

THE SEVENTY-FIFTH DAY

CARSON CITY (Friday), April 22, 2005

Senate called to order at 10:09 a.m.

President pro Tempore Amodei presiding.

Roll called.

All present.

Prayer by the Chaplain, Pastor Stan Pesis.

Lord, the busyness and the demands of our days callous us to our surroundings. Help us, this day, reserve ten seconds of each hour to see, to recognize, to thank those who scurry around helping us address our responsibilities.

AMEN.

Pledge of allegiance to the Flag.

Senator Raggio moved that further reading of the Journal be dispensed with, and the President pro Tempore and Secretary be authorized to make the necessary corrections and additions.

Motion carried.

REPORTS OF COMMITTEES

Mr. President pro Tempore:

Your Committee on Finance, to which was referred Senate Bill No. 98, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

WILLIAM J. RAGGIO, *Chair*

Mr. President pro Tempore:

Your Committee on Human Resources and Education, to which were referred Senate Bills Nos. 212, 402, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

MAURICE E. WASHINGTON, *Chair*

Mr. President pro Tempore:

Your Committee on Judiciary, to which were referred Senate Bills Nos. 337, 338, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

MARK E. AMODEI, *Chair*

Mr. President pro Tempore:

Your Committee on Taxation, to which were referred Senate Bills Nos. 233, 389, 390, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

MIKE MCGINNESS, *Chair*

Mr. President pro Tempore:

Your Committee on Transportation and Homeland Security, to which were referred Assembly Bills Nos. 82, 445, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

Also, your Committee on Transportation and Homeland Security, to which were referred Senate Bills Nos. 115, 124, 378, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

DENNIS NOLAN, *Chair*

MESSAGES FROM THE ASSEMBLY

ASSEMBLY CHAMBER, Carson City, April 21, 2005

To the Honorable the Senate:

I have the honor to inform your honorable body that the Assembly on this day passed Assembly Bill No. 421.

Also, I have the honor to inform your honorable body that the Assembly on this day passed, as amended, Assembly Bills Nos. 19, 51, 113, 180, 195, 232, 239, 254, 259, 267, 280, 287, 290, 343, 351, 363, 383, 395, 407, 427, 437, 468, 471, 475, 477, 485, 492, 502, 504, 555.

Also, I have the honor to inform your honorable body that the Assembly on this day adopted Senate Concurrent Resolution No. 20.

DIANE KEETCH

Assistant Chief Clerk of the Assembly

INTRODUCTION, FIRST READING AND REFERENCE

Assembly Bill No. 19.

Senator Nolan moved that the bill be referred to the Committee on Commerce and Labor.

Motion carried.

Assembly Bill No. 51.

Senator Nolan moved that the bill be referred to the Committee on Judiciary.

Motion carried.

Assembly Bill No. 113.

Senator Nolan moved that the bill be referred to the Committee on Finance.

Motion carried.

Assembly Bill No. 180.

Senator Nolan moved that the bill be referred to the Committee on Human Resources and Education.

Motion carried.

Assembly Bill No. 195.

Senator Nolan moved that the bill be referred to the Committee on Commerce and Labor.

Motion carried.

Assembly Bill No. 232.

Senator Nolan moved that Senate Standing Rule No. 40 be suspended and that the bill be referred to the Committee on Judiciary.

Motion carried.

Assembly Bill No. 239.

Senator Nolan moved that the bill be referred to the Committee on Transportation and Homeland Security.

Motion carried.

Assembly Bill No. 254.

Senator Nolan moved that the bill be referred to the Committee on Commerce and Labor.

Motion carried.

Assembly Bill No. 259.

Senator Nolan moved that the bill be referred to the Committee on Legislative Operations and Elections.

Motion carried.

Assembly Bill No. 267.

Senator Nolan moved that the bill be referred to the Committee on Judiciary.

Motion carried.

Assembly Bill No. 280.

Senator Nolan moved that the bill be referred to the Committee on Human Resources and Education.

Motion carried.

Assembly Bill No. 287.

Senator Nolan moved that the bill be referred to the Committee on Government Affairs.

Motion carried.

Assembly Bill No. 290.

Senator Nolan moved that Senate Standing Rule No. 40 be suspended and that the bill be referred to the Committee on Commerce and Labor.

Motion carried.

Assembly Bill No. 343.

Senator Nolan moved that the bill be referred to the Committee on Commerce and Labor.

Motion carried.

Assembly Bill No. 351.

Senator Nolan moved that the bill be referred to the Committee on Government Affairs.

Motion carried.

Assembly Bill No. 363.

Senator Nolan moved that the bill be referred to the Committee on Commerce and Labor.

Motion carried.

Assembly Bill No. 383.

Senator Nolan moved that Senate Standing Rule No. 40 be suspended and that the bill be referred to the Committee on Commerce and Labor.

Motion carried.

Assembly Bill No. 395.

Senator Nolan moved that the bill be referred to the Committee on Human Resources and Education.

Motion carried.

Assembly Bill No. 407.

Senator Nolan moved that the bill be referred to the Committee on Natural Resources.

Motion carried.

Assembly Bill No. 421.

Senator Nolan moved that the bill be referred to the Committee on Judiciary.

Motion carried.

Assembly Bill No. 427.

Senator Nolan moved that the bill be referred to the Committee on Commerce and Labor.

Motion carried.

Assembly Bill No. 437.

Senator Nolan moved that the bill be referred to the Committee on Commerce and Labor.

Motion carried.

Assembly Bill No. 468.

Senator Nolan moved that the bill be referred to the Committee on Judiciary.

Motion carried.

Assembly Bill No. 471.

Senator Nolan moved that the bill be referred to the Committee on Judiciary.

Motion carried.

Assembly Bill No. 475.

Senator Nolan moved that the bill be referred to the Committee on Government Affairs.

Motion carried.

Assembly Bill No. 477.

Senator Nolan moved that the bill be referred to the Committee on Government Affairs.

Motion carried.

Assembly Bill No. 485.

Senator Nolan moved that the bill be referred to the Committee on Judiciary.

Motion carried.

Assembly Bill No. 492.

Senator Nolan moved that the bill be referred to the Committee on Government Affairs.

Motion carried.

Assembly Bill No. 502.

Senator Nolan moved that the bill be referred to the Committee on Commerce and Labor.

Motion carried.

Assembly Bill No. 504.

Senator Nolan moved that the bill be referred to the Committee on Transportation and Homeland Security.

Motion carried.

Assembly Bill No. 555.

Senator Nolan moved that the bill be referred to the Committee on Commerce and Labor.

Motion carried.

Mr. President pro Tempore announced that if there were no objections, the Senate would recess subject to the call of the Chair.

Senate in recess at 10:18 a.m.

SENATE IN SESSION

At 10:25 a.m.

President pro Tempore Amodei presiding.

Quorum present.

SECOND READING AND AMENDMENT

Senate Bill No. 84.

Bill read second time.

The following amendment was proposed by the Committee on Government Affairs:

Amendment No. 415.

Amend section 1, page 2, line 13, by deleting "unit" and inserting: "~~unit~~ time share".

Amend section 1, page 2, by deleting line 14 and inserting: "time-share project , or in the time-share plan of which the time-share project is a part, who has a right to use or occupy ~~the~~ a unit is".

Amend section 1, page 2, line 15, by deleting "the" and inserting "~~the~~ a".

Amend sec. 2, page 3, line 2, by deleting "unit" and inserting: "~~unit~~ time share".

Amend sec. 2, page 3, by deleting line 3 and inserting: "time-share project , or in the time-share plan of which the time-share project is a part, who has a right to use or occupy ~~the~~ a unit is".

Amend sec. 2, page 3, line 4, by deleting "the" and inserting "~~the~~ a".

Amend sec. 3, page 3, by deleting line 28 and inserting: "*when an owner of a time share in the time-share project, or in the time-share plan of which the time-share project is a part, has a*".

Amend sec. 3, page 3, line 29, by deleting: "*the unit and is occupying the*" and inserting: "*a unit and is occupying a*".

Amend sec. 4, page 4, line 1, by deleting "unit" and inserting: "~~unit~~ time share".

Amend sec. 4, page 4, by deleting line 2 and inserting: "the time-share project , or in the time-share plan of which the time-share project is a part, who has a right to use or occupy ~~the~~ a".

Amend sec. 4, page 4, line 3, by deleting "the" and inserting "~~the~~ a".

Amend sec. 5, page 6, by deleting line 10 inserting: "*when an owner of a time share in the time-share project, or in the time-share plan of which the time-share project is a part, has a*".

Amend sec. 5, page 6, line 11, by deleting: "*the unit and is occupying the unit*" and inserting: "*a unit and is occupying a unit*".

Amend sec. 6, page 7, line 35, by deleting "unit" and inserting "time share".

Amend sec. 6, page 7, by deleting line 36 and inserting: "*the time-share project, or in the time-share plan of which the time-share project is a part, has a right to use or occupy a unit*".

Amend sec. 6, page 7, line 37, by deleting "the" and inserting "a".

Amend sec. 7, page 9, line 8, by deleting "unit" and inserting "time share".

Amend sec. 7, page 9, by deleting line 9 and inserting: "*the time-share project, or in the time-share plan of which the time-share project is a part, has a right to use or occupy a unit*".

Amend sec. 7, page 9, line 10, by deleting "the" and inserting "a".

Amend the title of the bill by deleting the first line and inserting:

"AN ACT relating to taxation: clarifying that cities and counties are prohibited from".

Amend the summary of the bill to read as follows:

"SUMMARY—Clarifies provisions governing exemption of certain uses of time-share units from taxes on transient lodging. (BDR 20-135)".

Senator Hardy moved the adoption of the amendment.

Remarks by Senator Hardy.

Conflict of interest declared by Senator Raggio.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Senate Bill No. 109.

Bill read second time.

The following amendment was proposed by the Committee on Judiciary:
Amendment No. 360.

Amend the bill as a whole by deleting section 1 and adding new sections designated sections 1 and 2, and the text of the repealed section, following the enacting clause, to read as follows:

"Section 1. NRS 125.480 is hereby amended to read as follows:

125.480 1. In determining custody of a minor child in an action brought under this chapter, the sole consideration of the court is the best interest of the child. ~~[If it appears to the court that joint custody would be in the best interest of the child, the court may grant custody to the parties jointly.]~~

2. Preference must not be given to either parent for the sole reason that the parent is the mother or the father of the child.

3. The court shall award custody in the following order of preference unless in a particular case the best interest of the child requires otherwise:

(a) To both parents jointly ~~[pursuant to NRS 125.490 or to either parent.]~~, *if the parents have agreed to an award of joint custody or so agree in open court at a hearing for the purpose of determining the custody of the child.*

(b) To both parents jointly or to either parent, according to the best interest of the child, based upon the best judgment of the court considering the facts of the case and subject to such conditions and limitations as the court deems equitable. If the court does not enter an order awarding joint custody of a child after either parent has applied for joint custody, the court shall state in its decision the reason for its denial of the parent's application. ~~[When awarding custody to either parent, the court shall consider, among other factors, which parent is more likely to allow the child to have frequent associations and a continuing relationship with the noncustodial parent.]~~

~~(b)~~ (c) To a person or persons in whose home the child has been living and where the child has had a wholesome and stable environment.

~~(c)~~ (d) To any person related within the third degree of consanguinity to the child whom the court finds suitable and able to provide proper care and guidance for the child, regardless of whether the relative resides within this State.

~~(d)~~ (e) To any other person or persons whom the court finds suitable and able to provide proper care and guidance for the child.

4. In determining the best interest of the child, the court shall consider, among other things:

(a) The wishes of the child if the child is of sufficient age and capacity to form an intelligent preference as to his custody. ~~[.]~~

(b) Any nomination by a parent or a guardian for the child. ~~[; and]~~

(c) *Which parent is more likely to allow the child to have frequent associations and a continuing relationship with the noncustodial parent.*

(d) *The level of conflict between the parents.*

(e) *The ability of the parents to cooperate to meet the needs of the child.*

(f) *The mental and physical health of the parents.*

- (g) *The physical, developmental and emotional needs of the child.*
- (h) *The nature of the relationship of the child with each parent.*
- (i) *The ability of the child to maintain a relationship with any sibling.*
- (j) *Any history of parental abuse or neglect of the child or a sibling of the child.*
- (k) *The ability of each parent to prioritize the needs of the child.*
- (l) Whether either parent or any other person seeking custody has engaged in an act of domestic violence against the child, a parent of the child or any other person residing with the child.

5. Except as otherwise provided in subsection 6 or NRS 125C.210, a determination by the court after an evidentiary hearing and finding by clear and convincing evidence that either parent or any other person seeking custody has engaged in one or more acts of domestic violence against the child, a parent of the child or any other person residing with the child creates a rebuttable presumption that sole or joint custody of the child by the perpetrator of the domestic violence is not in the best interest of the child. Upon making such a determination, the court shall set forth:

- (a) Findings of fact that support the determination that one or more acts of domestic violence occurred; and
- (b) Findings that the custody or visitation arrangement ordered by the court adequately protects the child and the parent or other victim of domestic violence who resided with the child.

6. If after an evidentiary hearing held pursuant to subsection 5 the court determines that each party has engaged in acts of domestic violence, it shall, if possible, then determine which person was the primary physical aggressor. In determining which party was the primary physical aggressor for the purposes of this section, the court shall consider:

- (a) All prior acts of domestic violence involving either party;
- (b) The relative severity of the injuries, if any, inflicted upon the persons involved in those prior acts of domestic violence;
- (c) The likelihood of future injury;
- (d) Whether, during the prior acts, one of the parties acted in self-defense; and
- (e) Any other factors which the court deems relevant to the determination.

➤ In such a case, if it is not possible for the court to determine which party is the primary physical aggressor, the presumption created pursuant to subsection 5 applies to both parties. If it is possible for the court to determine which party is the primary physical aggressor, the presumption created pursuant to subsection 5 applies only to the party determined by the court to be the primary physical aggressor.

7. As used in this section, "domestic violence" means the commission of any act described in NRS 33.018.

Sec. 2. NRS 125.490 is hereby repealed.

TEXT OF REPEALED SECTION

125.490 Joint Custody.

1. There is a presumption, affecting the burden of proof, that joint custody would be in the best interest of a minor child if the parents have agreed to an award of joint custody or so agree in open court at a hearing for the purpose of determining the custody of the minor child or children of the marriage.

2. The court may award joint legal custody without awarding joint physical custody in a case where the parents have agreed to joint legal custody.

3. For assistance in making a determination whether an award of joint custody is appropriate, the court may direct that an investigation be conducted."

Amend the title of the bill to read as follows:

"AN ACT relating to domestic relations; revising the provisions relating to the determination of custody of a minor after the parents' separation or dissolution of marriage; and providing other matters properly relating thereto."

Amend the summary of the bill to read as follows:

"SUMMARY—Revises provisions relating to determination of custody of minor after parents' separation or dissolution of marriage. (BDR 11-620)".

Senator Care moved the adoption of the amendment.

Remarks by Senator Care.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Senate Bill No. 116.

Bill read second time.

The following amendment was proposed by the Committee on Commerce and Labor:

Amendment No. 188.

Amend section 1, page 2, by deleting lines 4 and 5 and inserting:

"2. In addition to any other remedy or penalty provided in this chapter, if any person, *including, without limitation, a public body*, violates".

Amend section 1, page 2, by deleting lines 8 through 17 and inserting: ", *after providing the person with notice and an opportunity for a hearing*, impose against the person an administrative penalty of not more than \$5,000 for each such violation.

3. The Labor Commissioner may, by regulation, establish a sliding scale based on the severity of the violation to determine the amount of the administrative penalty to be imposed against the person pursuant to this section.

4. The Labor Commissioner shall report the violation to the Attorney General, and the Attorney General ~~shall~~ *may* prosecute the person in accordance with law."

Amend sec. 2, page 3, by deleting lines 4 through 12 and inserting:

"2. ~~Am~~ *In addition to any other remedy or penalty provided in this chapter, an employer is liable to an employee for any money deducted from the employee's wages for the payment of premiums on a policy of group life or health insurance if the money was not so used.*

3. *In addition to any other remedy or penalty provided in this chapter, if:*

(a) *An employer knowingly and willfully stops paying premiums on a policy of group life or health insurance and fails to give proper and timely notice to his employees pursuant to subsection 1; and*

(b) *One or more of his employees, after coverage under the policy ceases and before they are given notice that the employer has stopped paying premiums, incur claims for benefits which those employees would have received under the policy had their coverage not ceased,*

the employer is liable to those employees for the amount of the claims incurred, except that the employer's total liability for all such claims combined must not exceed the amount of the premiums, calculated on a monthly basis, that the employer would have been required to pay under the policy to provide coverage for those employees during the period in which the claims were incurred by the employees.

4. *If the Labor Commissioner brings an action pursuant to subsection 3 against an employer on behalf of his employees, any money recovered by the Labor Commissioner must be distributed on a pro rata basis among the employees who have claims against the employer, except that no employee may recover more than the total amount of all claims that the employee has against the employer. If the amount of money recovered by the Labor Commissioner exceeds the total amount of all claims from all employees, the excess amount must be deposited in the State General Fund."*

Amend the bill as a whole by deleting sections 3 and 4 and adding a new section designated sec. 3, following sec. 2, to read as follows:

"Sec. 3. This act becomes effective upon passage and approval."

Amend the title of the bill to read as follows:

"AN ACT relating to labor; revising provisions relating to enforcement by the Labor Commissioner of the prevailing rate of wage requirement for public works; providing for civil liability under certain circumstances for an employer who knowingly and willfully stops paying premiums on a policy of group life or health insurance and fails to give proper and timely notice to his employees; providing for enforcement of such civil liability by the Labor Commissioner; and providing other matters properly relating thereto."

Senator Townsend moved the adoption of the amendment.

Remarks by Senator Townsend.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Senate Bill No. 127.

Bill read second time.

The following amendment was proposed by the Committee on Taxation:
Amendment No. 437.

Amend section 1, page 2, between lines 23 and 24, by inserting:

"(e) A unit-owners' association organized pursuant to NRS 116.3101 as a nonprofit corporation, trust or partnership."

Amend the title of the bill by deleting the first and second lines and inserting:

"AN ACT relating to the licensing of businesses; revising the provisions governing the applicability of the".

Amend the summary of the bill to read as follows:

"SUMMARY—Revises provisions governing applicability of requirements for state business license. (BDR 32-679)".

Senator Titus moved the adoption of the amendment.

Remarks by Senator Titus.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Senate Bill No. 221.

Bill read second time.

The following amendment was proposed by the Committee on Human Resources and Education:

Amendment No. 350.

Amend the bill as a whole by deleting section 1 and renumbering sections 2 through 4 as sections 1 through 3.

Amend sec. 3, page 4, by deleting lines 44 and 45 and inserting: *"activities and events governed by an association pursuant to NRS 386.420 to 386.470, inclusive, and interscholastic activities and events, including sports, pursuant to subsection 5."*

Amend sec. 3, page 5, line 9, after "5." by inserting: *"In addition to those interscholastic activities and events governed by an association pursuant to NRS 386.420 to 386.470, inclusive, homeschooled children must be allowed to participate in interscholastic activities and events, including sports, through a public school. Any rules or regulations that apply to pupils enrolled in public schools who participate in interscholastic activities and events, including sports, apply in the same manner to homeschooled children who participate in interscholastic activities and events, including, without limitation, provisions governing:*

(a) Eligibility and qualifications for participation;

(b) Fees for participation;

(c) Insurance;

(d) Transportation;

(e) Requirements of physical examination;

(f) Responsibilities of participants;

(g) Schedules of events;

(h) Safety and welfare of participants;

- (i) Eligibility for awards, trophies and medals;
- (j) Conduct of behavior and performance of participants; and
- (k) Disciplinary procedures.

6. If a homeschooled child participates in interscholastic activities and events pursuant to subsection 5:

(a) No challenge may be brought by an association, a school district, a public school or a private school, a parent or guardian of a pupil enrolled in a public school or a private school, a pupil enrolled in a public school or a private school, or any other entity or person claiming that an interscholastic activity or event is invalid because the homeschooled child is allowed to participate.

(b) Neither the school district or a public school may prescribe any regulations, rules, policies, procedures or requirements governing the eligibility or participation of the homeschooled child that are more restrictive than the provisions governing the eligibility and participation of pupils enrolled in public schools.

7."

Amend sec. 4, page 5, line 12, by deleting "6." and inserting "[~~6~~] 8."

Amend sec. 4, page 5, line 15, by deleting "7." and inserting "[~~7~~] 9."

Senator Washington moved the adoption of the amendment.

Remarks by Senators Washington, Carlton and Coffin.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Senate Bill No. 238.

Bill read second time.

The following amendment was proposed by the Committee on Commerce and Labor:

Amendment No. 296.

Amend sec. 3, page 3, line 36, by deleting "*periodic*" and inserting "*quarterly*".

Amend sec. 4, page 5, by deleting line 5 and inserting:

"3. If a"

Amend sec. 4, page 5, line 10, by deleting "In" and inserting: "[~~In~~] *Except as otherwise provided in subsection 4, in*".

Amend sec. 4, pages 5 and 6, by deleting lines 36 through 45 on page 5 and lines 1 through 9 on page 6, and inserting: "at least once every 24 months.

4. *In addition to submitting the statement required pursuant to subsection 3, a public utility which purchases natural gas for resale may submit with its general rate application a statement showing the effects, on an annualized basis, of expected changes in circumstances which may occur within 240 days after the date on which its general rate application is filed with the Commission if such expected changes in circumstances are reasonably known and are measurable with reasonable accuracy. If a public*

utility submits such a statement, the public utility has the burden of proving that the expected changes in circumstances set forth in the statement are reasonably known and are measurable with reasonable accuracy. If the Commission determines that the public utility has met its burden of proof:

(a) The Commission shall consider the statement submitted pursuant to this subsection in addition to the statement required pursuant to subsection 3 as evidence in establishing just and reasonable rates for the public utility; and

(b) The public utility is not required to file with the Commission the certification that would otherwise be required pursuant to subsection 3."

Amend sec. 4, page 6, lines 38 and 43, by deleting "periodic" and inserting "quarterly".

Amend sec. 4, page 7, by deleting lines 1 through 16 and inserting:

"(a) The public utility shall file written notice with the Commission before the public utility makes a quarterly rate adjustment between annual rate adjustment applications. A quarterly rate adjustment is not subject to the requirements for notice and a hearing pursuant to NRS 703.320 or the requirements for a consumer session pursuant to subsection 1 of NRS 704.069.

(b) The public utility shall provide written notice of each quarterly rate adjustment to its customers by including the written notice with a customer's regular monthly bill. The public utility shall begin providing such written notice to its customers not later than 30 days after the date on which the public utility files its written notice with the Commission pursuant to paragraph (a). The written notice that is included with a customer's regular monthly bill:

(1) Must be printed separately on fluorescent-colored paper and must not be attached to the pages of the bill; and

(2) Must include the following:

(I) The total amount of the increase or decrease in the public utility's revenues from the rate adjustment, stated in dollars and as a percentage;

(II) The amount of the monthly increase or decrease in charges for each class of customer or class of service, stated in dollars and as a percentage;

(III) A statement that customers may send written comments or protests regarding the rate adjustment to the Commission; and

(IV) Any other information required by the Commission.

(c) The public utility shall file an annual rate adjustment application with the Commission. The annual rate adjustment application is subject to the requirements for notice and a hearing pursuant to NRS 703.320 and the requirements for a consumer session pursuant to subsection 1 of NRS 704.069.

(d) The proceeding regarding the annual rate adjustment application must include a review of each quarterly rate adjustment and a review of the transactions and recorded costs of natural gas included in each quarterly

rate adjustment and the annual rate adjustment application. There is no presumption of reasonableness or prudence for any quarterly rate adjustment or for any transactions or recorded costs of natural gas included in any quarterly rate adjustment or the annual rate adjustment application, and the public utility has the burden of proving reasonableness and prudence in the proceeding.

(e) The Commission shall not allow the public utility to recover any recorded costs of natural gas which were the result of any practice or transaction that was unreasonable or was undertaken, managed or performed imprudently by the public utility, and the Commission shall order the public utility to adjust its rates if the Commission determines that any recorded costs of natural gas included in any quarterly rate adjustment or the annual rate adjustment application were not reasonable or prudent."

Amend the bill as a whole by adding new sections designated sections 7 and 8, following sec. 6, to read as follows:

"Sec. 7. 1. As soon as practicable after the effective date of this act, the Public Utilities Commission of Nevada shall open an investigatory docket to study, examine and review the various processes, theories and methodologies that may be used to establish just and reasonable rates in cases involving general rate applications filed by public utilities.

2. The investigatory docket must include, without limitation:

(a) Consideration of the use of different ratemaking methodologies as an alternative to the historical test year methodologies currently used in Nevada, such as:

(1) Projected test year methodologies;

(2) Hybrid methodologies that use a combination of projected data and historical data; and

(3) Any other ratemaking methodologies that are reasonable alternatives to historical test year methodologies.

(b) With regard to each alternative ratemaking methodology, consideration of:

(1) The rate impact on customers and whether the methodology would result in rates that more accurately reflect the costs of providing service to those customers;

(2) The cost effectiveness of using the methodology;

(3) The fiscal impact on state and local agencies;

(4) The procedures and mechanisms necessary to implement the methodology; and

(5) Any other related matters that the Commission deems appropriate.

3. The following parties may participate in the investigatory docket:

(a) Each public utility operating in this State;

(b) The Regulatory Operations Staff of the Commission;

(c) The Consumer's Advocate and the Bureau of Consumer Protection in the Office of the Attorney General; and

(d) Any other interested parties.

4. On or before October 1, 2006, the Commission shall submit a written report of its findings and recommendations from the investigatory docket to the Director of the Legislative Counsel Bureau for transmittal to the 74th Session of the Nevada Legislature.

5. If the Commission's report contains any recommendations for modification or replacement of the historical test year methodologies currently used in Nevada with alternative ratemaking methodologies, the report must include, without limitation, recommendations regarding:

(a) The legislation that would be necessary to authorize the alternative ratemaking methodologies; and

(b) The procedures and mechanisms that would be necessary to implement the alternative ratemaking methodologies.

Sec. 8. 1. This section and section 7 of this act become effective upon passage and approval.

2. Sections 1 to 6, inclusive, of this act become effective on October 1, 2005."

Amend the title of the bill to read as follows:

"AN ACT relating to public utilities; authorizing a public utility which purchases natural gas for resale to submit information with a general rate application regarding the effect that certain expected changes in circumstances will have on its operations; authorizing the Public Utilities Commission of Nevada to permit a public utility which purchases natural gas for resale to make quarterly adjustments in its rates based on changes in the costs of natural gas without complying with certain procedural requirements; requiring the Commission to conduct a study and prepare a report for the Legislature regarding the possible use of alternative ratemaking methodologies in general rate cases; and providing other matters properly relating thereto."

Senator Hardy moved the adoption of the amendment.

Remarks by Senator Hardy.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Senate Bill No. 242.

Bill read second time.

The following amendment was proposed by the Committee on Transportation and Homeland Security:

Amendment No. 497.

Amend the bill as a whole by deleting sections 1 through 6 and adding new sections designated sections 1 through 4, following the enacting clause, to read as follows:

"Section 1. Chapter 482 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. 1. *Whenever an application is made for the initial registration or renewal of registration of a vehicle in this State, the Department shall, to*

determine whether the vehicle is stolen, compare the serial or vehicle identification number of the vehicle against:

(a) The records of the Department;
(b) The records of the National Crime Information Center; or
(c) Such other similar databases, indexes and records, containing information regarding stolen vehicles, as the Director may prescribe.

2. If the comparison required by subsection 1 reveals that the vehicle is stolen, the Department shall forward any relevant information regarding the vehicle to the sheriff's office of the county in which the vehicle is registered or its registration renewed, as applicable.

3. The Department shall, in consultation with appropriate state and local law enforcement agencies or officials, adopt such regulations as are necessary to carry out the provisions of this section.

4. As used in this section, "vehicle" means any vehicle required to be registered pursuant to the provisions of this chapter. The term does not include:

(a) Motor vehicles with a declared gross weight in excess of 26,000 pounds; or

(b) Mobile homes as defined in NRS 482.067.

Sec. 3. If a vehicle that is stolen is registered or its registration renewed and, to the best knowledge and belief of the Department, the person who paid the fees to register or renew the registration of the vehicle was unaware that the vehicle was stolen, such person must be allowed credit on those fees toward the registration or renewal of registration of a different vehicle.

Sec. 4. This act becomes effective on October 1, 2005, for the purpose of adopting regulations and on July 1, 2006, for all other purposes."

Amend the title of the bill to read as follows:

"AN ACT relating to motor vehicles; requiring the Department of Motor Vehicles to perform certain inquiries at the time a vehicle is initially registered or its registration renewed, to determine if the vehicle is stolen; providing for the notification of the appropriate sheriff's office if a vehicle is determined to be stolen; and providing other matters properly relating thereto."

Amend the summary of the bill to read as follows:

"SUMMARY—Requires Department of Motor Vehicles to perform certain inquiries to determine if vehicle is stolen. (BDR 43-350)".

Senator Horsford moved the adoption of the amendment.

Remarks by Senator Horsford.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Senate Bill No. 247.

Bill read second time.

The following amendment was proposed by the Committee on Taxation:

Amendment No. 438.

Amend the bill as a whole by deleting sections 1 through 43 and the leadlines of repealed sections and adding new sections designated sections 1 through 60 and the text of repealed sections, following the enacting clause, to read as follows:

"Section 1. Chapter 368A of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 32, inclusive, of this act.

Sec. 2. *As used in sections 2 to 32, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 to 10, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 3. *"Admission charge" means the total amount, expressed in terms of money, of consideration paid for the right or privilege to have access to a facility where live adult entertainment is provided.*

Sec. 4. *"Business" means any activity engaged in or caused to be engaged in by a business entity with the object of gain, benefit or advantage, either direct or indirect, to any person or governmental entity.*

Sec. 5. 1. *"Business entity" includes:*

(a) A corporation, partnership, proprietorship, limited-liability company, business association, joint venture, limited-liability partnership, business trust and their equivalents organized under the laws of this State or another jurisdiction and any other type of entity that engages in business.

(b) A natural person engaging in a business if the person is required to file with the Internal Revenue Service a Schedule C (Form 1040), Profit or Loss From Business Form, or its equivalent or successor form, or a Schedule E (Form 1040), Supplemental Income and Loss Form, or its equivalent or successor form, for the business.

2. The term does not include a governmental entity.

Sec. 6. 1. *"Facility" means, except as otherwise provided in subsection 2, any area or premises where live adult entertainment is provided and for which consideration is collected for the right or privilege of entering that area or those premises.*

2. The term does not include any portion of:

(a) A licensed gaming establishment; or

(b) A house of prostitution.

Sec. 7. *"Licensed gaming establishment" has the meaning ascribed to it in NRS 368A.080.*

Sec. 8. *"Live adult entertainment" means any activity provided for pleasure, enjoyment, recreation, relaxation, diversion or other similar purpose which includes the exposure of one or more personal anatomical features by a person or persons who are physically present when providing that activity to a patron or group of patrons who are physically present.*

Sec. 9. *"Personal anatomical feature" means any portion of the:*

1. Genitals, pubic region, anus or perineum of any human person; or

2. Areola of any female human breast or of any male human breast which has been surgically altered to appear as a female human breast.

Sec. 10. *"Taxpayer" means:*

1. Except as otherwise provided in subsection 2, the owner or operator of the facility where the live adult entertainment is provided.

2. If live adult entertainment that is taxable under sections 2 to 32, inclusive, of this act is provided at a publicly owned facility or on public land, the person who collects the taxable receipts.

Sec. 11. 1. There is hereby imposed an excise tax on admission to any facility in this State where live adult entertainment is provided at the rate of 10 percent of any admission charge to the facility plus 10 percent of any amounts paid for food, refreshments, alcoholic beverages and merchandise purchased at the facility.

2. Amounts paid for gratuities directly or indirectly remitted to persons employed at a facility where live adult entertainment is provided or for service charges, including those imposed in connection with the use of credit cards or debit cards, which are collected and retained by persons other than the taxpayer are not taxable pursuant to this section.

3. A business entity that collects any amount that is taxable pursuant to subsection 1 is liable for the tax imposed, but is entitled to collect reimbursement from any person paying that amount.

4. Any ticket for live adult entertainment must state whether the tax imposed by this section is included in the price of the ticket. If the ticket does not include such a statement, the taxpayer shall pay the tax based on the face amount of the ticket.

Sec. 12. A taxpayer shall hold the amount of all taxes for which he is liable pursuant to sections 2 to 32, inclusive, of this act in a separate account in trust for the State.

Sec. 13. 1. The Department shall:

(a) Collect the tax imposed by section 11 of this act; and

(b) Adopt such regulations as are necessary to carry out the provisions of paragraph (a), including, without limitation, regulations providing for a more detailed definition of "live adult entertainment" consistent with the general definition set forth in section 8 of this act for use in determining whether an activity is a taxable activity under the provisions of sections 2 to 32, inclusive, of this act.

2. For the purposes of subsection 1, the provisions of chapter 360 of NRS relating to the payment, collection, administration and enforcement of taxes, including, without limitation, any provisions relating to the imposition of penalties and interest, shall be deemed to apply to the payment, collection, administration and enforcement of the taxes imposed by sections 2 to 32, inclusive, of this act to the extent that the provisions of chapter 360 of NRS do not conflict with the provisions of sections 2 to 32, inclusive, of this act.

Sec. 14. 1. Except as otherwise provided in this section, each taxpayer shall file with the Department, on or before the last day of each month, a report showing the amount of all taxable receipts for the preceding month. The report must be in a form prescribed by the Department.

2. The Department, if it deems it necessary to ensure payment to or facilitate the collection by the State of the tax imposed by section 11 of this act, may require reports to be filed not later than 10 days after the end of each calendar quarter.

3. Each report required to be filed by this section must be accompanied by the amount of the tax that is due for the period covered by the report.

4. The Department shall deposit all taxes, interest and penalties it receives pursuant to sections 2 to 32, inclusive, of this act in the State Treasury for credit to the State General Fund.

Sec. 15. Upon written application made before the date on which payment must be made, the Department may, for good cause, extend by 30 days the time within which a taxpayer is required to pay the tax imposed by section 11 of this act. If the tax is paid during the period of extension, no penalty or late charge may be imposed for failure to pay at the time required, but the taxpayer shall pay interest at the rate of 1 percent per month from the date on which the amount would have been due without the extension until the date of payment, unless otherwise provided in NRS 360.232 or 360.320.

Sec. 16. 1. Each person responsible for maintaining the records of a taxpayer shall:

(a) Keep such records as may be necessary to determine the amount of the liability of the taxpayer pursuant to the provisions of sections 2 to 32, inclusive, of this act;

(b) Preserve those records for at least 4 years or until any litigation or prosecution pursuant to sections 2 to 32, inclusive, of this act is finally determined, whichever is longer; and

(c) Make the records available for inspection by the Department upon demand at reasonable times during regular business hours.

2. The Department may by regulation specify the types of records which must be kept to determine the amount of the liability of a taxpayer.

3. Any agreement that is entered into, modified or extended after July 1, 2005, for the lease, assignment or transfer of any premises upon which any activity subject to the tax imposed by section 11 of this act is, or thereafter may be, conducted shall be deemed to include a provision that the taxpayer who is required to pay the tax must be allowed access to, upon demand, all books, records and financial papers held by the lessee, assignee or transferee which must be kept pursuant to this section. Any person conducting activities subject to the tax imposed by section 11 of this act who fails to maintain or disclose his records pursuant to this subsection is liable to the taxpayer for any penalty paid by the taxpayer for the late payment or nonpayment of the tax caused by the failure to maintain or disclose records.

4. A person who violates any provision of this section is guilty of a misdemeanor.

Sec. 17. 1. To verify the accuracy of any report filed or, if no report is filed by a taxpayer, to determine the amount of tax required to be paid, the Department, or any person authorized in writing by the Department, may

examine the books, papers and records of any person who may be liable for the tax imposed by section 11 of this act.

2. Any person who may be liable for the tax imposed by section 11 of this act and who keeps outside of this State any books, papers and records relating thereto shall pay to the Department an amount equal to the allowance provided for state officers and employees generally while traveling outside of the State for each day or fraction thereof during which an employee of the Department is engaged in examining those documents, plus any other actual expenses incurred by the employee while he is absent from his regular place of employment to examine those documents.

Sec. 18. 1. Except as otherwise provided in this section and NRS 360.250, the records and files of the Department concerning the administration of sections 2 to 32, inclusive, of this act are confidential and privileged. The Department and any employee of the Department engaged in the administration of sections 2 to 32, inclusive, of this act or charged with the custody of any such records or files shall not disclose any information obtained from the records or files of the Department or from any examination, investigation or hearing authorized by the provisions of sections 2 to 32, inclusive, of this act. The Department and any employee of the Department may not be required to produce any of the records, files and information for the inspection of any person or for use in any action or proceeding.

2. The records and files of the Department concerning the administration of sections 2 to 32, inclusive, of this act are not confidential and privileged in the following cases:

(a) Testimony by a member or employee of the Department and production of records, files and information on behalf of the Department or a taxpayer in any action or proceeding pursuant to the provisions of sections 2 to 32, inclusive, of this act if that testimony or the records, files or information, or the facts shown thereby, are directly involved in the action or proceeding.

(b) Delivery to a taxpayer or his authorized representative of a copy of any report or other document filed by the taxpayer pursuant to sections 2 to 32, inclusive, of this act.

(c) Publication of statistics so classified as to prevent the identification of a particular person or document.

(d) Exchanges of information with the Internal Revenue Service in accordance with compacts made and provided for in such cases.

(e) Disclosure in confidence to the Governor or his agent in the exercise of the Governor's general supervisory powers, or to any person authorized to audit the accounts of the Department in pursuance of an audit, or to the Attorney General or other legal representative of the State in connection with an action or proceeding pursuant to sections 2 to 32, inclusive, of this act, or to any agency of this or any other state charged with the administration or enforcement of laws relating to taxation.

Sec. 19. 1. *If the Department determines that a taxpayer is taking any action with intent to defraud the State or to evade the payment of the tax or any part of the tax imposed by section 11 of this act, the Department shall establish an amount upon which that tax must be based.*

2. *The amount established by the Department pursuant to subsection 1 must be based upon the tax liability of business entities that are deemed comparable by the Department to that of the taxpayer.*

Sec. 20. 1. *If a taxpayer:*

(a) *Is unable to collect all or part of an admission charge or charges for food, refreshments, alcoholic beverages and merchandise which were included in the taxable receipts reported for a previous reporting period; and*

(b) *Has taken a deduction on his federal income tax return pursuant to 26 U.S.C. § 166(a) for the amount which he is unable to collect,*

➔ *he is entitled to receive a credit for the amount of tax paid on account of that uncollected amount. The credit may be used against the amount of tax that the taxpayer is subsequently required to pay pursuant to sections 2 to 32, inclusive, of this act.*

2. *If the Internal Revenue Service disallows a deduction described in paragraph (b) of subsection 1 and the taxpayer claimed a credit on a return for a previous reporting period pursuant to subsection 1, the taxpayer shall include the amount of that credit in the amount of taxes reported pursuant to sections 2 to 32, inclusive, of this act in the first return filed with the Department after the deduction is disallowed.*

3. *If a taxpayer collects all or part of an admission charge or charges for food, refreshments, alcoholic beverages and merchandise for which he claimed a credit on a return for a previous reporting period pursuant to subsection 2, he shall include:*

(a) *The amount collected in the charges reported pursuant to paragraph (a) of subsection 1; and*

(b) *The tax payable on the amount collected in the amount of taxes reported,*

➔ *in the first return filed with the Department after that collection.*

4. *Except as otherwise provided in subsection 5, upon determining that a taxpayer has filed a return which contains one or more violations of the provisions of this section, the Department shall:*

(a) *For the first return of any taxpayer that contains one or more violations, issue a letter of warning to the taxpayer which provides an explanation of the violation or violations contained in the return.*

(b) *For the first or second return, other than a return described in paragraph (a), in any calendar year which contains one or more violations, assess a penalty equal to the amount of the tax which was not reported.*

(c) *For the third and each subsequent return in any calendar year which contains one or more violations, assess a penalty of three times the amount of the tax which was not reported.*

5. For the purposes of subsection 4, if the first violation of this section by any taxpayer was determined by the Department through an audit which covered more than one return of the taxpayer, the Department shall treat all returns which were determined through the same audit to contain a violation or violations in the manner provided in paragraph (a) of subsection 4.

Sec. 21. The remedies of the State provided for in sections 2 to 32, inclusive, of this act are cumulative, and no action taken by the Department or the Attorney General constitutes an election by the State to pursue any remedy to the exclusion of any other remedy for which provision is made in sections 2 to 32, inclusive, of this act.

Sec. 22. If the Department determines that any tax, penalty or interest has been paid more than once or has been erroneously or illegally collected or computed, the Department shall set forth that fact in its records and shall certify to the State Board of Examiners the amount collected in excess of the amount legally due and the person from whom it was collected or by whom it was paid. If approved by the State Board of Examiners, the excess amount collected or paid must be credited on any amounts then due from the person under sections 2 to 32, inclusive, of this act and the balance refunded to the person or his successors in interest.

Sec. 23. 1. Except as otherwise provided in NRS 360.235 and 360.395:

(a) No refund may be allowed unless a claim for it is filed with the Department. A claim must be filed within 3 years after the last day of the month following the reporting period for which the overpayment was made.

(b) No credit may be allowed after the expiration of the period specified for filing claims for refund unless a claim for credit is filed with the Department within that period.

2. Each claim must be in writing and must state the specific grounds upon which the claim is founded.

3. Failure to file a claim within the time prescribed in subsection 1 constitutes a waiver of any demand against the State on account of overpayment.

4. Within 30 days after rejecting any claim in whole or in part, the Department shall serve notice of its action on the claimant in the manner prescribed for service of notice of a deficiency determination.

Sec. 24. 1. Except as otherwise provided in this section and NRS 360.320, interest must be paid upon any overpayment of any amount of the tax imposed by section 11 of this act in accordance with the provisions of section 13 of this act. The interest must be paid:

(a) In the case of a refund, to the last day of the calendar month following the date upon which the person making the overpayment, if he has not already filed a claim, is notified by the Department that a claim may be filed or the date upon which the claim is certified to the State Board of Examiners, whichever is earlier.

(b) In the case of a credit, to the same date as that to which interest is computed on the tax or amount against which the credit is applied.

2. *If the Department determines that any overpayment has been made intentionally or by reason of carelessness, the Department shall not allow any interest on the overpayment.*

Sec. 25. 1. *No injunction, writ of mandate or other legal or equitable process may issue in any suit, action or proceeding in any court against this State or against any officer of the State to prevent or enjoin the collection under sections 2 to 32, inclusive, of this act of the tax imposed by section 11 of this act or any amount of tax, penalty or interest required to be collected.*

2. *No suit or proceeding may be maintained in any court for the recovery of any amount alleged to have been erroneously or illegally determined or collected unless a claim for refund or credit has been filed.*

Sec. 26. 1. *Within 90 days after a final decision upon a claim filed pursuant to sections 2 to 32, inclusive, of this act is rendered by the Nevada Tax Commission, the claimant may bring an action against the Department on the grounds set forth in the claim.*

2. *An action brought pursuant to subsection 1 must be brought in a court of competent jurisdiction in Carson City, the county of this State where the claimant resides or maintains his principal place of business or a county in which any relevant proceedings were conducted by the Department, for the recovery of the whole or any part of the amount with respect to which the claim has been disallowed.*

3. *Failure to bring an action within the time specified constitutes a waiver of any demand against the State on account of alleged overpayments.*

Sec. 27. 1. *If the Department fails to mail notice of action on a claim within 6 months after the claim is filed, the claimant may consider the claim disallowed and file an appeal with the Nevada Tax Commission within 30 days after the last day of the 6-month period.*

2. *If the claimant is aggrieved by the decision of the Nevada Tax Commission rendered on appeal, the claimant may, within 90 days after the decision is rendered, bring an action against the Department on the grounds set forth in the claim for the recovery of the whole or any part of the amount claimed as an overpayment.*

3. *If judgment is rendered for the plaintiff, the amount of the judgment must first be credited towards any tax due from the plaintiff.*

4. *The balance of the judgment must be refunded to the plaintiff.*

Sec. 28. *In any judgment, interest must be allowed at the rate of 6 percent per annum upon the amount found to have been illegally collected from the date of payment of the amount to the date of allowance of credit on account of the judgment, or to a date preceding the date of the refund warrant by not more than 30 days. The date must be determined by the Department.*

Sec. 29. *A judgment may not be rendered in favor of the plaintiff in any action brought against the Department to recover any amount paid when the action is brought by or in the name of an assignee of the person paying the amount or by any person other than the person who paid the amount.*

Sec. 30. 1. *The Department may recover a refund or any part thereof which is erroneously made and any credit or part thereof which is erroneously allowed in an action brought in a court of competent jurisdiction in Carson City or Clark County in the name of the State of Nevada.*

2. *The action must be tried in Carson City or Clark County unless the court, with the consent of the Attorney General, orders a change of place of trial.*

3. *The Attorney General shall prosecute the action, and the provisions of NRS, the Nevada Rules of Civil Procedure and the Nevada Rules of Appellate Procedure relating to service of summons, pleadings, proofs, trials and appeals are applicable to the proceedings.*

Sec. 31. 1. *If any amount in excess of \$25 has been illegally determined, either by the person filing the return or by the Department, the Department shall certify this fact to the State Board of Examiners, and the latter shall authorize the cancellation of the amount upon the records of the Department.*

2. *If an amount not exceeding \$25 has been illegally determined, either by the person filing a return or by the Department, the Department, without certifying this fact to the State Board of Examiners, shall authorize the cancellation of the amount upon the records of the Department.*

Sec. 32. 1. *A person shall not:*

(a) *Make, cause to be made or permit to be made any false or fraudulent return or declaration or false statement in any report or declaration, with intent to defraud the State or to evade payment of the tax or any part of the tax imposed by section 11 of this act.*

(b) *Make, cause to be made or permit to be made any false entry in books, records or accounts with intent to defraud the State or to evade the payment of the tax or any part of the tax imposed by section 11 of this act.*

(c) *Keep, cause to be kept or permit to be kept more than one set of books, records or accounts with intent to defraud the State or to evade the payment of the tax or any part of the tax imposed by section 11 of this act.*

2. *Any person who violates the provisions of subsection 1 is guilty of a gross misdemeanor.*

Sec. 33. NRS 368A.010 is hereby amended to read as follows:

368A.010 As used in ~~[this chapter,]~~ *NRS 368A.010 to 368A.370, inclusive, unless the context otherwise requires, the words and terms defined in NRS 368A.020 to 368A.110, inclusive, have the meanings ascribed to them in those sections.*

Sec. 34. NRS 368A.050 is hereby amended to read as follows:

368A.050 1. "Business entity" includes:

(a) A corporation, partnership, proprietorship, limited-liability company, business association, joint venture, limited-liability partnership, business trust and their equivalents organized under the laws of this State or another jurisdiction and any other type of entity that engages in business.

(b) A natural person engaging in a business if ~~he is deemed to be a business entity pursuant to NRS 368A.120.~~ *the person is required to file with the Internal Revenue Service a Schedule C (Form 1040), Profit or Loss From Business Form, or its equivalent or successor form, or a Schedule E (Form 1040), Supplemental Income and Loss Form, or its equivalent or successor form, for the business.*

2. The term does not include a governmental entity.

Sec. 35. NRS 368A.060 is hereby amended to read as follows:

368A.060 "Facility" means:

1. Any area or premises where live entertainment is provided and for which consideration is collected for the right or privilege of entering that area or those premises if the live entertainment is provided at ~~[-~~

~~(a) An establishment that is not a licensed gaming establishment; or~~

~~(b) A] a licensed gaming establishment that is licensed for less than 51 slot machines, less than six games, or any combination of slot machines and games within those respective limits.~~

2. Any area or premises where live entertainment is provided if the live entertainment is provided at any other licensed gaming establishment.

Sec. 36. NRS 368A.080 is hereby amended to read as follows:

368A.080 "Licensed gaming establishment" ~~[has the meaning ascribed to it in NRS 463.0169.]~~ *means any premises for which a nonrestricted license has been issued pursuant to chapter 463 of NRS.*

Sec. 37. NRS 368A.110 is hereby amended to read as follows:

368A.110 "Taxpayer" means ~~[-~~

~~1. If live entertainment that is taxable under this chapter is provided at a licensed gaming establishment,] the person licensed to conduct gaming at [that establishment.~~

~~2. Except as otherwise provided in subsection 3, if live entertainment that is taxable under this chapter is not provided at a licensed gaming establishment, the owner or operator of the facility where the live entertainment is provided.~~

~~3. If live entertainment that is taxable under this chapter is provided at a publicly owned facility or on public land, the person who collects the taxable receipts.] a licensed gaming establishment where live entertainment is provided.~~

Sec. 38. NRS 368A.140 is hereby amended to read as follows:

368A.140 1. The Board shall:

(a) Collect the tax imposed by ~~[this chapter from taxpayers who are licensed gaming establishments;]~~ *NRS 368A.200*; and

(b) Adopt such regulations as are necessary to carry out the provisions of paragraph (a) ~~[-]~~, *including, without limitation, regulations providing for a more detailed definition of "live entertainment" consistent with the general definition set forth in NRS 368A.090 for use in determining whether an activity is a taxable activity under the provisions of NRS 368A.010 to 368A.370, inclusive.* The regulations must be adopted in accordance with the

provisions of chapter 233B of NRS and must be codified in the Nevada Administrative Code.

2. ~~{The Department shall:~~

~~(a) Collect the tax imposed by this chapter from all other taxpayers; and~~

~~(b) Adopt such regulations as are necessary to carry out the provisions of paragraph (a).~~

3. ~~For the purposes of {:~~

~~(a) Subsection~~ *subsection* 1, the provisions of chapter 463 of NRS relating to the payment, collection, administration and enforcement of gaming license fees and taxes, including, without limitation, any provisions relating to the imposition of penalties and interest, shall be deemed to apply to the payment, collection, administration and enforcement of the taxes imposed by ~~{this chapter}~~ *NRS 368A.010 to 368A.370, inclusive*, to the extent that ~~{those}~~ *the provisions of chapter 463 of NRS* do not conflict with the provisions of ~~{this chapter}~~.

~~(b) Subsection 2, the provisions of chapter 360 of NRS relating to the payment, collection, administration and enforcement of taxes, including, without limitation, any provisions relating to the imposition of penalties and interest, shall be deemed to apply to the payment, collection, administration and enforcement of the taxes imposed by this chapter to the extent that those provisions do not conflict with the provisions of this chapter.~~

4. ~~To ensure that the tax imposed by NRS 368A.200 is collected fairly and equitably, the Board and the Department shall:~~

~~(a) Jointly, coordinate the administration and collection of that tax and the regulation of taxpayers who are liable for the payment of the tax.~~

~~(b) Upon request, assist the other agency in the collection of that tax.]~~
NRS 368A.010 to 368A.370, inclusive.

Sec. 39. NRS 368A.150 is hereby amended to read as follows:

368A.150 1. If ~~{:~~

~~(a) The~~ *the* Board determines that a taxpayer ~~{who is a licensed gaming establishment}~~ is taking any action with intent to defraud the State or to evade the payment of the tax or any part of the tax imposed by ~~{this chapter,}~~ *NRS 368A.200*, the Board shall establish an amount upon which ~~{the tax imposed by this chapter}~~ *that tax* must be based.

~~{(b) The Department determines that a taxpayer who is not a licensed gaming establishment is taking any action with intent to defraud the State or to evade the payment of the tax or any part of the tax imposed by this chapter, the Department shall establish an amount upon which the tax imposed by this chapter must be based.}~~

2. The amount established by the Board ~~{or the Department}~~ pursuant to subsection 1 must be based upon the tax liability of business entities that are deemed comparable by the Board ~~{or the Department}~~ to that of the taxpayer.

Sec. 40. NRS 368A.160 is hereby amended to read as follows:

368A.160 1. Each person responsible for maintaining the records of a taxpayer shall:

(a) Keep such records as may be necessary to determine the amount of the liability of the taxpayer pursuant to the provisions of ~~[this chapter;]~~ *NRS 368A.010 to 368A.370, inclusive;*

(b) Preserve those records for ~~[-~~

~~(1) At] at least 5 years [if the taxpayer is a licensed gaming establishment] or until any litigation or prosecution pursuant to [this chapter] *NRS 368A.010 to 368A.370, inclusive,* is finally determined, whichever is longer; ~~for~~~~

~~(2) At least 4 years if the taxpayer is not a licensed gaming establishment or until any litigation or prosecution pursuant to this chapter is finally determined, whichever is longer;]~~ and

(c) Make the records available for inspection by the Board ~~[or the Department]~~ upon demand at reasonable times during regular business hours.

2. The Board ~~[and the Department]~~ may by regulation specify the types of records which must be kept to determine the amount of the liability of a taxpayer . ~~[from whom they are required to collect the tax imposed by this chapter.]~~

3. Any agreement that is entered into, modified or extended after January 1, 2004, for the lease, assignment or transfer of any premises upon which any activity subject to the tax imposed by ~~[this chapter]~~ *NRS 368A.200* is, or thereafter may be, conducted shall be deemed to include a provision that the taxpayer required to pay the tax must be allowed access to, upon demand, all books, records and financial papers held by the lessee, assignee or transferee which must be kept pursuant to this section. Any person conducting activities subject to the tax imposed by *NRS 368A.200* who fails to maintain or disclose his records pursuant to this subsection is liable to the taxpayer for any penalty paid by the taxpayer for the late payment or nonpayment of the tax caused by the failure to maintain or disclose records.

4. A person who violates any provision of this section is guilty of a misdemeanor.

Sec. 41. *NRS 368A.170* is hereby amended to read as follows:

368A.170 1. To verify the accuracy of any report filed or, if no report is filed by a taxpayer, to determine the amount of tax required to be paid ~~[-~~

~~(a) The],~~ the Board, or any person authorized in writing by the Board, may examine the books, papers and records of any ~~[licensed gaming establishment that] person who may be liable for the tax imposed by [this chapter.]~~

~~(b) The Department, or any person authorized in writing by the Department, may examine the books, papers and records of any other person who may be liable for the tax imposed by this chapter.] *NRS 368A.200.*~~

2. Any person who may be liable for the tax imposed by ~~[this chapter]~~ *NRS 368A.200* and who keeps outside of this State any books, papers and records relating thereto shall pay to the Board ~~[or the Department]~~ an amount equal to the allowance provided for state officers and employees generally while traveling outside of the State for each day or fraction thereof during

which an employee of the Board ~~for the Department~~ is engaged in examining those documents, plus any other actual expenses incurred by the employee while he is absent from his regular place of employment to examine those documents.

Sec. 42. NRS 368A.180 is hereby amended to read as follows:

368A.180 1. ~~Except as otherwise provided in this section and NRS 360.250, the~~ The records and files of the Board ~~and the Department~~ concerning the administration of ~~this chapter~~ NRS 368A.010 to 368A.370, inclusive, are confidential and privileged. The Board ~~, the Department~~ and any employee of the Board ~~for the Department~~ engaged in the administration of ~~this chapter~~ NRS 368A.010 to 368A.370, inclusive, or charged with the custody of any such records or files shall not disclose any information obtained from the records or files of the Board ~~for the Department~~ or from any examination, investigation or hearing authorized by the provisions of ~~this chapter~~ NRS 368A.010 to 368A.370, inclusive. The Board ~~, the Department~~ and any employee of the Board ~~for the Department~~ may not be required to produce any of the records, files and information for the inspection of any person or for use in any action or proceeding.

2. The records and files of the Board ~~and the Department~~ concerning the administration of ~~this chapter~~ NRS 368A.010 to 368A.370, inclusive, are not confidential and privileged in the following cases:

(a) Testimony by a member or employee of the Board ~~for the Department~~ and production of records, files and information on behalf of the Board ~~for the Department~~ or a taxpayer in any action or proceeding pursuant to the provisions of ~~this chapter~~ NRS 368A.010 to 368A.370, inclusive, if that testimony or the records, files or information, or the facts shown thereby, are directly involved in the action or proceeding.

(b) Delivery to a taxpayer or his authorized representative of a copy of any report or other document filed by the taxpayer pursuant to ~~this chapter~~ NRS 368A.010 to 368A.370, inclusive.

(c) Publication of statistics so classified as to prevent the identification of a particular person or document.

(d) Exchanges of information with the Internal Revenue Service in accordance with compacts made and provided for in such cases.

(e) Disclosure in confidence to the Governor or his agent in the exercise of the Governor's general supervisory powers, or to any person authorized to audit the accounts of the Board ~~for the Department~~ in pursuance of an audit, or to the Attorney General or other legal representative of the State in connection with an action or proceeding pursuant to ~~this chapter~~ NRS 368A.010 to 368A.370, inclusive, or to any agency of this or any other state charged with the administration or enforcement of laws relating to taxation.

Sec. 43. NRS 368A.200 is hereby amended to read as follows:

368A.200 1. Except as otherwise provided in this section, there is hereby imposed an excise tax on admission to any facility in this State where

live entertainment is provided. If the live entertainment is provided at a facility with a maximum seating capacity of:

(a) Less than 7,500, the rate of the tax is 10 percent of the admission charge to the facility plus 10 percent of any amounts paid for food, refreshments and merchandise purchased at the facility.

(b) At least 7,500, the rate of the tax is 5 percent of the admission charge to the facility.

2. Amounts paid for gratuities directly or indirectly remitted to persons employed at a facility where live entertainment is provided or for service charges, including those imposed in connection with the use of credit cards or debit cards, which are collected and retained by persons other than the taxpayer are not taxable pursuant to this section.

3. A business entity that collects any amount that is taxable pursuant to subsection 1 is liable for the tax imposed, but is entitled to collect reimbursement from any person paying that amount.

4. Any ticket for live entertainment must state whether the tax imposed by this section is included in the price of the ticket. If the ticket does not include such a statement, the taxpayer shall pay the tax based on the face amount of the ticket.

5. The tax imposed by subsection 1 does not apply to:

(a) Live entertainment that this State is prohibited from taxing under the Constitution, laws or treaties of the United States or the Nevada Constitution.

(b) Live entertainment that is provided by or entirely for the benefit of a nonprofit religious, charitable, fraternal or other organization that qualifies as a tax-exempt organization pursuant to 26 U.S.C. § 501(c).

(c) Any ~~boxing contest or exhibition governed by the provisions of chapter 467 of NRS.~~ *contest, game or other event involving the athletic or physical skills of amateur or professional athletes.*

(d) Live entertainment that is not provided at a licensed gaming establishment. ~~[if the facility in which the live entertainment is provided has a maximum seating capacity of less than 300.]~~

(e) Live entertainment that is provided at a licensed gaming establishment that is licensed for less than 51 slot machines, less than six games, or any combination of slot machines and games within those respective limits, if the facility in which the live entertainment is provided has a maximum seating capacity of less than 300.

(f) Merchandise sold outside the facility in which the live entertainment is provided, unless the purchase of the merchandise entitles the purchaser to admission to the entertainment.

(g) Live entertainment that is provided at a trade show.

(h) Music performed by musicians who move constantly through the audience if no other form of live entertainment is afforded to the patrons.

(i) Live entertainment that is provided at ~~a licensed gaming establishment at~~ private meetings or dinners attended by members of a particular

organization or by a casual assemblage if the purpose of the event is not primarily for entertainment.

(j) Live entertainment that is provided in the common area of a shopping mall, unless the entertainment is provided in a facility located within the mall.

6. As used in this section, "maximum seating capacity" means, in the following order of priority:

(a) The maximum occupancy of the facility in which live entertainment is provided, as determined by the State Fire Marshal or the local governmental agency that has the authority to determine the maximum occupancy of the facility;

(b) If such a maximum occupancy has not been determined, the maximum occupancy of the facility designated in any permit required to be obtained in order to provide the live entertainment; or

(c) If such a permit does not designate the maximum occupancy of the facility, the actual seating capacity of the facility in which the live entertainment is provided.

Sec. 44. NRS 368A.210 is hereby amended to read as follows:

368A.210 A taxpayer shall hold the amount of all taxes for which he is liable pursuant to ~~[this chapter]~~ *NRS 368A.010 to 368A.370, inclusive*, in a separate account in trust for the State.

Sec. 45. NRS 368A.220 is hereby amended to read as follows:

368A.220 1. Except as otherwise provided in this section ~~[-~~

~~(a) Each taxpayer who is a licensed gaming establishment], each taxpayer shall file with the Board, on or before the 24th day of each month, a report showing the amount of all taxable receipts for the preceding month. The report must be in a form prescribed by the Board.~~

~~[(b) All other taxpayers shall file with the Department, on or before the last day of each month, a report showing the amount of all taxable receipts for the preceding month. The report must be in a form prescribed by the Department.]~~

2. The Board ~~, [or the Department,]~~ if it deems it necessary to ensure payment to or facilitate the collection by the State of the tax imposed by NRS 368A.200, may require reports to be filed not later than 10 days after the end of each calendar quarter.

3. Each report required to be filed by this section must be accompanied by the amount of the tax that is due for the period covered by the report.

4. The Board ~~[and the Department]~~ shall deposit all taxes, interest and penalties it receives pursuant to ~~[this chapter]~~ *NRS 368A.010 to 368A.370, inclusive*, in the State Treasury for credit to the State General Fund.

Sec. 46. NRS 368A.230 is hereby amended to read as follows:

368A.230 Upon written application made before the date on which payment must be made, the Board ~~[or the Department]~~ may, for good cause, extend by 30 days the time within which a taxpayer is required to pay the tax imposed by ~~[this chapter]~~ *NRS 368A.200*. If the tax is paid during the period

of extension, no penalty or late charge may be imposed for failure to pay at the time required, but the taxpayer shall pay interest at the rate of 1 percent per month from the date on which the amount would have been due without the extension until the date of payment . ~~[unless otherwise provided in NRS 360.232 or 360.320.]~~

Sec. 47. NRS 368A.240 is hereby amended to read as follows:

368A.240 1. If a taxpayer:

(a) Is unable to collect all or part of an admission charge or charges for food, refreshments and merchandise which were included in the taxable receipts reported for a previous reporting period; and

(b) Has taken a deduction on his federal income tax return pursuant to 26 U.S.C. § 166(a) for the amount which he is unable to collect,

↳ he is entitled to receive a credit for the amount of tax paid on account of that uncollected amount. The credit may be used against the amount of tax that the taxpayer is subsequently required to pay pursuant to ~~[this chapter.]~~ *NRS 368A.010 to 368A.370, inclusive.*

2. If the Internal Revenue Service disallows a deduction described in paragraph (b) of subsection 1 and the taxpayer claimed a credit on a return for a previous reporting period pursuant to subsection 1, the taxpayer shall include the amount of that credit in the amount of taxes reported pursuant to ~~[this chapter.]~~ *NRS 368A.010 to 368A.370, inclusive*, in the first return filed with the Board ~~[or the Department]~~ after the deduction is disallowed.

3. If a taxpayer collects all or part of an admission charge or charges for food, refreshments and merchandise for which he claimed a credit on a return for a previous reporting period pursuant to subsection 2, he shall include:

(a) The amount collected in the charges reported pursuant to paragraph (a) of subsection 1; and

(b) The tax payable on the amount collected in the amount of taxes reported,

↳ in the first return filed with the Board ~~[or the Department]~~ after that collection.

4. Except as otherwise provided in subsection 5, upon determining that a taxpayer has filed a return which contains one or more violations of the provisions of this section, the Board ~~[or the Department]~~ shall:

(a) For the first return of any taxpayer that contains one or more violations, issue a letter of warning to the taxpayer which provides an explanation of the violation or violations contained in the return.

(b) For the first or second return, other than a return described in paragraph (a), in any calendar year which contains one or more violations, assess a penalty equal to the amount of the tax which was not reported.

(c) For the third and each subsequent return in any calendar year which contains one or more violations, assess a penalty of three times the amount of the tax which was not reported.

5. For the purposes of subsection 4, if the first violation of this section by any taxpayer was determined by the Board ~~[or the Department]~~ through an

audit which covered more than one return of the taxpayer, the Board ~~for the Department~~ shall treat all returns which were determined through the same audit to contain a violation or violations in the manner provided in paragraph (a) of subsection 4.

Sec. 48. NRS 368A.260 is hereby amended to read as follows:

368A.260 1. ~~[Except as otherwise provided in NRS 360.235 and 360.395:~~

~~(a)]~~ No refund may be allowed unless a claim for it is filed with ~~[-~~

~~(1) The Board, if the taxpayer is a licensed gaming establishment; or~~

~~(2) The Department, if the taxpayer is not a licensed gaming establishment.]~~ *the Board.* A claim must be filed within 3 years after the last day of the month following the reporting period for which the overpayment was made.

~~[(b)]~~ No credit may be allowed after the expiration of the period specified for filing claims for refund unless a claim for credit is filed with the Board ~~for the Department~~ within that period.

2. Each claim must be in writing and must state the specific grounds upon which the claim is founded.

3. Failure to file a claim within the time prescribed in ~~[this chapter]~~ *subsection 1* constitutes a waiver of any demand against the State on account of overpayment.

4. Within 30 days after rejecting any claim in whole or in part, the Board ~~for the Department~~ shall serve notice of its action on the claimant in the manner prescribed for service of notice of a deficiency determination.

Sec. 49. NRS 368A.270 is hereby amended to read as follows:

368A.270 1. Except as otherwise provided in this section, ~~[and NRS 360.320,]~~ interest must be paid upon any overpayment of any amount of the tax imposed by ~~[this chapter]~~ *NRS 368A.200* in accordance with the provisions of NRS 368A.140.

2. ~~[If the overpayment is paid to the Department, the interest must be paid:~~

~~(a) In the case of a refund, to the last day of the calendar month following the date upon which the person making the overpayment, if he has not already filed a claim, is notified by the Department that a claim may be filed or the date upon which the claim is certified to the State Board of Examiners, whichever is earlier.~~

~~(b) In the case of a credit, to the same date as that to which interest is computed on the tax or amount against which the credit is applied.~~

~~3.]~~ If the Board ~~for the Department~~ determines that any overpayment has been made intentionally or by reason of carelessness, the Board ~~for the Department~~ shall not allow any interest on the overpayment.

Sec. 50. NRS 368A.280 is hereby amended to read as follows:

368A.280 1. No injunction, writ of mandate or other legal or equitable process may issue in any suit, action or proceeding in any court against this State or against any officer of the State to prevent or enjoin the collection

under ~~[this chapter]~~ *NRS 368A.010 to 368A.370, inclusive*, of the tax imposed by ~~[this chapter]~~ *NRS 368A.200* or any amount of tax, penalty or interest required to be collected.

2. No suit or proceeding may be maintained in any court for the recovery of any amount alleged to have been erroneously or illegally determined or collected unless a claim for refund or credit has been filed.

Sec. 51. NRS 368A.290 is hereby amended to read as follows:

368A.290 1. Within 90 days after a final decision upon a claim filed pursuant to ~~[this chapter]~~ *NRS 368A.010 to 368A.370, inclusive*, is rendered by ~~[-~~

~~(a) The]~~ the Nevada Gaming Commission, the claimant may bring an action against the Board on the grounds set forth in the claim.

~~[(b) The Nevada Tax Commission, the claimant may bring an action against the Department on the grounds set forth in the claim.]~~

2. An action brought pursuant to subsection 1 must be brought in a court of competent jurisdiction in Carson City, the county of this State where the claimant resides or maintains his principal place of business or a county in which any relevant proceedings were conducted by the Board, ~~for the Department,]~~ for the recovery of the whole or any part of the amount with respect to which the claim has been disallowed.

3. Failure to bring an action within the time specified constitutes a waiver of any demand against the State on account of alleged overpayments.

Sec. 52. NRS 368A.300 is hereby amended to read as follows:

368A.300 1. If the Board fails to mail notice of action on a claim within 6 months after the claim is filed, the claimant may consider the claim disallowed and file an appeal with the Nevada Gaming Commission within 30 days after the last day of the 6-month period.

~~2. [If the Department fails to mail notice of action on a claim within 6 months after the claim is filed, the claimant may consider the claim disallowed and file an appeal with the Nevada Tax Commission within 30 days after the last day of the 6 month period.~~

~~3.]~~ If the claimant is aggrieved by the decision of ~~[-~~

~~(a) The]~~ the Nevada Gaming Commission rendered on appeal, the claimant may, within 90 days after the decision is rendered, bring an action against the Board on the grounds set forth in the claim for the recovery of the whole or any part of the amount claimed as an overpayment.

~~[(b) The Nevada Tax Commission rendered on appeal, the claimant may, within 90 days after the decision is rendered, bring an action against the Department on the grounds set forth in the claim for the recovery of the whole or any part of the amount claimed as an overpayment.~~

~~4.]~~ 3. If judgment is rendered for the plaintiff, the amount of the judgment must first be credited towards any tax due from the plaintiff.

~~{5.]~~ 4. The balance of the judgment must be refunded to the plaintiff.

Sec. 53. NRS 368A.310 is hereby amended to read as follows:

368A.310 In any judgment, interest must be allowed at the rate of 6 percent per annum upon the amount found to have been illegally collected from the date of payment of the amount to the date of allowance of credit on account of the judgment, or to a date preceding the date of the refund warrant by not more than 30 days. The date must be determined by the Board . ~~for the Department.~~

Sec. 54. NRS 368A.320 is hereby amended to read as follows:

368A.320 A judgment may not be rendered in favor of the plaintiff in any action brought against the Board ~~for the Department~~ to recover any amount paid when the action is brought by or in the name of an assignee of the person paying the amount or by any person other than the person who paid the amount.

Sec. 55. NRS 368A.330 is hereby amended to read as follows:

368A.330 1. The Board ~~for the Department~~ may recover a refund or any part thereof which is erroneously made and any credit or part thereof which is erroneously allowed in an action brought in a court of competent jurisdiction in Carson City or Clark County in the name of the State of Nevada.

2. The action must be tried in Carson City or Clark County unless the court, with the consent of the Attorney General, orders a change of place of trial.

3. The Attorney General shall prosecute the action, and the provisions of NRS, the Nevada Rules of Civil Procedure and the Nevada Rules of Appellate Procedure relating to service of summons, pleadings, proofs, trials and appeals are applicable to the proceedings.

Sec. 56. NRS 368A.340 is hereby amended to read as follows:

368A.340 1. If any amount in excess of \$25 has been illegally determined, either by the person filing the return or by the Board , ~~for the Department,~~ the Board ~~for the Department~~ shall certify this fact to the State Board of Examiners, and the latter shall authorize the cancellation of the amount upon the records of the Board . ~~for the Department.~~

2. If an amount not exceeding \$25 has been illegally determined, either by the person filing a return or by the Board , ~~for the Department,~~ the Board , ~~for the Department,~~ without certifying this fact to the State Board of Examiners, shall authorize the cancellation of the amount upon the records of the Board . ~~for the Department.~~

Sec. 57. NRS 368A.350 is hereby amended to read as follows:

368A.350 1. A person shall not:

(a) Make, cause to be made or permit to be made any false or fraudulent return or declaration or false statement in any report or declaration, with intent to defraud the State or to evade payment of the tax or any part of the tax imposed by ~~this chapter.~~ *NRS 368A.200.*

(b) Make, cause to be made or permit to be made any false entry in books, records or accounts with intent to defraud the State or to evade the payment of the tax or any part of the tax imposed by ~~this chapter.~~ *NRS 368A.200.*

(c) Keep, cause to be kept or permit to be kept more than one set of books, records or accounts with intent to defraud the State or to evade the payment of the tax or any part of the tax imposed by ~~[this chapter.]~~ *NRS 368A.200*.

2. Any person who violates the provisions of subsection 1 is guilty of a gross misdemeanor.

Sec. 58. *NRS 368A.370* is hereby amended to read as follows:

368A.370 The remedies of the State provided for in ~~[this chapter]~~ *NRS 368A.010 to 368A.370, inclusive*, are cumulative, and no action taken by the Board ~~[, the Department]~~ or the Attorney General constitutes an election by the State to pursue any remedy to the exclusion of any other remedy for which provision is made in ~~[this chapter.]~~ *NRS 368A.010 to 368A.370, inclusive*.

Sec. 59. *NRS 368A.120, 368A.130 and 368A.250* are hereby repealed.

Sec. 60. This act becomes effective on July 1, 2005, and expires by limitation on the last day of the month in which a court of competent jurisdiction enters a final order declaring unconstitutional or invalid any of the provisions of sections 2 to 32, inclusive, of this act which differ from the provisions of chapter 368A of NRS, as that chapter existed on June 30, 2005.

TEXT OF REPEALED SECTIONS

368A.120 Natural persons who are deemed to be business entities. A natural person engaging in a business shall be deemed to be a business entity that is subject to the provisions of this chapter if the person is required to file with the Internal Revenue Service a Schedule C (Form 1040), Profit or Loss From Business Form, or its equivalent or successor form, or a Schedule E (Form 1040), Supplemental Income and Loss Form, or its equivalent or successor form, for the business.

368A.130 Adoption by Department of regulations for determining whether activity is taxable. The Department shall provide by regulation for a more detailed definition of "live entertainment" consistent with the general definition set forth in *NRS 368A.090* for use by the Board and the Department in determining whether an activity is a taxable activity under the provisions of this chapter.

368A.250 Certification of excess amount collected; credit and refund. If the Department determines that any tax, penalty or interest it is required to collect has been paid more than once or has been erroneously or illegally collected or computed, the Department shall set forth that fact in its records and shall certify to the State Board of Examiners the amount collected in excess of the amount legally due and the person from whom it was collected or by whom it was paid. If approved by the State Board of Examiners, the excess amount collected or paid must be credited on any amounts then due from the person under this chapter, and the balance refunded to the person or his successors in interest."

Senator Titus moved the adoption of the amendment.

Remarks by Senator Titus.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Senate Bill No. 254.

Bill read second time.

The following amendment was proposed by the Committee on Human Resources and Education:

Amendment No. 536.

Amend section 1, page 1, line 2, by deleting "and 3" and inserting: ", 3 and 4".

Amend the bill as a whole by renumbering sections 2 and 3 as sections 3 and 4 and adding a new section designated sec. 2, following section 1, to read as follows:

"Sec. 2. *"Accommodation facility" means a child care facility which is operated:*

1. *By a business that is licensed to conduct a business other than the provision of care to children; and*

2. *As an auxiliary service provided for the customers of the primary business."*

Amend sec. 2, page 1, by deleting lines 3 and 4 and inserting:

"Sec. 3. 1. *A child may be admitted to an accommodation facility, including an accommodation facility licensed by"*

Amend sec. 2, page 1, line 6, before "facility" by inserting "accommodation".

Amend sec. 2, page 1, by deleting lines 9 and 10 and inserting: "*law after a child has been admitted to an accommodation facility, including an accommodation facility licensed by a"*

Amend sec. 2, page 1, line 12, before "facility" by inserting "accommodation".

Amend sec. 2, page 1, by deleting lines 14 and 15.

Amend sec. 3, page 2, by deleting lines 1 through 3 and inserting: "*of space per child in the facility, an accommodation facility may include the space occupied by any recreational toys that are used in the accommodation facility in"*

Amend sec. 3, page 2, by deleting lines 10 through 12 and inserting: "*number of toilets per child required in an accommodation facility to a number that is appropriate for accommodation facilities, taking into"*

Amend sec. 3, page 2, by deleting lines 14 through 19 and inserting:

"3. *An accommodation facility shall permit each parent or guardian of a child who is receiving care in the accommodation facility to attend to the needs of the child and to participate in activities with the child if the parent or guardian does so:*

(a) *In an area of the accommodation facility that is supervised by the operator of the accommodation facility; or*

(b) In an area of a bathroom facility that is designed for use by one person.

4. Not more than 30 percent of the area that is designated as play or activity space in an accommodation facility that begins operation on or after October 1, 2005, may consist of multilevel play equipment."

Amend the bill as a whole by renumbering sections 4 through 6 as sections 6 through 8 and adding a new section designated sec. 5, following sec. 3, to read as follows:

"Sec. 5. NRS 432A.020 is hereby amended to read as follows:

432A.020 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 432A.021 to 432A.028, inclusive, *and section 2 of this act* have the meanings ascribed to them in those sections."

Amend sec. 4, page 2, line 23, by deleting "3" and inserting "4".

Amend sec. 5, page 2, line 26, by deleting "2" and inserting "3".

Amend sec. 6, page 3, line 24, by deleting "2" and inserting "3".

Amend the title of the bill to read as follows:

"AN ACT relating to public welfare; making various changes relating to child care facilities that are operated by businesses as an auxiliary service provided for their customers; and providing other matters properly relating thereto."

Amend the summary of the bill to read as follows:

"SUMMARY—Makes various changes relating to child care facilities operated by businesses as auxiliary service provided for their customers. (BDR 38-1127)".

Senator Washington moved the adoption of the amendment.

Remarks by Senators Washington and Carlton.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Senate Bill No. 268.

Bill read second time.

The following amendment was proposed by the Committee on Human Resources and Education:

Amendment No. 349.

Amend section 1, page 1, by deleting lines 3 through 11 and inserting:

"1. The board of trustees of a school district shall not employ a person as an administrator unless the person has:

(a) If he holds a license to teach, provided instruction in the classroom at least one day each semester; or

(b) If he does not hold a license to teach, personally observed a classroom at least one day each semester,

↪ in the year immediately preceding the date of his employment or the date of his reemployment, as applicable."

Amend sec. 4, page 5, line 16, after "classroom" by inserting: "or personally observe a classroom, as applicable,"

Amend sec. 4, page 5, by deleting lines 18 through 22 and inserting:

"(a) May renew his contract one time, regardless of whether that person has provided instruction in a classroom or personally observed a classroom, as applicable, in the immediately preceding year; and

(b) Shall require the person to provide instruction in a classroom or personally observe a classroom, as applicable,".

Amend the title of the bill by deleting the fourth through sixth lines and inserting: "has certain experience in providing instruction in a classroom or personally observing a classroom; and providing other matters properly".

Senator Washington moved the adoption of the amendment.

Remarks by Senator Washington.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Senate Bill No. 269.

Bill read second time.

The following amendment was proposed by the Committee on Transportation and Homeland Security:

Amendment No. 478.

Amend section 1, page 4, line 14, by deleting "and" and inserting "~~and~~".

Amend section 1, page 4, line 15, after "(b)" by inserting: "*Have an identification number and a date of expiration; and*

(c)".

Amend section 1, page 4, line 19, by deleting "have" and inserting: "~~have~~:"

(a) Have".

Amend section 1, page 4, line 21, by deleting "background." and inserting: "background ~~[]~~; and

(b) Have an identification number and a date of expiration.".

Amend section 1, page 4, line 43, after "name" by inserting "*and address*".

Amend section 1, page 5, line 1, by deleting: "*issued. The letter*" and inserting: "*issued; and*

(a) If the person receives special license plates, the license plate number designated for the plates; and

(b) If the person receives a special or temporary parking placard or a special or temporary parking sticker, the identification number and date of expiration indicated on the placard or sticker.

↪ *The letter, or a legible copy thereof;*".

Amend sec. 2, page 7, line 31, by deleting "motorcycle" and inserting: "motorcycle, or is being picked up or dropped off by the driver of the vehicle or motorcycle,".

Amend sec. 2, page 7, line 39, by deleting "vehicle" and inserting: "vehicle, or is being picked up or dropped off by the driver of the vehicle,".

Senator Nolan moved the adoption of the amendment.

Remarks by Senator Nolan.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Senate Bill No. 288.

Bill read second time.

The following amendment was proposed by the Committee on Transportation and Homeland Security:

Amendment No. 482.

Amend the bill as a whole by deleting sections 1 through 3 and renumbering sections 4 and 5 as sections 1 and 2.

Amend sec. 4, page 2, line 4, by deleting "~~Commission~~ Division." and inserting "Commission."

Amend sec. 4, page 2, by deleting lines 15 and 16 and inserting:

"8. *Electric power; and*".

Amend sec. 5, page 2, line 30, by deleting "~~Commission~~ Division." and inserting "Commission."

Amend sec. 5, page 2, by deleting lines 38 and 39 and inserting:

"6. *Electric power; and*".

Amend the bill as a whole by deleting sections 6 through 12 and the text of repealed section and adding new sections designated sections 3 through 5, following sec. 5, to read as follows:

"Sec. 3. NRS 445B.759 is hereby amended to read as follows:

445B.759 1. The provisions of NRS 445B.700 to 445B.845, inclusive, do not apply to ~~military~~ :

(a) *Motor vehicles which operate on one or more types of alternative fuel specified in subsections 4 to 9, inclusive, of NRS 486A.030 and which do not operate on gasoline; or*

(b) *Military tactical vehicles.*

2. As used in this section, "military tactical vehicle" means a motor vehicle that is:

(a) Owned or controlled by the United States Department of Defense or by a branch of the Armed Forces of the United States; and

(b) Used in combat, combat support, combat service support, tactical or relief operations, or training for such operations.

Sec. 4. NRS 445B.759 is hereby amended to read as follows:

445B.759 1. The provisions of NRS 445B.700 to 445B.845, inclusive, do not apply to:

(a) Motor vehicles which operate on one or more types of alternative fuel specified in subsections ~~[4 to 9]~~ 2 to 7, inclusive, of NRS 486A.030 and which do not operate on gasoline; or

(b) Military tactical vehicles.

2. As used in this section, "military tactical vehicle" means a motor vehicle that is:

(a) Owned or controlled by the United States Department of Defense or by a branch of the Armed Forces of the United States; and

(b) Used in combat, combat support, combat service support, tactical or relief operations, or training for such operations.

Sec. 5. 1. This section and sections 1 and 3 of this act become effective on July 1, 2005.

2. Sections 1 and 3 of this act expire by limitation on December 31, 2006.

3. Sections 2 and 4 of this act become effective on January 1, 2007."

Amend the title of the bill by deleting the second through fifth lines and inserting: ""alternative fuel"; exempting motor vehicles which operate on certain alternative fuel but not gasoline from emissions testing; and".

Senator Nolan moved the adoption of the amendment.

Remarks by Senator Nolan.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Senate Bill No. 326.

Bill read second time.

The following amendment was proposed by the Committee on Judiciary:

Amendment No. 401.

Amend section 1, page 1, by deleting lines 3 and 4 and inserting:

"1. The right of eminent domain may not be exercised pursuant to subsection 2 or 3 of NRS 37.010".

Amend sec. 2, page 1, line 14, by deleting "An" and inserting: *"Except as otherwise provided in this subsection, an"*.

Amend sec. 2, page 2, line 2, after "domain." by inserting: *"An agency may exercise the power of eminent domain to acquire a parcel of property that is not blighted for a redevelopment project if the agency adopts a resolution that includes a written finding by the agency that a condition of blight exists for at least two-thirds of the property within the redevelopment area. If an agency acquires a parcel of property that is not blighted on which a business is conducted, the owner or owners of the business must be compensated for the loss of goodwill resulting from the acquisition of the parcel of property."*

Amend sec. 3, page 2, line 33, by deleting "The" and inserting:

"1. Except as otherwise provided in subsection 2, the".

Amend sec. 3, page 2, by deleting line 34 and inserting: *"action in eminent domain that is filed before, on or after July 1, 2005, including any pending action."*

2. The provisions of this act do not apply to any action for which a final judgment has been entered and for which no further appeal may be filed."

Amend the title of the bill, fourth line, after "domain;" by inserting: *"requiring a redevelopment agency that acquires real property on which a business is conducted to compensate the owner of the business for the loss of goodwill under certain circumstances;"*.

Senator Care moved the adoption of the amendment.

Remarks by Senators Care and Schneider.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Senate Bill No. 356.

Bill read second time.

The following amendment was proposed by the Committee on Taxation:

Amendment No. 378.

Amend sec. 9, page 8, line 7, by deleting "intangible" and inserting "tangible".

Amend sec. 10, page 8, line 20, by deleting "intangible" and inserting "tangible".

Senator McGinness moved the adoption of the amendment.

Remarks by Senator McGinness.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Senate Bill No. 358.

Bill read second time.

The following amendment was proposed by the Committee on Taxation:

Amendment No. 439.

Amend the bill as a whole by renumbering sections 1 and 2 as sections 2 and 3 and adding a new section designated section 1, following the enacting clause, to read as follows:

"Section 1. The Legislature hereby finds and declares that:

1. The organization of real property into any form of a common-interest community creates a uniform set of circumstances for the purposes of assessment and taxation which differ from those regarding other forms of ownership in which there is no similar commonality of interest, in that the value of the common elements of each type of common-interest community is necessarily represented in the separate valuation of each individual unit within such a community;

2. By virtue of their payment of the taxes and special assessments imposed upon the value of their individual units in a common-interest community, the owners of those units pay taxes and special assessments upon the value of the common elements of the community; and

3. Since the common elements of a common-interest community are therefore collectively taxed through the separate assessment and taxation of the individual units of the community, any additional assessment and taxation of the common elements of the community constitutes an unconstitutional double taxation of that property."

Amend section 1, page 1, line 6, by deleting "*parcels*" and inserting "*units*".

Amend section 1, page 1, line 8, by deleting "*separately*".

Amend section 1, page 1, line 10, by deleting "*parcel*" and inserting "*unit*".

Amend section 1, page 2, lines 2 and 3, by deleting "*parcel*" and inserting "*unit*".

Amend section 1, page 2, by deleting lines 31 through 34 and inserting:

"(e) *"Community unit" means a physical portion of a common-*".

Amend section 1, page 2, line 37, by deleting "(g)" and inserting "(f)".

Amend sec. 2, pages 2 and 3, by deleting lines 41 through 45 on page 2 and lines 1 through 4 on page 3, and inserting:

"116.1105 ~~{1.}~~ In a cooperative, unless the declaration provides that the interest of a unit's owner in a unit and its allocated interests is real estate for all purposes, that interest is personal property.

~~{2.—In a condominium or planned community:~~

~~(a) If there is any unit's owner other than a declarant, each unit that has been created, together with its interest in the common elements, constitutes for all purposes a separate parcel of real estate.~~

~~(b) If there is any unit's owner other than a declarant, each unit".~~

Amend the bill as a whole by renumbering sec. 3 as sec. 5 and adding a new section designated sec. 4, following sec. 2, to read as follows:

"Sec. 4. NRS 116.1203 is hereby amended to read as follows:

116.1203 1. Except as otherwise provided in subsection 2, if a planned community contains no more than 12 units and is not subject to any developmental rights, it is subject only to NRS ~~{116.1105,}~~ 116.1106 and 116.1107 unless the declaration provides that this entire chapter is applicable.

2. Except for NRS 116.3104, 116.31043, 116.31046 and 116.31138, the provisions of NRS 116.3101 to 116.3119, inclusive, and the definitions set forth in NRS 116.005 to 116.095, inclusive, to the extent that such definitions are necessary in construing any of those provisions, apply to a residential planned community containing more than six units."

Senator Beers moved the adoption of the amendment.

Remarks by Senators Beers and Schneider.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Senate Bill No. 388.

Bill read second time.

The following amendment was proposed by the Committee on Taxation:

Amendment No. 440.

Amend the bill as a whole by deleting sections 1 through 12 and the text of the repealed section and adding new sections designated sections 1 and 2, following the enacting clause, to read as follows:

"Section 1. NRS 463.370 is hereby amended to read as follows:

463.370 1. Except as otherwise provided in NRS 463.373, the Commission shall charge and collect from each licensee a license fee based upon all the gross revenue of the licensee as follows:

(a) Three and one-half percent of all the gross revenue of the licensee which does not exceed ~~[\$50,000]~~ \$250,000 per calendar month;

(b) Four and one-half percent of all the gross revenue of the licensee which exceeds ~~[\$50,000]~~ \$250,000 per calendar month and does not exceed ~~[\$134,000]~~ \$650,000 per calendar month; and

(c) Six and three-quarters percent of all the gross revenue of the licensee which exceeds ~~[\$134,000]~~ \$650,000 per calendar month.

2. Unless the licensee has been operating for less than a full calendar month, the Commission shall charge and collect the fee prescribed in subsection 1, based upon the gross revenue for the preceding calendar month, on or before the 24th day of the following month. Except for the fee based on the first full month of operation, the fee is an estimated payment of the license fee for the third month following the month whose gross revenue is used as its basis.

3. When a licensee has been operating for less than a full calendar month, the Commission shall charge and collect the fee prescribed in subsection 1, based on the gross revenue received during that month, on or before the 24th day of the following calendar month of operation. After the first full calendar month of operation, the Commission shall charge and collect the fee based on the gross revenue received during that month, on or before the 24th day of the following calendar month. The payment of the fee due for the first full calendar month of operation must be accompanied by the payment of a fee equal to three times the fee for the first full calendar month. This additional amount is an estimated payment of the license fees for the next 3 calendar months. Thereafter, each license fee must be paid in the manner described in subsection 2. Any deposit held by the Commission on July 1, 1969, must be treated as an advance estimated payment.

4. All revenue received from any game or gaming device which is operated on the premises of a licensee, regardless of whether any portion of the revenue is shared with any other person, must be attributed to the licensee for the purposes of this section and counted as part of the gross revenue of the licensee. Any other person, including, without limitation, an operator of an inter-casino linked system, who is authorized to receive a share of the revenue from any game, gaming device or inter-casino linked system that is operated on the premises of a licensee is liable to the licensee for that person's proportionate share of the license fees paid by the licensee pursuant to this section and shall remit or credit the full proportionate share to the licensee on or before the 24th day of each calendar month. The proportionate share of an operator of an inter-casino linked system must be based on all compensation and other consideration received by the operator of the inter-casino linked system, including, without limitation, amounts that accrue to the meter of the primary progressive jackpot of the inter-casino linked system and amounts that fund the reserves of such a jackpot, subject to all appropriate adjustments for deductions, credits, offsets and exclusions that the licensee is entitled to take or receive pursuant to the provisions of this chapter. A licensee is not liable to any other person authorized to receive a share of the licensee's revenue from any game, gaming device or inter-casino

linked system that is operated on the premises of the licensee for that person's proportionate share of the license fees to be remitted or credited to the licensee by that person pursuant to this section.

5. An operator of an inter-casino linked system shall not enter into any agreement or arrangement with a licensee that provides for the operator of the inter-casino linked system to be liable to the licensee for less than its full proportionate share of the license fees paid by the licensee pursuant to this section, whether accomplished through a rebate, refund, charge-back or otherwise.

6. Any person required to pay a fee pursuant to this section shall file with the Commission, on or before the 24th day of each calendar month, a report showing the amount of all gross revenue received during the preceding calendar month. Each report must be accompanied by:

(a) The fee due based on the revenue of the month covered by the report; and

(b) An adjustment for the difference between the estimated fee previously paid for the month covered by the report, if any, and the fee due for the actual gross revenue earned in that month. If the adjustment is less than zero, a credit must be applied to the estimated fee due with that report.

7. If the amount of license fees required to be reported and paid pursuant to this section is later determined to be greater or less than the amount actually reported and paid, the Commission shall:

(a) Charge and collect the additional license fees determined to be due, with interest thereon until paid; or

(b) Refund any overpayment to the person entitled thereto pursuant to this chapter, with interest thereon.

↪ Interest pursuant to paragraph (a) must be computed at the rate prescribed in NRS 17.130 from the first day of the first month following the due date of the additional license fees until paid. Interest pursuant to paragraph (b) must be computed at one-half the rate prescribed in NRS 17.130 from the first day of the first month following the date of overpayment until paid.

8. Failure to pay the fees provided for in this section shall be deemed a surrender of the license at the expiration of the period for which the estimated payment of fees has been made, as established in subsection 2.

9. Except as otherwise provided in NRS 463.386, the amount of the fee prescribed in subsection 1 must not be prorated.

10. Except as otherwise provided in NRS 463.386, if a licensee ceases operation, the Commission shall:

(a) Charge and collect the additional license fees determined to be due with interest computed pursuant to paragraph (a) of subsection 7; or

(b) Refund any overpayment to the licensee with interest computed pursuant to paragraph (b) of subsection 7,

↪ based upon the gross revenue of the licensee during the last 3 months immediately preceding the cessation of operation, or portions of those last 3 months.

11. If in any month, the amount of gross revenue is less than zero, the licensee may offset the loss against gross revenue in succeeding months until the loss has been fully offset.

12. If in any month, the amount of the license fee due is less than zero, the licensee is entitled to receive a credit against any license fees due in succeeding months until the credit has been fully offset.

Sec. 2. This act becomes effective on January 1, 2006."

Amend the title of the bill to read as follows:

"AN ACT relating to business; revising the amount of the state licensing fee required from certain businesses engaged in gaming; and providing other matters properly relating thereto."

Amend the summary of the bill to read as follows:

"SUMMARY—Revises amount of state licensing fee required from certain businesses engaged in gaming. (BDR 41-821)".

Senator McGinness moved the adoption of the amendment.

Remarks by Senator McGinness.

Amendment adopted.

Senator Raggio moved that Senate Bill No. 388 be rereferred to the Committee on Finance upon return from reprint.

Remarks by Senator Raggio.

Motion carried.

Bill ordered reprinted, engrossed and to the Committee on Finance.

MOTIONS, RESOLUTIONS AND NOTICES

Senator Horsford moved that Senate Bill No. 286 be taken from the General File and placed on the General File for the next legislative day.

Remarks by Senator Horsford.

Motion carried.

Senator Raggio moved to consider the General File at this time.

Motion carried.

GENERAL FILE AND THIRD READING

Senate Bill No. 30.

Bill read third time.

Roll call on Senate Bill No. 30:

YEAS—21.

NAYS—None.

Senate Bill No. 30 having received a constitutional majority, Mr. President pro Tempore declared it passed, as amended.

Bill ordered transmitted to the Assembly.

Senate Bill No. 83.

Bill read third time.

Roll call on Senate Bill No. 83:

YEAS—21.

NAYS—None.

Senate Bill No. 83 having received a constitutional majority,
Mr. President pro Tempore declared it passed, as amended.

Bill ordered transmitted to the Assembly.

Senate Bill No. 110.

Bill read third time.

Remarks by Senator Hardy.

Roll call on Senate Bill No. 110:

YEAS—17.

NAYS—Carlton, Coffin—2.

NOT VOTING—Mathews, Raggio—2.

Senate Bill No. 110 having received a constitutional majority,
Mr. President pro Tempore declared it passed, as amended.

Bill ordered transmitted to the Assembly.

Senate Bill No. 126.

Bill read third time.

Roll call on Senate Bill No. 126:

YEAS—21.

NAYS—None.

Senate Bill No. 126 having received a constitutional majority,
Mr. President pro Tempore declared it passed, as amended.

Bill ordered transmitted to the Assembly.

Senate Bill No. 173.

Bill read third time.

Remarks by Senators Care and Cegavske.

Roll call on Senate Bill No. 173:

YEAS—21.

NAYS—None.

Senate Bill No. 173 having received a constitutional majority,
Mr. President pro Tempore declared it passed, as amended.

Bill ordered transmitted to the Assembly.

Senate Bill No. 199.

Bill read third time.

Roll call on Senate Bill No. 199:

YEAS—21.

NAYS—None.

Senate Bill No. 199 having received a constitutional majority,
Mr. President pro Tempore declared it passed, as amended.

Bill ordered transmitted to the Assembly.

Senate Bill No. 216.

Bill read third time.

Roll call on Senate Bill No. 216:

YEAS—21.

NAYS—None.

Senate Bill No. 216 having received a constitutional majority,
Mr. President pro Tempore declared it passed, as amended.

Bill ordered transmitted to the Assembly.

Senate Bill No. 226.

Bill read third time.

The following amendment was proposed by Senator Carlton:

Amendment No. 574.

Amend sec. 2, page 3, by deleting line 31 and inserting:

"2. *The provisions of subsection 1:*

(a) Apply only to treatment or".

Amend sec. 2, page 3, between lines 36 and 37, by inserting:

"(b) Do not apply to a provider of health care that is a hospital as defined in NRS 439B.110. The provisions of this paragraph do not exempt the provider of health care from complying with the provisions of subsections 3 and 4."

Senator Carlton moved the adoption of the amendment.

Remarks by Senator Carlton.

Conflict of interest declared by Senator Raggio.

Amendment adopted.

Bill ordered reprinted, reengrossed and to third reading.

Senate Bill No. 266.

Bill read third time.

Roll call on Senate Bill No. 266:

YEAS—21.

NAYS—None.

Senate Bill No. 266 having received a constitutional majority,
Mr. President pro Tempore declared it passed, as amended.

Bill ordered transmitted to the Assembly.

Senate Bill No. 280.

Bill read third time.

Roll call on Senate Bill No. 280:

YEAS—21.

NAYS—None.

Senate Bill No. 280 having received a constitutional majority,
Mr. President pro Tempore declared it passed, as amended.

Bill ordered transmitted to the Assembly.

Senate Bill No. 281.

Bill read third time.

Roll call on Senate Bill No. 281:

YEAS—21.

NAYS—None.

Senate Bill No. 281 having received a constitutional majority,
Mr. President pro Tempore declared it passed, as amended.

Bill ordered transmitted to the Assembly.

Senate Bill No. 282.

Bill read third time.

Roll call on Senate Bill No. 282:

YEAS—21.

NAYS—None.

Senate Bill No. 282 having received a two-thirds majority,
Mr. President pro Tempore declared it passed, as amended.

Bill ordered transmitted to the Assembly.

Senate Bill No. 306.

Bill read third time.

Roll call on Senate Bill No. 306:

YEAS—19.

NAYS—Cegavske.

NOT VOTING—Raggio.

Senate Bill No. 306 having received a constitutional majority,
Mr. President pro Tempore declared it passed, as amended.

Bill ordered transmitted to the Assembly.

Senate Bill No. 313.

Bill read third time.

Remarks by Senators Nolan and Care.

Roll call on Senate Bill No. 313:

YEAS—15.

NAYS—Amodei, Care, Carlton, Horsford, Titus, Wiener—6.

Senate Bill No. 313 having received a constitutional majority,
Mr. President pro Tempore declared it passed, as amended.

Bill ordered transmitted to the Assembly.

Senate Bill No. 341.

Bill read third time.

Senator Raggio moved that Senate Bill No. 341 be taken from the General
File and rereferred to the Committee on Finance.

Remarks by Senator Raggio.

Motion carried.

Senate Bill No. 353.

Bill read third time.

Roll call on Senate Bill No. 353:

YEAS—21.

NAYS—None.

Senate Bill No. 353 having received a constitutional majority,
Mr. President pro Tempore declared it passed, as amended.

Bill ordered transmitted to the Assembly.

Senate Bill No. 403.

Bill read third time.

Remarks by Senator Washington.

Roll call on Senate Bill No. 403:

YEAS—21.

NAYS—None.

Senate Bill No. 403 having received a constitutional majority,
Mr. President pro Tempore declared it passed, as amended.

Bill ordered transmitted to the Assembly.

Senate Bill No. 408.

Bill read third time.

Roll call on Senate Bill No. 408:

YEAS—21.

NAYS—None.

Senate Bill No. 408 having received a constitutional majority,
Mr. President pro Tempore declared it passed, as amended.

Bill ordered transmitted to the Assembly.

Senate Bill No. 421.

Bill read third time.

Roll call on Senate Bill No. 421:

YEAS—20.

NAYS—Coffin.

Senate Bill No. 421 having received a constitutional majority,
Mr. President pro Tempore declared it passed, as amended.

Bill ordered transmitted to the Assembly.

Senate Bill No. 422.

Bill read third time.

Roll call on Senate Bill No. 422:

YEAS—20.

NAYS—Care.

Senate Bill No. 422 having received a two-thirds majority,
Mr. President pro Tempore declared it passed, as amended.

Bill ordered transmitted to the Assembly.

Senate Bill No. 432.

Bill read third time.

Remarks by Senators Coffin and Care.

Roll call on Senate Bill No. 432:

YEAS—19.

NAYS—Coffin.

NOT VOTING—Raggio.

Senate Bill No. 432 having received a constitutional majority, Mr. President pro Tempore declared it passed, as amended.

Bill ordered transmitted to the Assembly.

Senate Bill No. 459.

Bill read third time.

Remarks by Senators Washington, McGinness and Raggio.

Senator Washington moved that Senate Bill No. 459 be taken from the General File and placed on the General File for the next legislative day.

Remarks by Senator Washington.

Motion carried.

Senate Bill No. 460.

Bill read third time.

Remarks by Senators Horsford, Raggio and Washington.

Senator Raggio requested that the following remarks be entered in the Journal.

SENATOR HORSFORD:

Thank you, Mr. President pro Tempore. I rise in opposition to Senate Bill No. 460. I fully appreciate the hard work and deliberation that my colleagues on the Senate Committee on Human Resources and Education considered before proposing this amendment which I opposed. I would like to offer some perspective on why these policy changes are not necessary and will be counterproductive to the direction this Legislature and previous Legislatures have taken regarding setting higher academic standards for Nevada's students.

First, the amendment which is now reprinted in the bill in section 5, page 4, line 34, essentially, does the following: it allows the board of trustees from Washoe and Clark County school districts to submit a plan to the Superintendent of Public Instruction to provide flexibility in class-size reduction in grades 1 through 6 and that this plan for flexibility shall, not may, be approved by the State Superintendent as long as the class-size flexibility requested seeks to reduce the need for team teaching or because the school district lacks sufficient facilities.

While the proposed policy changes appear to be innocuous enough, the real-life application of this bill is significant. Let me make a few arguments as to why this bill should not be supported with these provisions.

First, the issue before this body concerning Senate Bill No. 460 is not really about class-size reduction. It is about this Legislature's commitment to supporting education policy that closes the achievement gap that presently exists among Nevada's school children. This Legislature has made several attempts to improve academic achievement and increase the educational standards for all grades. Yet, this measure is being supported as if it will improve student achievement and it will not; it may actually do the opposite.

If you want to discuss this bill in terms of class-size reduction then let us use the many studies and research that shows the success of smaller class sizes on student achievement and how this bill is counter to our goals as a Legislature of improving the achievement gap. Researchers have long investigated whether smaller classes improve student achievement. Their conclusions suggest that class-size reduction can result in greater in-depth coverage of subject matter by teachers, enhanced learning and stronger engagement by students, more personalized relationships between teachers and students, and safer schools with fewer discipline problems.

Furthermore, the research shows federal funding for class-size reduction for the 2001-2002 school year totaled \$1.6 billion and allocations are now included in the No Child Left Behind Act. One of the main goals of class-size reduction is closing the achievement gap between white middle-class students and poor students of color. And, that brings me to my next argument why this policy change is not necessary. Senate Bill No. 460 may actually cause two classes of Nevada school children to be treated differently even though they attend school in the same school district and potentially in the same neighborhood.

How is this possible? Based on the testimony received in committee on this bill, there are approximately 12 schools that may meet the criteria of the bill—particularly the provision regarding the district lacking the necessary facilities to achieve class sizes of 15 to 1 in grades 1, 2 and 3. Where are these schools that lack the facilities to fully accommodate class-size reduction? They are typically in older neighborhoods with low-income households and with larger minority populations. The new schools that have or are being built accommodate the class-size reduction but the older schools do not. Is that fair? And, this bill could further exacerbate the problem based on where a student lives. Senate Bill No. 460 may further widen the achievement gap among certain demographics.

Based upon the goals that this Legislature has set to increase the academic standards, I would ask this body to reject Senate Bill No. 460 and the provisions that actually create two classes of school children being treated differently.

If the proponents of this bill really want to increase academic achievement and close the achievement gap for all of Nevada's school children, then, maybe, we should maintain class sizes at 15 to 1 in all schools, especially those falling behind based on No Child Left Behind and extend class-size reduction to at least the sixth grade and fund it now. That will close the achievement gap, and that will provide for an equal education for all of Nevada's children.

SENATOR RAGGIO:

Thank you, Mr. President Pro Tempore. Though I do not serve on this committee, I have had considerable concern and involvement with this issue. It is unfortunate that the issue of allowing flexibility in class-size reduction has become a partisan issue. Everyone is committed to the same ideals and goals for our students as indicated by the previous speaker. This Legislature, some sessions ago, among other reforms in our education process for Kindergarten through 12, adopted a program of class-size reduction. We have committed almost \$1 billion to class-size reduction. There has been a significant cost in adding the teachers necessary.

At the time we adopted this program, we did so with a firm commitment from the school districts affected that if we would do this, they would provide the facilities. Unfortunately, that has not been the case. Unfortunately, for the most part, this class-size reduction has been accommodated through the use of less than adequate facilities, modular buildings, etc., and the program of team teaching. Everyone agrees team teaching is not a desirable situation.

We have gone through all of the studies, and they indicate that class-size reduction does benefit those who are involved in the process. There is not much empirical information on that.

Conceding that, there is nothing in this bill that suggests if this bill is processed, it is going to undo that.

I have talked to the representatives from the teacher's union about this, and I find anytime flexibility is talked about, the reaction is a knee-jerk one. We have accommodated some of that. We have granted waivers from the original concept of 15-1 ratio in the early classes to a 16-1 ratio. That is less than most of us had in our classrooms when we went to grammar school.

The idea of some flexibility being allowed for the early grades first arose when the Elko County School District was allowed to do so. They had significant success because of the flexibility without any impairment to the students. None of the dire consequences my distinguished colleague has suggested have occurred where flexibility has been allowed.

Grudgingly, last session, the Legislature stated it would allow flexibility in class-size reduction in 15 counties. Three or four have taken advantage of the offer. Others want to because they have not had the opportunity to implement the concept yet. The present law is about to sunset. This bill will remove the sunset allowing the flexibility to continue. The Legislature stated that the largest districts, Clark and Washoe County, could study this proposal and let us

know during the next session what they thought about the issue. They came to us this session and stated Clark County and Washoe County would like the same flexibility.

These counties are going to act in the best interest of the students. If we allow them this flexibility, they have the opportunity to use it wisely. Certain schools fit the requirements of the school districts for the use of this flexibility. We have to let the school districts decide for themselves. This is not stepping back into the dark ages regarding the issue of class-size reduction. This is allowing them the same flexibility that has proved worthwhile in the smaller districts. There are bigger and different problems with diversity, but a knee-jerk reaction every time this issue is raised is unfortunate.

This vote will probably go to party lines, and we will have to address it again when we talk about the Distributive School Account funding. It will be an issue. We should at least send a signal that we are willing to let those elected people in the school districts decide whether this is an appropriate issue for them to determine. I will vote in favor of the bill.

SENATOR WASHINGTON:

The Senate Majority Leader has articulated the issue of class-size reduction very well. The bill is narrow in its scope for Clark County and Washoe County. It deals with team teaching which we know does not work. It deals with a facilities' issue which we know both counties have a problem in meeting the mandates within class-size reduction.

I would like to address the achievement gap mentioned by my colleague for Las Vegas. As we deal with trying to close the achievement gap, there are certain factors that are important to understand.

The first factor is parental involvement. There is no parent out there who does not want their child to be better off than they are. They want them to have a better education, a better status in life, a better position in life, and they understand the importance of education. Unfortunately, some parents do not become involved with their children's education. I encourage parents to understand what the education process is all about, who their children's teachers are, who the principals are and what type of schools they are attending. I would encourage, for those who are socially and economically disadvantaged, those who are of color and those who are of different ethnicities, that they get involved in their children's education. They should do this not just while they are in school but, also, before they go to school. They should teach their children how to read, read to them and help them understand phonics and the alphabet. Help them to understand how to do arithmetic before they go to school. Change the culture in which, perhaps, my colleague and I have grown up in where the importance of education was missing. My mother, father, grandparents and great-grandparents put a great emphasis on education. They knew the importance of education. Since the 1960s and the 1970s, the achievement gap has closed because of the emphasis placed on education. More of us who are of color have attended college. More of us have graduated from high school. If we are going to close the achievement gap, the first thing is to make certain the parents become involved.

The second issue to closing the achievement gap is addressing the quality of teachers. Every session and during the interim, we discuss this issue. Making certain the subjects taught in the classrooms contain substance and not fluff is important. Subjects should not be "feel-good" subjects. The subjects taught should aide the student preparing them to compete in the global economy. We need to make certain the student is taught the information in a way he or she can understand it. Content and methodology are important issues to education. It is important to make certain the teacher has the authority in the classroom to discipline accordingly when a child is disruptive.

The third issue to closing the achievement gap is resources. We must make certain that resources are provided not only to the school or the administrator but to the teacher making certain that books, supplies and technology are at their reach.

As we deal with the subject of education, it is unfortunate that we allow organizations such as the teacher's union to promulgate a lawsuit against "No Child Left Behind" especially when our Congressional Delegation has worked endlessly to make certain we get the money and the resources and the flexibility needed in this State to complete the tasks at hand. It is unfortunate that Doug Thunder would say that we have been cheated. I do not think we have been cheated. We are moving forward. "No Child Left Behind" is used to close that achievement gap. I

congratulate my colleague, the Majority Leader, for his efforts, especially during the 1997 session, for coming up with the Accountability Act which made certain there were standards in place, that we were accountable for the content and the method and the resources that we were giving our educational institutions in closing the achievement gap.

This is a good bill. It is a bill that needs to pass because the districts are asking for it. I urge my colleagues to vote "yes" on this bill.

Roll call on Senate Bill No. 460:

YEAS—12.

NAYS—Care, Carlton, Coffin, Horsford, Lee, Mathews, Schneider, Titus, Wiener—9.

Senate Bill No. 460 having received a constitutional majority, Mr. President pro Tempore declared it passed, as amended.

Bill ordered transmitted to the Assembly.

Senate Bill No. 467.

Bill read third time.

Remarks by Senator Hardy.

Roll call on Senate Bill No. 467:

YEAS—20.

NAYS—None.

EXCUSED—Titus.

Senate Bill No. 467 having received a constitutional majority, Mr. President pro Tempore declared it passed, as amended.

Bill ordered transmitted to the Assembly.

Senate Bill No. 493.

Bill read third time.

Roll call on Senate Bill No. 493:

YEAS—19.

NAYS—Care.

EXCUSED—Titus.

Senate Bill No. 493 having received a constitutional majority, Mr. President pro Tempore declared it passed, as amended.

Bill ordered transmitted to the Assembly.

MOTIONS, RESOLUTIONS AND NOTICES

Senator Raggio moved that Assembly Bills Nos. 6, 79, 88, 178, 205, 227, 243 be taken from the General File and placed on the General File for the next legislative day.

Remarks by Senator Raggio.

Motion carried.

SECOND READING AND AMENDMENT

Senate Bill No. 394.

Bill read second time.

The following amendment was proposed by the Committee on Taxation:

Amendment No. 379.

Amend the bill as a whole by deleting sec. 9 and adding:

"Sec. 9. (Deleted by amendment)."

Amend sec. 10, page 11, by deleting lines 31 and 32 and inserting:

"361.228 1. All intangible personal property is exempt from taxation,".

Amend sec. 11, page 13, by deleting lines 17 through 22 and inserting:
"standards, the county assessor shall consider comparable sales of land before July 1 of the year before the lien date."

Amend sec. 13, page 15, by deleting lines 5 through 19 and inserting:
"beginning the next day ~~for~~ :

(a) For changes that occur before July 1 in:

~~(a)~~ (1) Ownership;

~~(b)~~ (2) Improvements as a result of new construction, destruction or removal;

~~(c)~~ (3) Land parceling;

~~(d)~~ (4) Site improvements;

~~(e)~~ (5) Zoning or other legal or physical restrictions on use;

~~(f)~~ (6) Actual use, including changes in agricultural or open space use;

~~(g)~~ (7) Exemptions; or

~~(h)~~ (8) Items of personal property on the secured roll ~~to~~ ;

(b) To correct assessments because of a clerical, typographical or mathematical error; or

(c) To correct overassessments because of a factual error in existence, size, quantity ~~or age~~, age, use or zoning, or legal or physical restrictions on use."

Amend the bill as a whole by deleting sec. 14 and adding:

"Sec. 14. (Deleted by amendment)."

Amend sec. 15, page 17, by deleting lines 10 and 11 and inserting:
"assessor unless it is established by a preponderance of the evidence that the valuation established by the county assessor exceeds the full cash value of the property or is"

Amend sec. 15, page 17, by deleting line 19 and inserting "or".

Amend sec. 15, page 17, by deleting lines 22 through 27 and inserting
"NRS 361.260,".

Amend sec. 16, page 18, by deleting line 9 and inserting: "value of the property on January 1 immediately preceding the fiscal year for which".

Amend the bill as a whole by deleting sec. 17 and adding:

"Sec. 17. (Deleted by amendment)."

Amend sec. 18, page 20, by deleting line 5 and inserting: "*within 48 hours after the last day allowed for filing the appeal.*".

Amend sec. 19, page 20, line 10, by deleting "*notarized*" and inserting "*separate, signed*".

Amend the bill as a whole by deleting sections 25 and 26 and adding:

"Secs. 25 and 26. (Deleted by amendment)."

Amend the bill as a whole by deleting sections 30 through 32 and adding:

"Secs. 30-32. (Deleted by amendment)."

Amend sec. 40, page 35, line 4, by deleting "361.520, 361.765" and inserting "361.520".

Amend the leadlines of repealed sections by deleting the leadline of NRS 361.765.

Amend the title of the bill to read as follows:

"AN ACT relating to property; revising various provisions governing the assessment, valuation and exemption of property for purposes of levying property taxes; providing additional funding for the accounts for the acquisition and improvement of technology in the office of the county assessor; increasing the assessed value of the home of a senior citizen for determining eligibility for a refund of a certain amount of property taxes paid by that senior citizen; providing penalties; and providing other matters properly relating thereto."

Senator McGinness moved the adoption of the amendment.

Remarks by Senator McGinness.

Conflict of interest declared by Senator Raggio.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Senate Bill No. 414.

Bill read second time.

The following amendment was proposed by the Committee on Government Affairs:

Amendment No. 422.

Amend sec. 10, page 2, by deleting line 17 and inserting:

"(a) Two members appointed by the Governor, one of whom the Governor shall designate as the"

Amend sec. 10, page 2, by deleting line 20.

Amend sec. 10, page 2, line 21, by deleting "(d)" and inserting "(c)".

Amend sec. 10, page 2, line 22, by deleting "(e)" and inserting "(d)".

Amend sec. 13, page 3, line 18, after "to" by inserting: "2 1/2 percent of".

Amend sec. 14, page 4, lines 3 and 9, by deleting "20" and inserting "30".

Senator Hardy moved the adoption of the amendment.

Remarks by Senator Hardy.

Amendment adopted.

Senator Hardy moved that Senate Bill No. 414 be rereferred to the Committee on Finance upon return from reprint.

Remarks by Senator Hardy.

Motion carried.

Bill ordered reprinted, engrossed and to the Committee on Finance.

Senate Bill No. 426.

Bill read second time.

The following amendment was proposed by the Committee on Government Affairs:

Amendment No. 424.

Amend the bill as a whole by renumbering sections 2 through 5 as sections 3 through 6 and adding a new section designated sec. 2, following section 1, to read as follows:

"Sec. 2. NRS 338.140 is hereby amended to read as follows:

338.140 1. A public body shall not draft or cause to be drafted specifications for bids, in connection with a public work:

(a) In such a manner as to limit the bidding, directly or indirectly, to any one specific concern.

(b) Except in those instances where the product is designated to match others in use on a particular public improvement either completed or in the course of completion, calling for a designated material, product, thing or service by specific brand or trade name unless the specification lists at least two brands or trade names of comparable quality or utility and is followed by the words "or equal" so that bidders may furnish any equal material, product, thing or service.

(c) In such a manner as to hold the bidder to whom such contract is awarded responsible for extra costs incurred as a result of errors or omissions by the public body in the contract documents.

(d) In such a manner as to require a bidder to furnish to the public body, whether before or after the bid is submitted, documents generated in the preparation or determination of prices included in the bid, except when requested by the public body for:

(1) A determination of the price of additional work performed pursuant to a change order;

(2) An evaluation of claims for costs incurred for the performance of additional work;

(3) Preparation for arbitration or litigation; or

(4) Any combination thereof.

↪ A document furnished to a public body pursuant to this paragraph is confidential and must be returned to the bidder. *Any document furnished to a public body by a bidder pursuant to this paragraph may be transmitted and stored electronically if the manner of transmission ensures that the documents are exclusively accessible to the bidder. Electronic transmission and storage of such documents does not waive or otherwise affect the proprietary interests of the bidder in the documents.*

2. In those cases involving a unique or novel product application required to be used in the public interest, or where only one brand or trade name is known to the public body, it may list only one.

3. Specifications must provide a period of time of at least 7 days after award of the contract for submission of data substantiating a request for a substitution of "an equal" item."

Amend sec. 5, page 10, line 9, by deleting "2 and 3" and inserting "3 and 4".

Amend the title of the bill, second line, after the semicolon, by inserting: "providing that certain documents furnished to a public body may be transmitted and stored electronically;"

Senator Hardy moved the adoption of the amendment.

Remarks by Senator Hardy.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Senate Bill No. 453.

Bill read second time.

The following amendment was proposed by the Committee on Judiciary:

Amendment No. 293.

Amend the bill as a whole by renumbering sections 1 through 9 as sections 2 through 10 and adding a new section designated section 1, following the enacting clause, to read as follows:

"Section 1. Chapter 78 of NRS is hereby amended by adding thereto a new section to read as follows:

1. *On application to a court of competent jurisdiction by a judgment creditor of a stockholder, the court may charge the stockholder's stock with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the stockholder's stock.*

2. *This section:*

(a) *Applies only to a corporation that:*

(1) *Has more than one, but fewer than 75 stockholders of record at any time;*

(2) *Is not a subsidiary of a publicly traded corporation, either in whole or in part; and*

(3) *Is not a professional corporation, as defined in NRS 89.020.*

(b) *Does not apply to any liability of a stockholder that exists as the result of an action filed before October 1, 2005.*

(c) *Provides the exclusive remedy by which a judgment creditor of a stockholder or an assignee of a stockholder may satisfy a judgment out of the stockholder's stock of the corporation.*

(d) *Does not deprive any stockholder of the benefit of any exemption applicable to the stockholder's stock.*

(e) *Does not supersede any private agreement between a stockholder and a creditor."*

Amend sec. 6, page 7, line 17, by deleting: "7, 8 and 9" and inserting: "8, 9 and 10".

Amend the bill as a whole by deleting sec. 10.

Amend sec. 11, page 9, line 42, by deleting "7" and inserting "8".

Amend sec. 11, page 10, line 2, by deleting "7" and inserting "8".

Amend sec. 12, page 10, lines 15 and 20, by deleting "8" and inserting "9".

Amend sec. 13, page 10, line 26, by deleting "8" and inserting "9".

Amend sec. 14, page 11, lines 11, 15, 17 and 20, by deleting "9" and inserting "10".

Amend the bill as a whole by deleting sec. 16 and renumbering sec. 17 as sec. 16.

Amend the bill as a whole by deleting sections 18 and 19 and renumbering sections 20 through 34 as sections 17 through 31.

Amend the bill as a whole by deleting sec. 35, renumbering sections 36 through 40 as sections 32 through 36 and adding new sections designated sections 37 through 40, following sec. 40, to read as follows:

"Sec. 37. NRS 21.075 is hereby amended to read as follows:

21.075 1. Execution on the writ of execution by levying on the property of the judgment debtor may occur only if the sheriff serves the judgment debtor with a notice of the writ of execution pursuant to NRS 21.076 and a copy of the writ. The notice must describe the types of property exempt from execution and explain the procedure for claiming those exemptions in the manner required in subsection 2. The clerk of the court shall attach the notice to the writ of execution at the time the writ is issued.

2. The notice required pursuant to subsection 1 must be substantially in the following form:

NOTICE OF EXECUTION
YOUR PROPERTY IS BEING ATTACHED OR
YOUR WAGES ARE BEING GARNISHED

A court has determined that you owe money to(name of person), the judgment creditor. He has begun the procedure to collect that money by garnishing your wages, bank account and other personal property held by third persons or by taking money or other property in your possession.

Certain benefits and property owned by you may be exempt from execution and may not be taken from you. The following is a partial list of exemptions:

1. Payments received under the Social Security Act.
2. Payments for benefits or the return of contributions under the Public Employees' Retirement System.
3. Payments for public assistance granted through the Welfare Division of the Department of Human Resources or a local governmental entity.
4. Proceeds from a policy of life insurance.
5. Payments of benefits under a program of industrial insurance.
6. Payments received as disability, illness or unemployment benefits.
7. Payments received as unemployment compensation.
8. Veteran's benefits.
9. A homestead in a dwelling or a mobile home, not to exceed \$200,000, unless:

(a) The judgment is for a medical bill, in which case all of the primary dwelling, including a mobile or manufactured home, may be exempt.

(b) Allodial title has been established and not relinquished for the dwelling or mobile home, in which case all of the dwelling or mobile home

and its appurtenances are exempt, including the land on which they are located, unless a valid waiver executed pursuant to NRS 115.010 is applicable to the judgment.

10. A vehicle, if your equity in the vehicle is less than \$15,000.

11. Seventy-five percent of the take-home pay for any pay period, unless the weekly take-home pay is less than 30 times the federal minimum wage, in which case the entire amount may be exempt.

12. Money, not to exceed \$500,000 in present value, held in:

(a) An individual retirement arrangement which conforms with the applicable limitations and requirements of 26 U.S.C. § 408;

(b) A written simplified employee pension plan which conforms with the applicable limitations and requirements of 26 U.S.C. § 408;

(c) A cash or deferred arrangement that is a qualified plan pursuant to the Internal Revenue Code;

(d) A trust forming part of a stock bonus, pension or profit-sharing plan that is a qualified plan pursuant to sections 401 et seq. of the Internal Revenue Code, 26 U.S.C. §§ 401 et seq.; and

(e) A trust forming part of a qualified tuition program pursuant to chapter 353B of NRS, any applicable regulations adopted pursuant to chapter 353B of NRS and section 529 of the Internal Revenue Code, 26 U.S.C. § 529, unless the money is deposited after the entry of a judgment against the purchaser or account owner or the money will not be used by any beneficiary to attend a college or university.

13. All money and other benefits paid pursuant to the order of a court of competent jurisdiction for the support, education and maintenance of a child, whether collected by the judgment debtor or the State.

14. All money and other benefits paid pursuant to the order of a court of competent jurisdiction for the support and maintenance of a former spouse, including the amount of any arrearages in the payment of such support and maintenance to which the former spouse may be entitled.

15. A vehicle for use by you or your dependent which is specially equipped or modified to provide mobility for a person with a permanent disability.

16. A prosthesis or any equipment prescribed by a physician or dentist for you or your dependent.

17. Payments, in an amount not to exceed \$16,150, received as compensation for personal injury, not including compensation for pain and suffering or actual pecuniary loss, by the judgment debtor or by a person upon whom the judgment debtor is dependent at the time the payment is received.

18. Payments received as compensation for the wrongful death of a person upon whom the judgment debtor was dependent at the time of the wrongful death, to the extent reasonably necessary for the support of the judgment debtor and any dependent of the judgment debtor.

19. Payments received as compensation for the loss of future earnings of the judgment debtor or of a person upon whom the judgment debtor is dependent at the time the payment is received, to the extent reasonably necessary for the support of the judgment debtor and any dependent of the judgment debtor.

20. Payments received as restitution for a criminal act.

21. *Stock of certain corporations, subject to the provisions of section 1 of this act.*

↳ These exemptions may not apply in certain cases such as a proceeding to enforce a judgment for support of a person or a judgment of foreclosure on a mechanic's lien. You should consult an attorney immediately to assist you in determining whether your property or money is exempt from execution. If you cannot afford an attorney, you may be eligible for assistance through(name of organization in county providing legal services to indigent or elderly persons).

PROCEDURE FOR CLAIMING EXEMPT PROPERTY

If you believe that the money or property taken from you is exempt, you must complete and file with the clerk of the court a notarized affidavit claiming the exemption. A copy of the affidavit must be served upon the sheriff and the judgment creditor within 8 days after the notice of execution is mailed. The property must be returned to you within 5 days after you file the affidavit unless you or the judgment creditor files a motion for a hearing to determine the issue of exemption. If this happens, a hearing will be held to determine whether the property or money is exempt. The motion for the hearing to determine the issue of exemption must be filed within 10 days after the affidavit claiming exemption is filed. The hearing to determine whether the property or money is exempt must be held within 10 days after the motion for the hearing is filed.

IF YOU DO NOT FILE THE AFFIDAVIT WITHIN THE TIME SPECIFIED, YOUR PROPERTY MAY BE SOLD AND THE MONEY GIVEN TO THE JUDGMENT CREDITOR, EVEN IF THE PROPERTY OR MONEY IS EXEMPT.

Sec. 38. NRS 21.090 is hereby amended to read as follows:

21.090 1. The following property is exempt from execution, except as otherwise specifically provided in this section:

(a) Private libraries not to exceed \$1,500 in value, and all family pictures and keepsakes.

(b) Necessary household goods, as defined in 16 C.F.R. § 444.1(i) as that section existed on January 1, 1987, and yard equipment, not to exceed \$10,000 in value, belonging to the judgment debtor to be selected by him.

(c) Farm trucks, farm stock, farm tools, farm equipment, supplies and seed not to exceed \$4,500 in value, belonging to the judgment debtor to be selected by him.

(d) Professional libraries, office equipment, office supplies and the tools, instruments and materials used to carry on the trade of the judgment debtor for the support of himself and his family not to exceed \$4,500 in value.

(e) The cabin or dwelling of a miner or prospector, his cars, implements and appliances necessary for carrying on any mining operations and his mining claim actually worked by him, not exceeding \$4,500 in total value.

(f) Except as otherwise provided in paragraph (o), one vehicle if the judgment debtor's equity does not exceed \$15,000 or the creditor is paid an amount equal to any excess above that equity.

(g) For any pay period, 75 percent of the disposable earnings of a judgment debtor during that period, or for each week of the period 30 times the minimum hourly wage prescribed by section 6(a)(1) of the federal Fair Labor Standards Act of 1938, 29 U.S.C. § 206(a)(1), and in effect at the time the earnings are payable, whichever is greater. Except as otherwise provided in paragraphs (n), (r) and (s), the exemption provided in this paragraph does not apply in the case of any order of a court of competent jurisdiction for the support of any person, any order of a court of bankruptcy or of any debt due for any state or federal tax. As used in this paragraph, "disposable earnings" means that part of the earnings of a judgment debtor remaining after the deduction from those earnings of any amounts required by law, to be withheld.

(h) All fire engines, hooks and ladders, with the carts, trucks and carriages, hose, buckets, implements and apparatus thereunto appertaining, and all furniture and uniforms of any fire company or department organized under the laws of this State.

(i) All arms, uniforms and accouterments required by law to be kept by any person, and also one gun, to be selected by the debtor.

(j) All courthouses, jails, public offices and buildings, lots, grounds and personal property, the fixtures, furniture, books, papers and appurtenances belonging and pertaining to the courthouse, jail and public offices belonging to any county of this State, all cemeteries, public squares, parks and places, public buildings, town halls, markets, buildings for the use of fire departments and military organizations, and the lots and grounds thereto belonging and appertaining, owned or held by any town or incorporated city, or dedicated by the town or city to health, ornament or public use, or for the use of any fire or military company organized under the laws of this State and all lots, buildings and other school property owned by a school district and devoted to public school purposes.

(k) All money, benefits, privileges or immunities accruing or in any manner growing out of any life insurance, if the annual premium paid does not exceed \$1,000. If the premium exceeds that amount, a similar exemption exists which bears the same proportion to the money, benefits, privileges and immunities so accruing or growing out of the insurance that the \$1,000 bears to the whole annual premium paid.

(l) The homestead as provided for by law, including a homestead for which allodial title has been established and not relinquished and for which a waiver executed pursuant to NRS 115.010 is not applicable.

(m) The dwelling of the judgment debtor occupied as a home for himself and family, where the amount of equity held by the judgment debtor in the home does not exceed \$200,000 in value and the dwelling is situated upon lands not owned by him.

(n) All property in this State of the judgment debtor where the judgment is in favor of any state for failure to pay that state's income tax on benefits received from a pension or other retirement plan.

(o) Any vehicle owned by the judgment debtor for use by him or his dependent that is equipped or modified to provide mobility for a person with a permanent disability.

(p) Any prosthesis or equipment prescribed by a physician or dentist for the judgment debtor or a dependent of the debtor.

(q) Money, not to exceed \$500,000 in present value, held in:

(1) An individual retirement arrangement which conforms with the applicable limitations and requirements of 26 U.S.C. § 408;

(2) A written simplified employee pension plan which conforms with the applicable limitations and requirements of 26 U.S.C. § 408;

(3) A cash or deferred arrangement which is a qualified plan pursuant to the Internal Revenue Code;

(4) A trust forming part of a stock bonus, pension or profit-sharing plan which is a qualified plan pursuant to sections 401 et seq. of the Internal Revenue Code, 26 U.S.C. §§ 401 et seq.; and

(5) A trust forming part of a qualified tuition program pursuant to chapter 353B of NRS, any applicable regulations adopted pursuant to chapter 353B of NRS and section 529 of the Internal Revenue Code, 26 U.S.C. § 529, unless the money is deposited after the entry of a judgment against the purchaser or account owner or the money will not be used by any beneficiary to attend a college or university.

(r) All money and other benefits paid pursuant to the order of a court of competent jurisdiction for the support, education and maintenance of a child, whether collected by the judgment debtor or the State.

(s) All money and other benefits paid pursuant to the order of a court of competent jurisdiction for the support and maintenance of a former spouse, including the amount of any arrearages in the payment of such support and maintenance to which the former spouse may be entitled.

(t) Payments, in an amount not to exceed \$16,150, received as compensation for personal injury, not including compensation for pain and suffering or actual pecuniary loss, by the judgment debtor or by a person upon whom the judgment debtor is dependent at the time the payment is received.

(u) Payments received as compensation for the wrongful death of a person upon whom the judgment debtor was dependent at the time of the wrongful

death, to the extent reasonably necessary for the support of the judgment debtor and any dependent of the judgment debtor.

(v) Payments received as compensation for the loss of future earnings of the judgment debtor or of a person upon whom the judgment debtor is dependent at the time the payment is received, to the extent reasonably necessary for the support of the judgment debtor and any dependent of the judgment debtor.

(w) Payments received as restitution for a criminal act.

(x) *Stock of certain corporations, subject to the provisions of section 1 of this act.*

2. Except as otherwise provided in NRS 115.010, no article or species of property mentioned in this section is exempt from execution issued upon a judgment to recover for its price, or upon a judgment of foreclosure of a mortgage or other lien thereon.

3. Any exemptions specified in subsection (d) of section 522 of the Bankruptcy Act of 1978, 11 U.S.C. § 522(d), do not apply to property owned by a resident of this State unless conferred also by subsection 1, as limited by subsection 2.

Sec. 39. NRS 31.045 is hereby amended to read as follows:

31.045 1. Execution on the writ of attachment by attaching property of the defendant may occur only if:

(a) The judgment creditor serves the defendant with notice of the execution when the notice of the hearing is served pursuant to NRS 31.013; or

(b) Pursuant to an ex parte hearing, the sheriff serves upon the judgment debtor notice of the execution and a copy of the writ at the same time and in the same manner as set forth in NRS 21.076.

↪ If the attachment occurs pursuant to an ex parte hearing, the clerk of the court shall attach the notice to the writ of attachment at the time the writ is issued.

2. The notice required pursuant to subsection 1 must be substantially in the following form:

NOTICE OF EXECUTION
YOUR PROPERTY IS BEING ATTACHED OR
YOUR WAGES ARE BEING GARNISHED

Plaintiff, (name of person), alleges that you owe him money. He has begun the procedure to collect that money. To secure satisfaction of judgment the court has ordered the garnishment of your wages, bank account or other personal property held by third persons or the taking of money or other property in your possession.

Certain benefits and property owned by you may be exempt from execution and may not be taken from you. The following is a partial list of exemptions:

1. Payments received under the Social Security Act.

2. Payments for benefits or the return of contributions under the Public Employees' Retirement System.

3. Payments for public assistance granted through the Welfare Division of the Department of Human Resources or a local governmental entity.

4. Proceeds from a policy of life insurance.

5. Payments of benefits under a program of industrial insurance.

6. Payments received as disability, illness or unemployment benefits.

7. Payments received as unemployment compensation.

8. Veteran's benefits.

9. A homestead in a dwelling or a mobile home, not to exceed \$200,000, unless:

(a) The judgment is for a medical bill, in which case all of the primary dwelling, including a mobile or manufactured home, may be exempt.

(b) Allodial title has been established and not relinquished for the dwelling or mobile home, in which case all of the dwelling or mobile home and its appurtenances are exempt, including the land on which they are located, unless a valid waiver executed pursuant to NRS 115.010 is applicable to the judgment.

10. A vehicle, if your equity in the vehicle is less than \$15,000.

11. Seventy-five percent of the take-home pay for any pay period, unless the weekly take-home pay is less than 30 times the federal minimum wage, in which case the entire amount may be exempt.

12. Money, not to exceed \$500,000 in present value, held in:

(a) An individual retirement arrangement which conforms with the applicable limitations and requirements of 26 U.S.C. § 408;

(b) A written simplified employee pension plan which conforms with the applicable limitations and requirements of 26 U.S.C. § 408;

(c) A cash or deferred arrangement that is a qualified plan pursuant to the Internal Revenue Code;

(d) A trust forming part of a stock bonus, pension or profit-sharing plan that is a qualified plan pursuant to sections 401 et seq. of the Internal Revenue Code, 26 U.S.C. §§ 401 et seq.; and

(e) A trust forming part of a qualified tuition program pursuant to chapter 353B of NRS, any applicable regulations adopted pursuant to chapter 353B of NRS and section 529 of the Internal Revenue Code, 26 U.S.C. § 529, unless the money is deposited after the entry of a judgment against the purchaser or account owner or the money will not be used by any beneficiary to attend a college or university.

13. All money and other benefits paid pursuant to the order of a court of competent jurisdiction for the support, education and maintenance of a child, whether collected by the judgment debtor or the State.

14. All money and other benefits paid pursuant to the order of a court of competent jurisdiction for the support and maintenance of a former spouse, including the amount of any arrearages in the payment of such support and maintenance to which the former spouse may be entitled.

15. A vehicle for use by you or your dependent which is specially equipped or modified to provide mobility for a person with a permanent disability.

16. A prosthesis or any equipment prescribed by a physician or dentist for you or your dependent.

17. Payments, in an amount not to exceed \$16,150, received as compensation for personal injury, not including compensation for pain and suffering or actual pecuniary loss, by the judgment debtor or by a person upon whom the judgment debtor is dependent at the time the payment is received.

18. Payments received as compensation for the wrongful death of a person upon whom the judgment debtor was dependent at the time of the wrongful death, to the extent reasonably necessary for the support of the judgment debtor and any dependent of the judgment debtor.

19. Payments received as compensation for the loss of future earnings of the judgment debtor or of a person upon whom the judgment debtor is dependent at the time the payment is received, to the extent reasonably necessary for the support of the judgment debtor and any dependent of the judgment debtor.

20. Payments received as restitution for a criminal act.

21. *Stock of certain corporations, subject to the provisions of section 1 of this act.*

↳ These exemptions may not apply in certain cases such as proceedings to enforce a judgment for support of a child or a judgment of foreclosure on a mechanic's lien. You should consult an attorney immediately to assist you in determining whether your property or money is exempt from execution. If you cannot afford an attorney, you may be eligible for assistance through (name of organization in county providing legal services to the indigent or elderly persons).

PROCEDURE FOR CLAIMING EXEMPT PROPERTY

If you believe that the money or property taken from you is exempt or necessary for the support of you or your family, you must file with the clerk of the court on a form provided by the clerk a notarized affidavit claiming the exemption. A copy of the affidavit must be served upon the sheriff and the judgment creditor within 8 days after the notice of execution is mailed. The property must be returned to you within 5 days after you file the affidavit unless the judgment creditor files a motion for a hearing to determine the issue of exemption. If this happens, a hearing will be held to determine whether the property or money is exempt. The hearing must be held within 10 days after the motion for a hearing is filed.

IF YOU DO NOT FILE THE AFFIDAVIT WITHIN THE TIME SPECIFIED, YOUR PROPERTY MAY BE SOLD AND THE MONEY GIVEN TO THE JUDGMENT CREDITOR, EVEN IF THE PROPERTY OR MONEY IS EXEMPT.

If you received this notice with a notice of a hearing for attachment and you believe that the money or property which would be taken from you by a writ of attachment is exempt or necessary for the support of you or your family, you are entitled to describe to the court at the hearing why you believe your property is exempt. You may also file a motion with the court for a discharge of the writ of attachment. You may make that motion any time before trial. A hearing will be held on that motion.

IF YOU DO NOT FILE THE MOTION BEFORE THE TRIAL, YOUR PROPERTY MAY BE SOLD AND THE MONEY GIVEN TO THE PLAINTIFF, EVEN IF THE PROPERTY OR MONEY IS EXEMPT OR NECESSARY FOR THE SUPPORT OF YOU OR YOUR FAMILY.

Sec. 40. NRS 31.050 is hereby amended to read as follows:

31.050 Subject to the order for attachment and the provisions of *section 1 of this act and* chapter 104 of NRS, the right of shares which the defendant may have in the stock of any corporation or company, together with the interest and profits therein, and all debts due such defendant, and all other property in this State of such defendant not exempt from execution, may be attached, and if judgment be recovered, be sold to satisfy the judgment and execution."

Amend the bill as a whole by deleting sections 41 and 42 and renumbering sections 43 through 45 as sections 41 through 43.

Amend sec. 43, page 34, line 1, by deleting "and" and inserting "or".

Amend sec. 44, page 35, line 6, by deleting "{\$20} \$30" and inserting "\$20".

Amend sec. 44, page 36, by deleting lines 14 through 17 and inserting:

"(a) ~~["The entire amount or \$62.50, whichever is less, of the fee collected pursuant to subparagraph (1) of that paragraph and one half]~~ *One-half* of the fee collected ~~["pursuant to subparagraph (2) of that paragraph]~~ must be deposited with the State Treasurer for credit".

Amend the title of the bill to read as follows:

"AN ACT relating to business entities; providing for a charging order by the court concerning a stockholder's stock under certain circumstances; revising various provisions concerning the timing, form and contents of certain filings by various business entities; clarifying that certain corporations and associations which are homeowners' associations must comply with certain requirements; providing that a person who knowingly files a forged or false record is subject to civil liability under certain circumstances; establishing certain fees for services provided to business entities; making various other changes concerning business entities; and providing other matters properly relating thereto."

Amend the summary of the bill to read as follows:

"SUMMARY—Makes various changes concerning business entities. (BDR 7-576)".

Senator Care moved the adoption of the amendment.

Remarks by Senator Care.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Senate Bill No. 463.

Bill read second time.

The following amendment was proposed by the Committee on Government Affairs:

Amendment No. 417.

Amend sec. 6, pages 2 and 3, by deleting lines 41 through 44 on page 2 and lines 1 through 7 on page 3, and inserting: "*Fund for the purpose of assisting, through loans or grants, to pay the costs of:*".

Amend sec. 6, page 3, line 8, by deleting "(2)" and inserting "(a)".

Amend sec. 6, page 3, line 14, by deleting "(3)" and inserting "(b)".

Amend sec. 6, page 3, line 17, after "5." by inserting: "*The Board may adopt regulations relating to the Research and Development Fund. The regulations may provide for, without limitation:*

(a) *The administration of the Fund; and*

(b) *The creation and operation of one or more corporations formed for educational or charitable purposes.*

6."

Amend sec. 6, page 3, line 22, by deleting "6." and inserting "7."

Amend sec. 6, page 3, line 24, by deleting "7." and inserting "8."

Senator Hardy moved the adoption of the amendment.

Remarks by Senator Hardy.

Amendment adopted.

Senator Hardy moved that Senate Bill No. 463 be rereferred to the Committee on Finance upon return from reprint.

Motion carried.

Bill ordered reprinted, engrossed and to the Committee on Finance.

Assembly Bill No. 92.

Bill read second time and ordered to third reading.

Assembly Bill No. 126.

Bill read second time and ordered to third reading.

Assembly Bill No. 295.

Bill read second time and ordered to third reading.

REPORTS OF COMMITTEES

Mr. President pro Tempore:

Your Committee on Human Resources and Education, to which were referred Senate Bills Nos. 81, 296, 462, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

MAURICE E. WASHINGTON, *Chair*

UNFINISHED BUSINESS
SIGNING OF BILLS AND RESOLUTIONS

There being no objections, the President pro Tempore and Secretary signed Senate Bill No. 94; Senate Concurrent Resolution No. 19; Assembly Bill No. 97; Assembly Concurrent Resolution No. 22.

GUESTS EXTENDED PRIVILEGE OF SENATE FLOOR

On request of Senator Raggio, the privilege of the floor of the Senate Chamber for this day was extended to the following students, chaperones and teacher from Our Lady of the Snows School: Elizabeth Armstrong, Jennifer Bayless, Lucia Bevia, Emily Creighton, Matthew Egan, M.J. Farthing, Tisha Ferraro, Kirsten Gansert, Emily Hartman, Austyn Herman, Patrick Hinojosa, Katie Rose Jacobus, Edward Kaufer, Alexandra Krmpotic, Emma Krump, Madison Kapitz, Ashley Laughlin, Rhett Lawson, Bradley Lujan, Kelly Lujan, Katie McDonald, Julia Moreno, Alyssa O'Gara, Thomas O'Gara, Gina Perano, Miranda Russell, Waverlee Smith, Shannon Sullivan, Shane Talbot, Jacob Tremewan, Xiomara Valencia, Joe Wallick, Hayden White; chaperones: Michael Jacobus, Becky McDonald, Carolyn Ferraro, Rene Hinojosa, Kelly Creighton, Lisa Laughlin, Jill White, Michele Krump and teacher: Cynthia Kaufer.

On request of Senator Townsend, the privilege of the floor of the Senate Chamber for this day was extended to the following students, chaperones and teachers from the Huffaker Elementary School: Gregory Avera, Sofia Baig, Elise Brodsky, Dylan Brunson, Corrie Calderon, Cordell Clarence-Young, Cory Colombini, Kyle Dhindsa, Brittany Dietz, Shelbie Faretto, Shelby Gardner, Oliver Graybar, Bruce Holbrook, Michael Johnston, Brennan Kern, Tiffany Klaich, Zachary Liske, Erika Macaluso, Taylor Meyer, James Moore, Roderick Morrison, Carson Mullins, Sarah Pappas, Mollie Pierce, Taylor Raach, Peyton Remedios, Cecily Rooker, Jenna Scolari, Tucker Stosic, Keegan Sullivan, Dokotah Tom, Luke Smith, Kevin Boles, Britt Brown, Summer Buck, Jordan Cardenas, Marie Cody, Ben Belford, Katarina Vanderpool, Daniel Mills, Brett Drumright, Cassie Foulk, Brittany Garcia, Eric Gill, Lindsey Harrison, Renay Hernandez, Jesse Higgins, Kuuipo Hunter, Jeff Ishi, Ranald MacDonald, Megan Urbano, Erin Moyle, Anna Nason, Ricky Olguin, Wesley Ott, Gayln Painter, Kylee Palmer, Kyle Pierce, Janet Salas, Uno Sung, Hannah Wilkening, Kendelle Abts, Caroline Boorman, Kelly Cascinai, Brandon Chang, Crystal Davis, Cole DeLong, David Diaz, Elizabeth Dutton, William Evermann, Monica Guerrero, Michael Jones, Angel-Antonio Keene, Jakob Keppelmann, Sophia King, Katarina LeCoque; chaperones: Lisa Buck, Nancy Gill, Janice Foulk, Keith Brown, Lisa Cody-Goade, Rita Higgins, Robin Adamson-Dutton, Patti Boorman, Louise Hogen, Carrie Jones, Eve King, Steven Kish, Laurie Mac Namara, Jeanne Marks, Brigid Pierce, Sheri Vial, Alanna Fitzgerald, Lia Griffin, Linda Gardner, Karen Colombini, Gretchen Graybar, Debbie Klaich, Angelo Macaluso, Goyle Kern, Dawn Pappas, Kevin Raack, Laura

Moore, Julie Scolari, Lynn McClellan, Camie Stosic; teachers: Sandra Armentrout, Carol Winans and Tracey Frandsen.

Senator Raggio moved that the Senate adjourn until Monday, April 25, 2005, at 11 a.m.

Motion carried.

Senate adjourned at 12:13 p.m.

Approved:

MARK E. AMODEI
President pro Tempore of the Senate

Attest: CLAIRE J. CLIFT
Secretary of the Senate