

SENATE BILL NO. 319—SENATOR SHAFFER

MARCH 17, 2003

Referred to Committee on Commerce and Labor

SUMMARY—Makes various changes to provisions regulating insurance. (BDR 57-599)

FISCAL NOTE: Effect on Local Government: No.
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 insurance; restricting the use by an insurer of information included in the consumer credit report of an applicant or policyholder as a basis for making certain determinations and taking certain actions regarding policies of insurance; revising the membership of certain boards; providing that any refund of an assessment by the Division of Industrial Relations of the Department of Business and Industry must include payment for interest earned; providing that hearings officers and appeals officers shall designate the location of certain hearings; requiring the Commissioner of Insurance to conduct a study relating to the Investments of Insurers Model Act adopted by the National Association of Insurance Commissioners; 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 686A of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2 to 11, inclusive, of this
3 act.

4 **Sec. 2.** *As used in sections 2 to 11, inclusive, of this act,*
5 *unless the context otherwise requires, the words and terms defined*
6 *in sections 3 to 8, inclusive, of this act have the meanings ascribed*
7 *to them in those sections.*



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1 **Sec. 3.** *“Adverse action” means a denial or cancellation of,*
2 *an increase in any charge for, or a reduction or other adverse or*
3 *unfavorable change in the terms of coverage or amount of, any*
4 *insurance, existing or applied for, in connection with any policy.*

5 **Sec. 4.** *“Affiliate” means any company that controls, is*
6 *controlled by, or is under common control with another company.*

7 **Sec. 5.** *“Consumer credit report” means any written, oral or*
8 *other communication of information by a consumer reporting*
9 *agency bearing on the credit worthiness, credit standing or credit*
10 *capacity of an applicant or policyholder, and which is used or*
11 *expected to be used or collected in whole or in part for the purpose*
12 *of serving as a factor to determine:*

- 13 1. *Whether to issue, cancel or renew a policy;*
14 2. *The amount of the premium for a policy; or*
15 3. *Eligibility for any plan for making payments with regard to*
16 *a policy.*

17 **Sec. 6.** *“Consumer reporting agency” means any person*
18 *which, for monetary fees, dues, or on a cooperative nonprofit*
19 *basis, regularly engages in whole or in part in the practice of*
20 *assembling or evaluating consumer credit information or other*
21 *information on consumers for the purpose of furnishing consumer*
22 *credit reports to third parties.*

23 **Sec. 7.** *“Credit information” means any information that is*
24 *related to credit and derived from a consumer credit report, found*
25 *on a consumer credit report or provided on an application for a*
26 *policy. The term does not include information that is not related to*
27 *credit, regardless of whether it is contained in a consumer credit*
28 *report or in an application for a policy, or is used to calculate an*
29 *insurance score.*

30 **Sec. 8.** *“Insurance score” means a number or rating that is*
31 *derived from an algorithm, computer application, model or other*
32 *process that is based in whole or in part on credit information for*
33 *the purposes of predicting the future losses or exposure with*
34 *regard to an applicant or policyholder.*

35 **Sec. 9.** *The provisions of sections 2 to 11, inclusive, of this*
36 *act do not apply to a contract of surety insurance issued pursuant*
37 *to chapter 691B of NRS or any commercial or business policy.*

38 **Sec. 10.** *An insurer that uses information from a consumer*
39 *credit report shall not:*

- 40 1. *Use an insurance score that is calculated using income,*
41 *gender, address, zip code, ethnic group, religion, marital status or*
42 *nationality of the consumer as a factor, or would otherwise lead to*
43 *unfair or invidious discrimination.*

- 44 2. *Deny, cancel or fail to renew a policy on the basis of credit*
45 *information unless the insurer also considers other applicable*



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1 *underwriting factors that are independent of credit information*
2 *and not expressly prohibited by this section.*

3 3. *Base renewal rates for a policy upon credit information*
4 *unless the insurer also considers other applicable factors*
5 *independent of credit information.*

6 4. *Take an adverse action against an applicant or*
7 *policyholder based on the applicant or policyholder not having a*
8 *credit card account unless the insurer also considers other*
9 *applicable factors independent of credit information.*

10 5. *Consider an absence of credit information or an inability*
11 *to calculate an insurance score in underwriting or rating a policy*
12 *unless the insurer treats the applicant or policyholder as having*
13 *neutral credit information, as defined by the insurer.*

14 6. *Take an adverse action against an applicant or*
15 *policyholder based on credit information, unless an insurer*
16 *obtains and uses a credit report issued or an insurance score*
17 *calculated within 90 days from the date the policy is first written or*
18 *renewal is issued.*

19 7. *Except as otherwise provided in this subsection, use credit*
20 *information regarding a policyholder without obtaining an*
21 *updated consumer credit report regarding the policyholder and*
22 *recalculating the insurance score at least once every 36 months.*
23 *An insurer does not need to obtain an updated consumer credit*
24 *report for a policyholder if:*

25 (a) *The insurer is treating the policyholder as otherwise*
26 *approved by the Commissioner.*

27 (b) *The policyholder is in the most favorably-priced tier of the*
28 *insurer and all affiliates of the insurer.*

29 (c) *Credit information was not used for underwriting or rating*
30 *the policyholder when the policy was initially written.*

31 (d) *The insurer reevaluates the policyholder at least once every*
32 *36 months based upon underwriting or rating factors other than*
33 *credit information.*

34 8. *Use the following as a negative factor in any insurance*
35 *scoring methodology or in reviewing credit information for the*
36 *purpose of underwriting or rating a policy:*

37 (a) *Credit inquiries not initiated by the applicant or*
38 *policyholder, or inquiries requested by the applicant or*
39 *policyholder for his or her own credit information.*

40 (b) *Inquiries relating to insurance coverage, if so identified on*
41 *the consumer credit report.*

42 (c) *Collection accounts relating to medical treatment, if so*
43 *identified on the consumer credit report.*

44 (d) *Multiple lender inquiries, if identified on the consumer*
45 *credit report as being related to home loans or mortgages and*



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1 *made within 30 days of one another, unless only one inquiry is*
2 *considered.*

3 *(e) Multiple lender inquiries, if identified on the consumer*
4 *credit report as being related to a loan for an automobile and*
5 *made within 30 days of one another, unless only one inquiry is*
6 *considered.*

7 *(f) Any credit information that does not reflect the usual credit*
8 *activity of the applicant or policyholder.*

9 **Sec. 11.** *Before December 31 of each even-numbered year,*
10 *the Commissioner shall prepare a report to the Governor and the*
11 *Legislature. The report must address:*

12 *1. The operation of sections 2 to 11, inclusive, of this act;*

13 *2. The efficacy, necessity and desirability of using credit*
14 *information in making decisions related to insurance;*

15 *3. The impacts upon the residents of Nevada of the continued*
16 *use of credit information in making decisions related to*
17 *insurance; and*

18 *4. Any additional consumer protections identified by the*
19 *Commissioner for the consideration of the Legislature.*

20 **Sec. 12.** NRS 686C.140 is hereby amended to read as follows:

21 686C.140 1. The Board of Directors of the Association
22 consists of not less than five nor more than nine members, serving
23 terms as established in the plan of operation.

24 **2.** The members of the Board who represent insurers must be
25 selected by member insurers subject to the approval of the
26 Commissioner. *If practicable, one of the members of the Board*
27 *must be an officer of a domestic insurer.*

28 **3.** Two public representatives must be appointed to the Board
29 by the Commissioner. A public representative may not be an officer,
30 director or employee of an insurer or engaged in the business of
31 insurance.

32 **4.** Vacancies on the Board must be filled for the remaining
33 period of the term by majority vote of the members of the Board,
34 subject to the approval of the Commissioner, for members who
35 represent insurers, and by the Commissioner for public
36 representatives.

37 **5.** To select the initial Board of Directors, and initially organize
38 the Association, the Commissioner shall give notice to all member
39 insurers of the time and place of the organizational meeting. In
40 determining voting rights at the organizational meeting, each
41 member insurer is entitled to one vote in person or by proxy. If the
42 Board of Directors is not selected within 60 days after notice of the
43 organizational meeting, the Commissioner may appoint the initial
44 members to represent insurers in addition to the public
45 representatives.



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1 ~~[2-]~~ 6. In approving selections or in appointing members to the
2 Board, the Commissioner shall consider, among other things,
3 whether all member insurers are fairly represented.

4 ~~[3-]~~ 7. Members of the Board may be reimbursed from the
5 assets of the Association for expenses incurred by them as members
6 of the Board of Directors but members of the Board may not
7 otherwise be compensated by the Association for their services.

8 **Sec. 13.** NRS 687A.050 is hereby amended to read as follows:
9 687A.050 1. The Board of Directors of the Association shall
10 consist of not fewer than five nor more than nine persons. The
11 members of the Board shall be appointed by the Commissioner and
12 shall serve at his discretion. Vacancies on the Board shall be filled
13 in the same manner as initial appointments.

14 2. A majority of the members appointed shall be the designated
15 representatives of member insurers. *If practicable, one of the*
16 *members appointed as a designated representative of the member*
17 *insurers must be an officer of a domestic insurer.* The
18 Commissioner shall consider among other things whether all
19 member insurers are fairly represented.

20 3. Members of the Board may be reimbursed from the assets of
21 the Association for expenses incurred by them as members of the
22 Board of Directors.

23 **Sec. 14.** Chapter 687B of NRS is hereby amended by adding
24 thereto a new section to read as follows:

25 *Unless otherwise provided by a specific statute, if a signature is*
26 *required of any person, the person may provide as the signature of*
27 *the person:*

28 1. *An original signature;*

29 2. *A facsimile signature; or*

30 3. *An electronic signature pursuant to the provisions of*
31 *chapter 719 of NRS.*

32 **Sec. 15.** NRS 687B.160 is hereby amended to read as follows:

33 687B.160 1. Every insurance policy must be executed in the
34 name of and on behalf of the insurer by its officer, attorney in fact,
35 employee or representative duly authorized by the insurer.

36 2. ~~[A facsimile signature of any]~~ Any such executing individual
37 may ~~[be used]~~ use, in lieu of an original signature ~~[]~~:

38 (a) *A facsimile signature; or*

39 (b) *An electronic signature pursuant to the provisions of*
40 *chapter 719 of NRS.*

41 3. An insurance contract issued before, on or after January 1,
42 1972, which is otherwise valid is not rendered invalid by reason of
43 the apparent execution thereof on behalf of the insurer by the
44 imprinted facsimile signature of an individual not authorized so to
45 execute as of the date of the policy.



1 **Sec. 16.** NRS 232.680 is hereby amended to read as follows:

2 232.680 1. The cost of carrying out the provisions of NRS
3 232.550 to 232.700, inclusive, and of supporting the Division, a
4 full-time employee of the Legislative Counsel Bureau and the Fraud
5 Control Unit for Industrial Insurance established pursuant to NRS
6 228.420, and that portion of the cost of the Office for Consumer
7 Health Assistance established pursuant to NRS 223.550 that is
8 related to providing assistance to consumers and injured employees
9 concerning workers' compensation, must be paid from assessments
10 payable by each insurer, including each employer who provides
11 accident benefits for injured employees pursuant to NRS 616C.265.

12 2. The Administrator shall assess each insurer, including each
13 employer who provides accident benefits for injured employees
14 pursuant to NRS 616C.265. To establish the amount of the
15 assessment, the Administrator shall determine the amount of money
16 necessary for each of the expenses set forth in subsections 1 and 4 of
17 this section and subsection 3 of NRS 616A.425 and determine the
18 amount that is payable by the private carriers, the self-insured
19 employers, the associations of self-insured public or private
20 employers and the employers who provide accident benefits
21 pursuant to NRS 616C.265 for each of the programs. For the
22 expenses from which more than one group of insurers receives
23 benefit, the Administrator shall allocate a portion of the amount
24 necessary for that expense to be payable by each of the relevant
25 group of insurers, based upon the expected annual expenditures for
26 claims of each group of insurers. After allocating the amounts
27 payable among each group of insurers for all the expenses from
28 which each group receives benefit, the Administrator shall apply an
29 assessment rate to the:

30 (a) Private carriers that reflects the relative hazard of the
31 employments covered by the private carriers, results in an equitable
32 distribution of costs among the private carriers and is based upon
33 expected annual premiums to be received;

34 (b) Self-insured employers that results in an equitable
35 distribution of costs among the self-insured employers and is based
36 upon expected annual expenditures for claims;

37 (c) Associations of self-insured public or private employers that
38 results in an equitable distribution of costs among the associations
39 of self-insured public or private employers and is based upon
40 expected annual expenditures for claims; and

41 (d) Employers who provide accident benefits pursuant to NRS
42 616C.265 that reflect the relative hazard of the employments
43 covered by those employers, results in an equitable distribution of
44 costs among the employers and is based upon expected annual
45 expenditures for claims.



1 The Administrator shall adopt regulations that establish the formula
2 for the assessment and for the administration of payment, and any
3 penalties that the Administrator determines are necessary to carry
4 out the provisions of this subsection. The formula may use actual
5 expenditures for claims. As used in this subsection, the term "group
6 of insurers" includes the group of employers who provide accident
7 benefits for injured employees pursuant to NRS 616C.265.

8 3. Federal grants may partially defray the costs of the Division.

9 4. Assessments made against insurers by the Division after the
10 adoption of regulations must be used to defray all costs and
11 expenses of administering the program of workers' compensation,
12 including the payment of:

13 (a) All salaries and other expenses in administering the Division,
14 including the costs of the office and staff of the Administrator.

15 (b) All salaries and other expenses of administering NRS
16 616A.435 to 616A.460, inclusive, the offices of the Hearings
17 Division of the Department of Administration and the programs of
18 self-insurance and review of premium rates by the Commissioner of
19 Insurance.

20 (c) The salary and other expenses of a full-time employee of the
21 Legislative Counsel Bureau whose principal duties are limited to
22 conducting research and reviewing and evaluating data related to
23 industrial insurance.

24 (d) All salaries and other expenses of the Fraud Control Unit for
25 Industrial Insurance established pursuant to NRS 228.420.

26 (e) Claims against uninsured employers arising from compliance
27 with NRS 616C.220 and 617.401.

28 (f) That portion of the salaries and other expenses of the Office
29 for Consumer Health Assistance established pursuant to NRS
30 223.550 that is related to providing assistance to consumers and
31 injured employees concerning workers' compensation.

32 *5. If the Division refunds any part of an assessment, the*
33 *Division shall include in that refund any interest earned by the*
34 *Division from the refunded part of the assessment.*

35 **Sec. 17.** NRS 616A.425 is hereby amended to read as follows:

36 616A.425 1. There is hereby established in the State Treasury
37 the Fund for Workers' Compensation and Safety as an enterprise
38 fund. All money received from assessments levied on insurers and
39 employers by the Administrator pursuant to NRS 232.680 must be
40 deposited in this Fund.

41 2. All assessments, penalties, bonds, securities and all other
42 properties received, collected or acquired by the Division for
43 functions supported in whole or in part from the Fund must be
44 delivered to the custody of the State Treasurer for deposit to the
45 credit of the Fund.



1 3. All money and securities in the Fund must be used to defray
2 all costs and expenses of administering the program of workmen's
3 compensation, including the payment of:

4 (a) All salaries and other expenses in administering the Division
5 of Industrial Relations, including the costs of the office and staff of
6 the Administrator.

7 (b) All salaries and other expenses of administering NRS
8 616A.435 to 616A.460, inclusive, the offices of the Hearings
9 Division of the Department of Administration and the programs of
10 self-insurance and review of premium rates by the Commissioner.

11 (c) The salary and other expenses of a full-time employee of the
12 Legislative Counsel Bureau whose principal duties are limited to
13 conducting research and reviewing and evaluating data related to
14 industrial insurance.

15 (d) All salaries and other expenses of the Fraud Control Unit for
16 Industrial Insurance established pursuant to NRS 228.420.

17 (e) Claims against uninsured employers arising from compliance
18 with NRS 616C.220 and 617.401.

19 (f) That portion of the salaries and other expenses of the Office
20 for Consumer Health Assistance established pursuant to NRS
21 223.550 that is related to providing assistance to consumers and
22 injured employees concerning workers' compensation.

23 4. The State Treasurer may disburse money from the Fund only
24 upon written order of the Controller.


25 5. The State Treasurer shall invest money of the Fund in the
26 same manner and in the same securities in which he is authorized to
27 invest state general funds which are in his custody. Income realized
28 from the investment of the assets of the Fund must be credited to the
29 Fund.

30 6. The Commissioner shall assign an actuary to review the
31 establishment of assessment rates. The rates must be filed with the
32 Commissioner 30 days before their effective date. Any insurer or
33 employer who wishes to appeal the rate so filed must do so pursuant
34 to NRS 679B.310.

35 7. *If the Division refunds any part of an assessment, the*
36 *Division shall include in that refund any interest earned by the*
37 *Division from the refunded part of the assessment.*

38 **Sec. 18.** NRS 616C.330 is hereby amended to read as follows:

39 616C.330 1. The hearing officer shall:

40 (a) Within 5 days after receiving a request for a hearing, set the
41 hearing for a date and time within 30 days after his receipt of the
42 request  *at a place in Carson City, Nevada, or Las Vegas,*
43 *Nevada, or upon agreement of one or more of the parties to pay all*
44 *additional costs directly related to an alternative location, at any*



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1 *other place of convenience to the parties, as determined by the*
2 *hearing officer;*

3 (b) Give notice by mail or by personal service to all interested
4 parties to the hearing at least 15 days before the date and time
5 scheduled; and

6 (c) Conduct hearings expeditiously and informally.

7 2. The notice must include a statement that the injured
8 employee may be represented by a private attorney or seek
9 assistance and advice from the Nevada Attorney for Injured
10 Workers.

11 3. If necessary to resolve a medical question concerning an
12 injured employee's condition or to determine the necessity of
13 treatment for which authorization for payment has been denied, the
14 hearing officer may refer the employee to a physician or
15 chiropractor of his choice who has demonstrated special competence
16 to treat the particular medical condition of the employee. If the
17 medical question concerns the rating of a permanent disability, the
18 hearing officer may refer the employee to a rating physician or
19 chiropractor. The rating physician or chiropractor must be selected
20 in rotation from the list of qualified physicians and chiropractors
21 maintained by the Administrator pursuant to subsection 2 of NRS
22 616C.490, unless the insurer and injured employee otherwise agree
23 to a rating physician or chiropractor. The insurer shall pay the costs
24 of any medical examination requested by the hearing officer.

25 4. If an injured employee has requested payment for the cost of
26 obtaining a second determination of his percentage of disability
27 pursuant to NRS 616C.100, the hearing officer shall decide whether
28 the determination of the higher percentage of disability made
29 pursuant to NRS 616C.100 is appropriate and, if so, may order the
30 insurer to pay to the employee an amount equal to the maximum
31 allowable fee established by the Administrator pursuant to NRS
32 616C.260 for the type of service performed, or the usual fee of that
33 physician or chiropractor for such service, whichever is less.

34 5. The hearing officer shall order an insurer, organization for
35 managed care or employer who provides accident benefits for
36 injured employees pursuant to NRS 616C.265 to pay the charges of
37 a provider of health care if the conditions of NRS 616C.138 are
38 satisfied.

39 6. The hearing officer may allow or forbid the presence of a
40 court reporter and the use of a tape recorder in a hearing.

41 7. The hearing officer shall render his decision within 15 days
42 after:

43 (a) The hearing; or

44 (b) He receives a copy of the report from the medical
45 examination he requested.



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1 8. The hearing officer shall render his decision in the most
2 efficient format developed by the Chief of the Hearings Division of
3 the Department of Administration.

4 9. The hearing officer shall give notice of his decision to each
5 party by mail. He shall include with the notice of his decision the
6 necessary forms for appealing from the decision.

7 10. Except as otherwise provided in NRS 616C.380, the
8 decision of the hearing officer is not stayed if an appeal from that
9 decision is taken unless an application for a stay is submitted by a
10 party. If such an application is submitted, the decision is
11 automatically stayed until a determination is made on the
12 application. A determination on the application must be made within
13 30 days after the filing of the application. If, after reviewing the
14 application, a stay is not granted by the hearing officer or an appeals
15 officer, the decision must be complied with within 10 days after the
16 refusal to grant a stay.

17 **Sec. 19.** NRS 616C.345 is hereby amended to read as follows:

18 616C.345 1. Any party aggrieved by a decision of the
19 hearing officer relating to a claim for compensation may appeal
20 from the decision by filing a notice of appeal with an appeals officer
21 within 30 days after the date of the decision.

22 2. If a dispute is required to be submitted to a procedure for
23 resolving complaints pursuant to NRS 616C.305 and:

24 (a) A final determination was rendered pursuant to that
25 procedure; or

26 (b) The dispute was not resolved pursuant to that procedure
27 within 14 days after it was submitted,
28 any party to the dispute may file a notice of appeal within 70 days
29 after the date on which the final determination was mailed to the
30 employee, or his dependent, or the unanswered request for
31 resolution was submitted. Failure to render a written determination
32 within 30 days after receipt of such a request shall be deemed by the
33 appeals officer to be a denial of the request.

34 3. Except as otherwise provided in NRS 616C.380, the filing of
35 a notice of appeal does not automatically stay the enforcement of the
36 decision of a hearing officer or a determination rendered pursuant to
37 NRS 616C.305. The appeals officer may order a stay, when
38 appropriate, upon the application of a party. If such an application is
39 submitted, the decision is automatically stayed until a determination
40 is made concerning the application. A determination on the
41 application must be made within 30 days after the filing of the
42 application. If a stay is not granted by the officer after reviewing
43 the application, the decision must be complied with within 10 days
44 after the date of the refusal to grant a stay.



1 4. Except as otherwise provided in ~~[this subsection,]~~
2 *subsection 5*, the appeals officer shall, within 10 days after
3 receiving a notice of appeal pursuant to this section or a contested
4 claim pursuant to subsection 5 of NRS 616C.315 ~~[, schedule]~~ :

5 (a) *Schedule* a hearing on the merits of the appeal or contested
6 claim for a date and time within 90 days after his receipt of the
7 notice *at a place in Carson City, Nevada, or Las Vegas, Nevada, or*
8 *upon agreement of one or more of the parties to pay all additional*
9 *costs directly related to an alternative location, at any other place*
10 *of convenience to the parties, as determined by the appeals officer;*
11 and ~~[give]~~

12 (b) *Give* notice by mail or by personal service to all parties to
13 the matter and their attorneys or agents at least 30 days before the
14 date and time scheduled.

15 5. A request to schedule the hearing for a date and time which
16 is:

17 (a) Within 60 days after the receipt of the notice of appeal or
18 contested claim; or

19 (b) More than 90 days after the receipt of the notice or
20 claim,

21 may be submitted to the appeals officer only if all parties to the
22 appeal or contested claim agree to the request.

23 ~~[5-]~~ 6. An appeal or contested claim may be continued upon
24 written stipulation of all parties, or upon good cause shown.

25 ~~[6-]~~ 7. Failure to file a notice of appeal within the period
26 specified in subsection 1 or 2 may be excused if the party aggrieved
27 shows by a preponderance of the evidence that he did not receive
28 the notice of the determination and the forms necessary to appeal the
29 determination. The claimant, employer or insurer shall notify the
30 hearing officer of a change of address.

31 **Sec. 20.** 1. The Commissioner of Insurance shall conduct a
32 study to review whether the State of Nevada should enact, in the
33 interest of the public:

34 (a) The Defined Limits Version of the Investments of Insurers
35 Model Act adopted by the National Association of Insurance
36 Commissioners;

37 (b) The Defined Standards Version of the Investments of
38 Insurers Model Act adopted by the National Association of
39 Insurance Commissioners; or

40 (c) Other legislation regulating the investments of insurers.

41 2. The Commissioner shall seek to obtain all relevant
42 information from public and private sources as part of this study.
43 Any such information obtained by the Commissioner may only be
44 used for the purposes of conducting this study.



1 3. The Commissioner shall complete this study and submit a
2 copy of his findings and recommendations on or before January 1,
3 2005, to the Director of the Legislative Counsel Bureau for
4 distribution to the 73rd Session of the Nevada Legislature.

