A copy of the pamphlet to be distributed:**
10 **(1) To each regulated person on record with the regulatory agency**
11 **and to any other person upon request; and**

12 **(2) With each notice to a regulated person that the regulatory**
13 **agency will conduct an examination of the financial or other business**
14 **records of the regulated person.**

15 **Sec. 11. Except as otherwise provided by specific statute, a**
16 **regulatory agency shall, within 30 days after it receives from a regulated**
17 **person a written request relating to the maintenance or examination of**
18 **his financial or other business records, provide the regulated person with**
19 **a written response to that request.**

20 **Sec. 12. NRS 239A.010 is hereby amended to read as follows:**

21 239A.010 As used in ~~{this chapter,}~~ **NRS 239A.010 to 239A.190,**
22 **inclusive,** unless the context otherwise requires, the **words and** terms
23 defined in NRS 239A.020 to 239A.050, inclusive, have the meanings
24 ascribed to them in those sections.

25 **Sec. 13. NRS 239A.070 is hereby amended to read as follows:**

26 239A.070 ~~{This chapter does}~~ **The provisions of NRS 239A.010 to**
27 **239A.190, inclusive, do** not apply to any subpoena issued pursuant to Title
28 14 or chapters 616A to 617, inclusive, of NRS or prohibit:

29 1. Dissemination of any financial information which is not identified
30 with or identifiable as being derived from the financial records of a
31 particular customer.

32 2. The attorney general, district attorney, department of taxation,
33 public administrator, sheriff or a police department from requesting of a
34 financial institution, and the institution from responding to the request, as
35 to whether a person has an account or accounts with that financial
36 institution and, if so, any identifying numbers of the account or accounts.

37 3. A financial institution, in its discretion, from initiating contact with
38 and thereafter communicating with and disclosing the financial records of a
39 customer to appropriate governmental agencies concerning a suspected
40 violation of any law.

41 4. Disclosure of the financial records of a customer incidental to a
42 transaction in the normal course of business of the financial institution if
43 the director, officer, employee or agent of the financial institution who
44 makes or authorizes the disclosure has no reasonable cause to believe that
45 such records will be used by a governmental agency in connection with an
46 investigation of the customer.

47 5. A financial institution from notifying a customer of the receipt of a
48 subpoena or a search warrant to obtain his financial records, except when
49 ordered by a court to withhold such notification.



1 6. The examination by or disclosure to any governmental regulatory
2 agency of financial records which relate solely to the exercise of its
3 regulatory function if the agency is specifically authorized by law to
4 examine, audit or require reports of financial records of financial
5 institutions.

6 7. The disclosure to any governmental agency of any financial
7 information or records whose disclosure to that particular agency is
8 required by the tax laws of this state.

9 8. The disclosure of any information pursuant to NRS 425.393,
10 425.400 or 425.460.

11 9. A governmental agency from obtaining a credit report or consumer
12 credit report from anyone other than a financial institution.

13 **Sec. 14.** NRS 239A.080 is hereby amended to read as follows:

14 239A.080 Except as *otherwise* provided in subsection 3 and NRS
15 239A.070 and 239A.150:

16 1. An officer, employee or agent of a governmental agency shall not
17 request or receive the financial records of any customer from a financial
18 institution unless:

19 (a) The request relates to a lawful investigation of the customer;

20 (b) The financial records are described in the request with particularity
21 and are consistent with the scope and requirements of the investigation;
22 and

23 (c) The officer, employee or agent furnishes the financial institution
24 with a customer authorization, subpoena or search warrant authorizing
25 examination or disclosure of such records as provided in ~~this chapter.~~
26 *NRS 239A.010 to 239A.190, inclusive.*

27 2. A director, officer, employee or agent of a financial institution shall
28 not provide or authorize another person to provide to an officer, employee
29 or agent of a governmental agency any financial records of a customer if
30 the director, officer, employee or agent of the financial institution knows or
31 has reason to believe that the financial records are being requested in
32 connection with an investigation of the customer, unless the request is
33 accompanied by a customer authorization, subpoena or search warrant
34 authorizing examination or disclosure of such records as provided in ~~this~~
35 ~~chapter.~~ *NRS 239A.010 to 239A.190, inclusive.*

36 3. This section does not apply to any officer, employee or agent of the
37 state gaming control board who is acting with the written permission of the
38 customer whose records are being requested.

39 **Sec. 15.** NRS 239A.090 is hereby amended to read as follows:

40 239A.090 1. A customer may authorize disclosure of financial
41 records pertaining to him by signing and dating a statement in which he:

42 (a) Authorizes the disclosure for a period specified in the statement;

43 (b) Specifies the name of the governmental agency to which disclosure
44 is authorized and, if applicable, the statutory purpose for which the
45 information is to be obtained;

46 (c) Identifies the financial records which are authorized to be disclosed;
47 and

48 (d) Indicates his understanding that he has the right at any time to
49 revoke the authorization.



1 2. No such authorization ~~{shall}~~ *may* be required by a financial
2 institution as a condition of doing business with the financial institution.

3 3. A governmental agency authorized by a customer to examine his
4 financial records shall notify the customer in writing within 30 days after
5 the examination that the examination took place and that he has the right to
6 request in writing the reasons for the examination. The notice ~~{shall}~~ *must*
7 also specify the financial records which were examined. The agency shall
8 give the customer the reason for the examination in writing within 10 days
9 after he requests it.

10 4. Except as *otherwise* provided in this section, a waiver by a customer
11 of any right or procedure under ~~{this chapter,}~~ *NRS 239A.010 to 239A.190,*
12 *inclusive*, whether oral or written or with or without consideration, is
13 invalid.

14 **Sec. 16.** NRS 239A.120 is hereby amended to read as follows:

15 239A.120 A governmental agency shall not provide financial records
16 obtained under ~~{this chapter,}~~ *NRS 239A.010 to 239A.190, inclusive*, to any
17 other governmental agency unless that other agency has independently
18 obtained authorization to receive such financial records in accordance with
19 the provisions of ~~{this chapter,}~~ *NRS 239A.010 to 239A.190, inclusive*.

20 **Sec. 17.** NRS 239A.130 is hereby amended to read as follows:

21 239A.130 1. A financial institution is not required to inquire or
22 determine that a governmental agency seeking disclosure of financial
23 records has complied with the requirements of ~~{this chapter,}~~ *NRS*
24 *239A.010 to 239A.190, inclusive*, if the customer authorization, subpoena
25 or search warrant served upon the financial institution shows compliance
26 on its face.

27 2. A financial institution which refuses to disclose the financial records
28 of a customer in reliance in good faith upon the provisions of ~~{this chapter,}~~
29 *NRS 239A.010 to 239A.190, inclusive*, is not liable to its customer, to a
30 governmental agency or to any other person for any loss or damage caused
31 by the refusal.

32 **Sec. 18.** NRS 239A.160 is hereby amended to read as follows:

33 239A.160 An action based upon the violation of any of the provisions
34 of ~~{this chapter shall}~~ *NRS 239A.010 to 239A.190, inclusive, may* not be
35 commenced more than 3 years after the date on which the violation
36 occurred.

37 **Sec. 19.** NRS 239A.170 is hereby amended to read as follows:

38 239A.170 1. In addition to any other remedy provided by law, a
39 customer aggrieved by a violation or threatened violation of the provisions
40 of ~~{this chapter,}~~ *NRS 239A.010 to 239A.190, inclusive*, may seek
41 injunctive relief as provided by law.

42 2. If a customer prevails in any proceeding to enforce any of the
43 provisions of ~~{this chapter,}~~ *NRS 239A.010 to 239A.190, inclusive*, he may
44 recover costs and reasonable attorney's fees.

45 **Sec. 20.** NRS 239A.180 is hereby amended to read as follows:

46 239A.180 Evidence obtained in violation of any of the provisions of
47 ~~{this chapter,}~~ *NRS 239A.010 to 239A.190, inclusive*, is inadmissible in any
48 proceeding except a proceeding to enforce ~~{the provisions of this chapter,}~~
49 *those provisions*.



1 **Sec. 21.** NRS 239A.190 is hereby amended to read as follows:
2 239A.190 Any person who knowingly participates in or knowingly
3 induces or attempts to induce a violation of any prohibition in ~~this chapter~~
4 *NRS 239A.010 to 239A.190, inclusive*, is guilty of a misdemeanor.

5 **Sec. 22.** NRS 364.220 is hereby amended to read as follows:
6 364.220 If an audit is performed pursuant to subsection 2 of NRS
7 364.210:

8 1. The proprietor of the enterprise has those rights set forth in NRS
9 360.291 *and section 9 of this act* that are applicable to the audit.

10 2. The proprietor must be informed of his rights in writing, including
11 his rights relating to the procedure required by subsection 3 of NRS
12 364.210.

13 3. The proprietor must be given notice, in writing, of the amount of
14 any interest or penalties required to be paid as a result of the audit.

