

Amendment No. 700

Senate Amendment to Assembly Bill No. 249 First Reprint (BDR 40-1043)

Proposed by: Senate Committee on Health and Education**Amends:** Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	☐	Lost	☐	_____	Adopted	☐	Lost	☐	_____
Concurred In	☐	Not	☐	_____	Concurred In	☐	Not	☐	_____
Receded	☐	Not	☐	_____	Receded	☐	Not	☐	_____

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 dashed underlining*** is newly added transitory language.

SLP/KCR



Date: 5/15/2009

A.B. No. 249—Revises provisions governing the abatement of certain nuisances and the protection of public health and safety. (BDR 40-1043)



ASSEMBLY BILL NO. 249—ASSEMBLYMEN HARDY, HORNE; CONKLIN, DONDERO
LOOP, GANSERT, HAMBRICK, HOGAN, KOIVISTO, MANENDO, SMITH,
SPIEGEL AND STEWART

MARCH 5, 2009

JOINT SPONSORS: SENATORS HARDY, CEGAVSKE;
COPENING AND WOODHOUSE

Referred to Committee on Health and Human Services

SUMMARY—Revises provisions governing the abatement of certain nuisances
and the protection of public health and safety. (BDR 40-1043)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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

AN ACT relating to public health; authorizing a district health officer or his
designee who orders the extermination or abatement of mosquitoes,
flies, other insects, rats or their breeding places to take certain actions
to abate the nuisance; authorizing a district health officer to order an
owner of real property to abate and prevent the recurrence of such a
nuisance; providing that all money expended by the health district in
abating and preventing the recurrence of such a nuisance constitutes a
lien upon the property; authorizing the health district to bring an action
to foreclose the lien; providing a district board of health with certain
authority relating to the protection of the public health and safety with
respect to **residential property, rental dwelling units, ~~and~~ and**
commercial property; and providing other matters properly relating
thereto.

Legislative Counsel's Digest:

Section 1.5 of this bill provides that the provisions of **sections 1.5-4.5** of this bill apply to
any health district created pursuant to NRS 439.362 or 439.370 (currently the Southern
Nevada Health District in Clark County and the Washoe County Health District). Existing law
authorizes health officers in this State to order the abatement or removal of any nuisance
detrimental to the public health. (NRS 439.490) **Section 2** of this bill provides that a district
health officer or his designee who orders the extermination or abatement of mosquitoes, flies,
other insects, rats or any breeding place thereof may authorize and take certain actions to
abate the nuisance. **Section 3** of this bill authorizes the district health officer to order the
owner of any real property to abate and prevent the recurrence of such a nuisance. The health
officer is required to provide notice of the order to the owner by mail addressed to the last
known address of the owner. **Section 3** provides that if the owner does not abate the nuisance

within the period specified in the order, the health district is required to abate the nuisance and take any action necessary to prevent its recurrence. **Section 4** of this bill provides that all money expended by the health district in abating the nuisance and preventing its recurrence constitutes a lien upon the real property which may be recovered in an action against the property.

Existing law provides that a district board of health may, by affirmative vote of a majority of its members, adopt certain regulations which take effect immediately upon approval of the regulations by the State Board of Health. (NRS 439.366) **Section 4.5** of this bill specifically authorizes a district board of health to adopt regulations relating to any health hazard or safety hazard on residential property, ~~for~~ any health hazard or safety hazard in a rental dwelling unit ~~or any health hazard on commercial property~~. **Section 4.5 requires the regulations relating to safety hazards on residential property and rental dwelling units to provide for a program for swimming pool safety.** **Section 4.5** also authorizes a district board of health to adopt regulations to ensure the enforcement of laws that protect the public health and safety associated with the condition of residential property, rental dwelling units ~~and commercial property~~. In addition, **section 4.5** authorizes a district board of health, in carrying out its duties relating to the protection of the public health and safety associated with the condition of residential property, rental dwelling units, ~~and commercial property~~, to take any enforcement action it determines necessary and to establish an administrative hearing process.

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

Section 1. Chapter 439 of NRS is hereby amended by adding thereto the provisions set forth as sections 1.5 to 4.5, inclusive, of this act.

Sec. 1.5. *The provisions of sections 1.5 to 4.5, inclusive, of this act apply to any health district created pursuant to NRS 439.362 or 439.370.*

Sec. 2. *A district health officer or his designee who issues an order for the extermination or abatement of mosquitoes, flies, other insects, rats or any breeding place thereof may authorize and take any action necessary to abate the nuisance or prevent its recurrence, including, without limitation:*

1. Abate any stagnant pool of water or other breeding place for mosquitoes, flies, other insects or rats;

2. Treat with oil, other larvicidal material, other chemicals or other material any breeding place of mosquitoes, flies, other insects or rats;

3. Build, construct, repair and maintain necessary dikes, levees, cuts, canals or ditches upon any land, and acquire by purchase, condemnation or other lawful means, in the name of the health district, any land, right-of-way, easement, property or material necessary for the extermination or abatement of mosquitoes, flies, other insects, rats or any breeding place thereof;

4. Enter into contracts to indemnify or compensate any owner of real or other property for any injury or damage caused by the use or taking of property for dikes, levees, cuts, canals or ditches;

5. Enter upon without hindrance any land, within or without the health district, to determine whether breeding places of mosquitoes, flies, other insects or rats exist upon that land; and

6. Determine whether any person subject to an order issued pursuant to section 3 of this act has complied with the order.

Sec. 3. *1. A district health officer may issue an order requiring an owner of real property to abate and prevent the recurrence of any mosquitoes, flies, other insects, rats or any breeding place thereof by providing notice of the order*

1 to the owner by mail addressed to the last known address of the owner. The order
2 must:

3 (a) Provide that the owner shall abate the nuisance and prevent its
4 recurrence; and

5 (b) Specify the period within which the abatement must be completed.

6 2. If the owner of the real property does not comply with the order within
7 the time specified, the health district shall abate the nuisance and take all
8 necessary steps to prevent its recurrence.

9 Sec. 4. 1. All money expended by a health district in abating a nuisance
10 and preventing its recurrence on real property pursuant to section 3 of this act
11 constitutes a lien upon the property and may be recovered by an action against
12 the property.

13 2. Notice of the lien must be filed and recorded by the health district in the
14 office of the county recorder of the county in which the property is situated not
15 later than 6 months after the date on which the health district completes the
16 abatement.

17 3. Any action to foreclose the lien must be commenced not later than 6
18 months after the filing and recording of the notice of the lien.

19 4. An action commenced pursuant to subsection 3 must be brought by the
20 health district in the name of the health district.

21 5. When the property is sold, enough of the proceeds to satisfy the lien and
22 the costs of foreclosure must be paid to the health district and the surplus, if any,
23 must be paid to the owner of the property if known, and if not known, must be
24 paid into the court in which the lien was foreclosed for the use of the owner if
25 ascertained.

26 Sec. 4.5. 1. In addition to any other powers, duties and authority
27 conferred on a district board of health, the district board of health may by
28 affirmative vote of a majority of all the members of the board adopt regulations
29 consistent with law, which must take effect immediately on their approval by the
30 State Board of Health, to:

31 (a) Regulate any health hazard or safety hazard on residential property;
32 ~~and~~

33 (b) Regulate any health hazard or safety hazard in a rental dwelling unit ~~and~~;
34 and

35 (c) Regulate any health hazard on commercial property.

36 2. The district board of health may adopt regulations to ensure the
37 enforcement of laws that protect the public health and safety associated with the
38 condition of rental dwelling units and to recover all costs incurred by the district
39 board of health relating thereto. Any regulation adopted pursuant to this
40 subsection must be provided by the landlord of a rental dwelling unit to a tenant
41 upon request to ensure that the landlord and the tenant understand their
42 respective rights and responsibilities clearly.

43 3. In carrying out its duties relating to the protection of the public health
44 and safety associated with the condition of residential property and rental
45 dwelling units, the district board of health shall adopt regulations establishing a
46 program for swimming pool safety to reduce the number of children who drown
47 in swimming pools. The regulations may include, without limitation:

48 (a) Provisions for the use of swimming pool alarms and barriers designed to
49 prevent drowning by children;

50 (b) Provisions for providing and encouraging participation in instruction in
51 swimming pool safety, swimming and drowning prevention for children;

52 (c) Voluntary inspections of swimming pools to assist persons in making
53 swimming pools safe for children;

(d) A grant program for the collection of gifts, grants and donations to carry out the program for swimming pool safety and to distribute swimming pool alarms;

(e) Requirements for providing to persons who own or rent a residential property or rental dwelling unit which has a swimming pool information regarding the program for swimming pool safety; and

(f) Provisions for the dissemination of information to the public regarding the program for swimming pool safety, including, without limitation, through the use of public awareness and media campaigns.

4. In carrying out its duties relating to the protection of the public health and safety associated with the condition of rental dwelling units, the district board of health may:

(a) Take any enforcement action it determines necessary; and

(b) Establish an administrative hearing process, including, without limitation, the hiring of qualified hearing officers.

~~44~~ 5. If a tenant of a rental dwelling unit provides written notice to the landlord pursuant to NRS 118A.355 specifying a failure by the landlord to maintain the dwelling unit in a habitable condition and requesting that the landlord remedy the failure and the landlord fails to remedy ~~the~~ failure or to make a reasonable effort to do so within the time prescribed in NRS 118A.355, the tenant may, in addition to any remedy provided in NRS 118A.355, provide to the district board of health a copy of the written notice that the tenant provided to the landlord. If, upon inspection of the dwelling unit, the district board of health determines that either the landlord or the tenant has failed to maintain the dwelling unit in a habitable condition, the district board of health may refer the matter to the administrative hearing process if established pursuant to subsection ~~4~~ 4 or take any action with respect to the dwelling unit which is authorized by this section or the regulations adopted pursuant thereto.

~~54~~ 6. Before the adoption, amendment or repeal of a regulation, the district board of health must give at least 30 days' notice of its intended action. The notice must:

(a) Include a statement of either the terms or substance of the proposal or a description of the subjects and issues involved and of the time when, the place where and the manner in which interested persons may present their views thereon;

(b) State each address at which the text of the proposal may be inspected and copied; and

(c) Be mailed to all persons who have requested in writing that they be placed on a mailing list, which must be kept by the board for such purpose.

~~64~~ 7. All interested persons must be afforded a reasonable opportunity to submit data, views or arguments, orally or in writing, on the intended action to adopt, amend or repeal the regulation. With respect to substantive regulations, the district board of health shall set a time and place for an oral public hearing, but if no one appears who will be directly affected by the proposal and requests an oral hearing, the district board of health may proceed immediately to act upon any written submissions. The district board of health shall consider fully all written and oral submissions respecting the proposal.

~~74~~ 8. The district board of health shall file a copy of all of its adopted regulations with the county clerk.

~~84~~ 9. As used in this section:

(a) "Barrier" means a fence, dwelling wall or nondwelling wall, or a combination thereof.

1 (b) "Commercial property" means any real property which is not used for a
2 residential dwelling and is not occupied as, or designed or intended for
3 occupancy as, a residence or sleeping place.

4 (c) "Dwelling unit" has the meaning ascribed to it in NRS 118A.080.

5 ~~###~~ (d) "Health hazard" means any biological, physical or chemical
6 exposure, ~~to~~ condition or public nuisance that may adversely affect the health
7 of a person.

8 (e) "Safety hazard" means a public nuisance which may adversely affect the
9 safety of a person, including, without limitation, swimming pools.

10 (f) "Swimming pool" means any permanent and in-ground structure that is
11 outdoors, constructed to contain at least 18 inches of water and intended to be
12 used by persons for swimming or bathing.

13 (g) "Swimming pool alarm" means a device placed in a swimming pool that
14 is designed to detect accidental or unauthorized entrance into the swimming pool
15 and sound an alarm upon such detection.

16 Sec. 5. (Deleted by amendment.)

17 Sec. 6. (Deleted by amendment.)

18 Sec. 7. NRS 439.490 is hereby amended to read as follows:

19 439.490 Every health officer ~~{shall have authority to}~~ or his designee may
20 order the abatement or removal of any nuisance detrimental to the public health in
21 accordance with the laws relating to such matters.

22 Sec. 8. This act becomes effective on July 1, 2009.