

Amendment No. 941

Senate Amendment to Assembly Bill No. 463 First Reprint (BDR 22-534)

Proposed by: Senate Committee on Government Affairs**Amends:** Summary: No Title: No Preamble: Amend Joint Sponsorship: No Digest: Yes

Adoption of this amendment will REMOVE the unfunded mandate from A.B. 463.

ASSEMBLY ACTION		Initial and Date		SENATE ACTION		Initial and Date	
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold* is newly added transitory language.

MSM/EGO



Date: 5/22/2007

A.B. No. 463—Makes various changes pertaining to residential establishments and group homes. (BDR 22-534)



ASSEMBLY BILL NO. 463—ASSEMBLYMEN KIRKPATRICK, ATKINSON, SMITH,
CONKLIN, OCEGUERA, ALLEN, BUCKLEY, DENIS, PARKS, PARNELL, PIERCE,
SEGERBLOM AND WOMACK

MARCH 19, 2007

JOINT SPONSORS: SENATORS HORSFORD AND TITUS

Referred to Committee on Government Affairs

SUMMARY—Makes various changes pertaining to residential establishments and group homes. (BDR 22-534)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: No.

~~[CONTAINS UNFUNDED MANDATE (\$7)
(Not Requested By Affected Local Government)]~~

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~[omitted material]~~ is material to be omitted.

AN ACT relating to land use planning; making various changes pertaining to residential establishments and group homes; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, the Health Division of the Department of Health and Human Services is required to compile, maintain and disseminate a registry pertaining to each "residential establishment" that exists in this State. (NRS 278.021) **Sections 2-7** of this bill: (1) require local governments to assist in obtaining such information; (2) expand the registry to include certain information likely to be helpful to agencies that provide police, fire-fighting, rescue or emergency medical services; and (3) broaden the scope of the registry to apply not just to licensed residential establishments, but to any facility that provides similar services to four or more persons. Thus, facilities operating unlawfully as residential establishments are included in the registry, providing necessary information to licensing and law enforcement authorities.

Section 8 of this bill provides that if a county or city requires a certain approval or permit before a residential establishment may operate, the county or city must, before granting that approval or permit ~~to~~ **ensure that the establishment, or its owner or operator, has secured the necessary certifications or licenses that are required by federal, state or local authorities** ~~to~~ **Section 8 also allows for, unless conditional or provisional approval or permitting by a local government is granted by the county or city pending receipt by the establishment of the necessary certification or license** ~~to~~ **; and (2) ensure that, if the establishment is subject to the distance requirements set forth in section 9 of this bill, the establishment will be located and operated in accordance with those requirements.**

Under existing law, the governing body of a county whose population is 100,000 or more (currently Clark and Washoe Counties), and the governing body of each city in such a county,

is required to establish by ordinance a minimum distance between residential establishments that is at least 660 feet but not more than 1,500 feet. (NRS 278.021) **Section 9** of this bill changes the minimum distance prospectively to at least 1,500 feet but not more than 2,500 feet. **Section ~~449~~ 11** of this bill provides that if a governing body fails to establish the minimum distance requirement by December 31, 2007, its ordinances will be conformed by operation of state law to a 2,500-foot distance requirement.

Existing law requires an applicant seeking licensure of a facility under the provisions of NRS 449.001 to 449.240, inclusive, to file with the Health Division an application containing certain information and evidence. (NRS 449.040) Section 10 of this bill provides additionally that such an application must, if the facility for which licensure is sought is a “residential establishment” as defined in section 5 of this bill, and if such establishment is subject to the distance requirements set forth in section 9 of this bill, include evidence satisfactory to the Health Division that the establishment will be located and operated in accordance with those requirements.

WHEREAS, Residential establishments, commonly referred to as “group homes,” include such facilities as halfway houses for recovering alcohol and drug abusers, homes for individual residential care, and residential facilities for groups; and

WHEREAS, Residential establishments serve an important purpose in the various communities of this State, allowing persons with special needs to receive assistance or care in a setting that may be more comfortable, ~~less~~ **more** informal and less expensive than the setting of a more formal institution, such as a hospital; and

WHEREAS, Federal law, including the Fair Housing Act of 1968 and the Fair Housing Amendments Act of 1988, clearly prohibits discriminatory housing practices, including practices which have the effect of discriminating against persons with disabilities in regard to the availability of housing; and

WHEREAS, The statutes of this State already require, in large part, that residential establishments be treated as single-family residences for zoning purposes, and already require the Health Division of the Department of Health and Human Services to compile and maintain a registry of information relating to such establishments; and

WHEREAS, Ensuring that such information is accurate, current and disseminated to the pertinent authorities is of vital importance to several state and local governmental agencies, because: (1) persons who reside in residential establishments may be more susceptible than other persons to become victims of mistreatment or unscrupulous behavior, including, without limitation, Medicaid fraud or Medicare fraud; (2) governmental agencies and officers who enforce health and safety standards must be notified of the location of residential establishments in order to protect adequately the persons who reside in those establishments; and (3) fire departments, law enforcement agencies and other first responders must be notified of the locations of residential establishments so that they may be prepared to address the special needs of the residents of those establishments in the event of a fire, medical crisis or other emergency; and

WHEREAS, In several communities throughout the State, the names ascribed to residential establishments may be different, and certain persons may attempt to operate on an informal or unlicensed basis facilities that are, in practical effect, residential establishments; now, therefore,

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 278 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 8, inclusive, of this act.

Sec. 2. *As used in NRS 278.021 and sections 2 to 8, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 to 6, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 3. *“Halfway house for recovering alcohol and drug abusers” has the meaning ascribed to it in NRS 449.008.*

Sec. 3.5. *“Health Division” means the Health Division of the Department of Health and Human Services.*

Sec. 4. *“Home for individual residential care” has the meaning ascribed to it in NRS 449.0105.*

Sec. 5. *“Residential establishment” means a home for individual residential care in a county whose population is 100,000 or more, a halfway house for recovering alcohol and drug abusers or a residential facility for groups.*

Sec. 6. *“Residential facility for groups” has the meaning ascribed to it in NRS 449.017.*

Sec. 7. 1. ~~*Each political subdivision of the State of Nevada shall, within the limits of available money,*~~ *county and city shall:*

(a) Conduct a reasonable investigation or survey to determine, insofar as is practicable, the following information regarding each group home that is located within the territorial limits of the political subdivision: county or city:

(1) The name of the owner of the group home;

(2) If the group home is leased or rented, the name of the lessee or renter;

(3) The name of the administrator of the group home, if any;

(4) The address of the group home;

(5) The phone number of the group home;

(6) If the group home is licensed, the number of clients for which the home is licensed; and

(7) If known, any information that may be helpful to agencies of the State of Nevada or counties or cities providing police, fire-fighting, rescue or emergency medical services with respect to persons residing in the group home who may need special assistance in the event of a fire, medical crisis or other emergency; and

(b) As often as is reasonably necessary, but not less frequently than once each calendar quarter, transmit the information to the Health Division.

2. ~~*If a political subdivision*~~ county or city ~~*is not able to obtain all of the information described in subsection 1, it shall transmit to the Health Division such information as it is able to obtain.*~~

3. ~~*Using the information transmitted by political subdivisions*~~ counties and cities ~~*pursuant to subsection 1 and using any other resources at its disposal, the Health Division shall compile and maintain a registry of information relating to each group home that exists in this State. The Health Division shall make the information contained in the registry available to:*~~

(a) Any agency of the State of Nevada or a political subdivision of this State; county or city that provides police, fire-fighting, rescue or emergency medical services;

(b) Upon request for the purposes set forth in section 8 of this act, the governing body of a county or city;

(c) Any agency of the Federal Government, the State of Nevada or a ~~political subdivision of this State~~ county or city that is involved in the investigation of acts of abuse, fraud or similar crimes; and

~~(e)~~ (d) Except as otherwise provided in this paragraph, the general public, through the use of the Internet website maintained by the Health Division. The Health Division shall not make available on its Internet website any personally identifying information relating to a resident of a group home.

4. Insofar as the Health Division is able to obtain the relevant information, the registry compiled and maintained by the Health Division must include, with respect to each group home that exists in this State:

(a) Each item of information described in paragraph (a) of subsection 1; and

(b) An entry indicating whether the group home is or is not formally licensed or certified as a residential establishment.

5. Any department or agency of the State of Nevada or a ~~political subdivision of this State~~ county or city that becomes aware of the existence of a group home which is not included in the registry shall, within 30 days after obtaining such information, transmit the information to the Health Division as is necessary for inclusion in the registry.

6. As used in this section ~~is~~

~~(a) "Group", "group home" means:~~

~~(1) (a) A residential establishment; and~~

~~(2) (b) Any other home, facility or residence, whether or not it is licensed, whether it is operated formally or informally and by whatever name it may be known, that provides to four or more unrelated persons services similar to those provided by a residential establishment.~~

~~(b) "Health Division" means the Health Division of the Department of Health and Human Services.~~

~~(c) "Political subdivision" means a city or county.~~

Sec. 8. 1. As a prerequisite to the approval or issuance of any rezoning, zone variance or special use permit that is necessary to operate a residential establishment, the governing body of a county or city shall :

(a) Except as otherwise provided in subsection 2, ensure that the residential establishment or the owner or operator thereof has obtained any licenses or certifications that are required by federal, state or local authorities ~~and~~ ; and

(b) If the residential establishment is subject to the distance requirements set forth in subsection 3 of NRS 278.021, request and use the information contained in the registry compiled and maintained pursuant to section 7 of this act to ensure that the residential establishment will be located and operated in accordance with the provisions of that subsection.

2. Pending a residential establishment or the owner or operator thereof obtaining the required licenses ~~and~~ or certifications, the governing body of a county or city or another entity designated to act on behalf of the governing body may conditionally or provisionally approve or issue any rezoning, zone variance or special use permit that is necessary to operate the residential establishment.

Sec. 9. NRS 278.021 is hereby amended to read as follows:

278.021 1. In any ordinance adopted by a city or county, the definition of "single-family residence" must include a:

(a) Residential facility for groups in which 10 or fewer unrelated persons with disabilities reside with:

(1) House parents or guardians who need not be related to any of the persons with disabilities; and

(2) If applicable, additional persons who are related to the house parents or guardians within the third degree of consanguinity or affinity.

(b) Home for individual residential care.

(c) Halfway house for recovering alcohol and drug abusers.

2. The provisions of subsection 1 do not prohibit a definition of "single-family residence" which permits more persons to reside in a residential facility for groups, nor does it prohibit regulation of homes which are operated on a commercial basis. For the purposes of this subsection, a residential facility for groups, a halfway house for recovering alcohol and drug abusers or a home for individual residential care shall not be deemed to be a home that is operated on a commercial basis for any purposes relating to building codes or zoning.

3. ~~[The Health Division of the Department of Health and Human Services shall compile and maintain a registry of information relating to each residential establishment that exists in this State and shall make available for access on the Internet or its successor, if any, the information contained in the registry. The registry must include with respect to each residential establishment:~~

~~—(a) The name of the owner of the establishment;~~

~~—(b) The name of the administrator of the establishment;~~

~~—(c) The address of the establishment; and~~

~~—(d) The number of clients for which the establishment is licensed.~~

~~Any department or agency of a county or city that becomes aware of the existence of a residential establishment that is not included in the registry shall transmit such information to the Health Division, as is necessary, for inclusion in the registry within 30 days after obtaining the information.~~

~~4.]~~ The governing body of a county whose population is 100,000 or more or the governing body of a city in such a county or any department or agency of the city or county shall approve the first application submitted on or after July 1, 2000, to operate a residential establishment within a particular neighborhood in the jurisdiction of the governing body. If a subsequent application is submitted to operate an additional residential establishment at a location that is within the minimum distance established by the governing body pursuant to this subsection from an existing residential establishment, the governing body shall review the application based on applicable zoning ordinances. The requirements of this subsection do not require the relocation or displacement of any residential establishment which existed before July 1, 2001, from its location on that date. The provisions of this subsection do not create or impose a presumption that the location of more than one residential establishment within the minimum distance of each other established by the governing body pursuant to this subsection is inappropriate under all circumstances with respect to the enforcement of zoning ordinances and regulations. For purposes of this subsection, each governing body shall establish by ordinance a minimum distance between residential establishments that is at least ~~[660]~~ 1,500 feet but not more than ~~[1,500]~~ 2,500 feet.

~~[5.— The]~~

4. *Except as otherwise provided in section 8 of this act, the* governing body of a county or city shall not refuse to issue a special use permit to a residential establishment that meets local public health and safety standards.

~~[6.]~~ 5. The provisions of this section must not be applied in any manner which would result in a loss of money from the Federal Government for programs relating to housing.

~~[7.]~~ 6. As used in this section ~~[:~~

~~—(a) "Halfway house for recovering alcohol and drug abusers" has the meaning ascribed to it in NRS 449.008;~~

~~—(b) "Home for individual residential care" has the meaning ascribed to it in NRS 449.0105;~~

~~—(c) "Person"], "person~~ with a disability" means a person:

~~{(1)}~~ (a) With a physical or mental impairment that substantially limits one or more of the major life activities of the person;

~~{(2)}~~ (b) With a record of such an impairment; or

~~{(3)}~~ (c) Who is regarded as having such an impairment.

~~{(d)} "Residential establishment" means a home for individual residential care in a county whose population is 100,000 or more, a halfway house for recovering alcohol and drug abusers or a residential facility for groups;~~

~~—(e) "Residential facility for groups" has the meaning ascribed to it in NRS 449.017.~~

Sec. 10. NRS 449.040 is hereby amended to read as follows:

449.040 Any person, state or local government or agency thereof desiring a license under the provisions of NRS 449.001 to 449.240, inclusive, must file with the Health Division an application on a form prescribed, prepared and furnished by the Health Division, containing:

1. The name of the applicant and, if a natural person, whether the applicant has attained the age of 21 years.

2. The type of facility to be operated.

3. The location of the facility.

4. In specific terms, the nature of services and type of care to be offered, as defined in the regulations.

5. The number of beds authorized by the Director of the Department of Health and Human Services or, if such authorization is not required, the number of beds the facility will contain.

6. The name of the person in charge of the facility.

7. Such other information as may be required by the Health Division for the proper administration and enforcement of NRS 449.001 to 449.240, inclusive.

8. Evidence satisfactory to the Health Division that the applicant is of reputable and responsible character. If the applicant is a firm, association, organization, partnership, business trust, corporation or company, similar evidence must be submitted as to the members thereof, and the person in charge of the facility for which application is made. If the applicant is a political subdivision of the State or other governmental agency, similar evidence must be submitted as to the person in charge of the institution for which application is made.

9. Evidence satisfactory to the Health Division of the ability of the applicant to comply with the provisions of NRS 449.001 to 449.240, inclusive, and the standards and regulations adopted by the Board.

10. Evidence satisfactory to the Health Division that the facility conforms to the zoning regulations of the local government within which the facility will be operated or that the applicant has applied for an appropriate reclassification, variance, permit for special use or other exception for the facility.

11. If the facility to be licensed is a residential establishment as defined in section 5 of this act, and if the residential establishment is subject to the distance requirements set forth in subsection 3 of NRS 278.021, evidence satisfactory to the Health Division that the residential establishment will be located and operated in accordance with the provisions of that subsection.

~~{Sec. 10.}~~ **Sec. 11.** 1. On or before December 31, 2007, the governing body of each county whose population is 100,000 or more, and the governing body of each city in such a county, shall establish by ordinance the minimum distance between residential establishments that is set forth in subsection 3 of NRS 278.021 **as amended by section 9 of this act.**

2. If a governing body fails to comply with the provisions of subsection 1 on or before December 31, 2007, on that date the ordinances of the governing body

- 1 shall be deemed to establish by operation of law a minimum distance between
- 2 residential establishments of 2,500 feet.
- 3 3. As used in this section, "residential establishment" has the meaning
- 4 ascribed to it in section 5 of this act.