

Amendment No. 396

Assembly Amendment to Assembly Bill No. 8

(BDR 38-98)

Proposed by: Assembly Committee on Judiciary**Amends:** Summary: Yes Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

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 dashed underlining* is newly added transitory language.

RBL



Date: 4/20/2009

A.B. No. 8—Establishes the Statewide Central Registry for the Collection of Information Concerning the Abuse, Neglect, Exploitation or Isolation of Older Persons. (BDR 38-98)



ASSEMBLY BILL NO. 8—COMMITTEE ON
HEALTH AND HUMAN SERVICES

(ON BEHALF OF THE LEGISLATIVE COMMISSION’S SUBCOMMITTEE TO STUDY ISSUES
RELATING TO SENIOR CITIZENS AND VETERANS)

PREFILED DECEMBER 2, 2008

Referred to Committee on Judiciary

SUMMARY—~~[Establishes]~~ Makes various changes governing the investigations of the criminal history of certain employees and licensees and creates the Statewide Central Registry for the Collection of Information Concerning the Abuse, Neglect, Exploitation or Isolation of Older Persons. (BDR 38-98)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility.
Effect on the State: Yes.

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

AN ACT relating to ~~[older persons;]~~ public safety; revising certain provisions governing the investigations of the criminal history of certain employees and licensees; establishing the Statewide Central Registry for the Collection of Information Concerning the Abuse, Neglect, Exploitation or Isolation of Older Persons; requiring the Aging Services Division of the Department of Health and Human Services to maintain the Central Registry; providing for the release of certain information from the Central Registry to an employer or prospective employer under certain circumstances; providing immunity from civil and criminal liability under certain circumstances for persons who release information from the Central Registry; making it a crime to submit fingerprints to an employer or licensing board under false pretenses; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Section 1 of this bill requires the Office of Disability Services of the Department of
2 Health and Human Services, rather than the Central Repository for Nevada Records of
3 Criminal History, to review the record of criminal history and the report obtained from
4 the Federal Bureau of Investigation to make employment-related decisions concerning
5 employees of certain organizations and agencies which provide personal care services.
6 (NRS 426.335) Sections 17, 18 and 19 of this bill similarly amend provisions regarding

7 the review of such information by the Health Division of the Department of Health and
8 Human Services for the purpose of making decisions relating to the licensure of persons
9 who operate certain medical facilities and employment-related decisions concerning
10 prospective and current employees of certain medical facilities. (NRS 449.176, 449.179,
11 449.185) Section 15 of this bill makes it a category D felony to submit fingerprints to an
12 employer or licensing board under any false pretense when the fingerprints will be used
13 to conduct an investigation of the criminal history of the person.

14 Certain persons are required to report cases of suspected abuse, neglect, exploitation or
15 isolation of older persons. (NRS 200.5093) Sections 2-14 of this bill establish the Statewide
16 Central Registry for the Collection of Information Concerning the Abuse, Neglect,
17 Exploitation or Isolation of Older Persons and require the Aging Services Division of the
18 Department of Health and Human Services to maintain the Central Registry. Section 10
19 provides for the release of certain information from the Central Registry to an employer or
20 prospective employer upon written authorization from the person who is the subject of the
21 background investigation by the employer or prospective employer. Section 13 provides
22 immunity from civil and criminal liability for persons who lawfully release information from
23 the Central Registry. Section 14 makes it a misdemeanor to release information contained in
24 the Central Registry to an unauthorized person.

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

1 **Section 1. NRS 426.335 is hereby amended to read as follows:**

2 426.335 1. Except as otherwise provided in subsection 2, within 10 days
3 after hiring an employee or entering into a contract with an independent contractor,
4 the holder of a certificate to operate an intermediary service organization shall:

5 (a) Obtain a written statement from the employee or independent contractor
6 stating whether he has been convicted of any crime listed in subsection 1 of
7 NRS 426.341;

8 (b) Obtain an oral and written confirmation of the information contained in the
9 written statement obtained pursuant to paragraph (a);

10 (c) Obtain from the employee or independent contractor two sets of
11 fingerprints and a written authorization to forward the fingerprints to the Central
12 Repository for Nevada Records of Criminal History for submission to the Federal
13 Bureau of Investigation for its report; and

14 (d) Submit to the Central Repository for Nevada Records of Criminal History
15 the fingerprints obtained pursuant to paragraph (c).

16 2. The holder of a certificate to operate an intermediary service organization
17 is not required to obtain the information described in subsection 1 from an
18 employee or independent contractor who provides proof that ~~[an investigation]~~ a
19 search of his criminal history has been conducted by the Central Repository for
20 Nevada Records of Criminal History within the immediately preceding 6 months
21 and the ~~[investigation]~~ search did not indicate that the employee or independent
22 contractor had been convicted of any crime set forth in subsection 1 of
23 NRS 426.341.

24 3. The holder of a certificate to operate an intermediary service organization
25 shall ensure that the criminal history of each employee or independent contractor
26 who works at or for the intermediary service organization is investigated at least
27 once every 5 years. The holder of the certificate shall:

28 (a) ~~[If the intermediary service organization does not have the fingerprints of~~
29 ~~the employee or independent contractor on file, obtain]~~ Obtain two sets of
30 fingerprints from the employee or independent contractor;

(b) Obtain written authorization from the employee or independent contractor to forward the fingerprints ~~to file on~~ obtained pursuant to paragraph (a) to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report; and

(c) Submit the fingerprints to the Central Repository for Nevada Records of Criminal History.

4. Upon receiving fingerprints submitted pursuant to this section, the Central Repository for Nevada Records of Criminal History shall search the record of criminal history of the employee or independent contractor and forward the record of criminal history to the Office together with the report obtained from the Federal Bureau of Investigation pursuant to subsection 3. The Office shall review the record and report and determine whether the employee or independent contractor has been convicted of a crime listed in subsection 1 of NRS 426.341 and immediately inform ~~the Office and~~ the holder of a certificate to operate the intermediary service organization for which the person works whether the employee or independent contractor has been convicted of such a crime.

5. The Central Repository for Nevada Records of Criminal History may impose a fee upon an intermediary service organization that submits fingerprints pursuant to this section for the reasonable cost of ~~the investigation~~ taking any action described in this section. The intermediary service organization may recover from the employee or independent contractor not more than one-half of the fee imposed by the Central Repository. If the intermediary service organization requires the employee or independent contractor to pay for any part of the fee imposed by the Central Repository, it shall allow the employee or independent contractor to pay the amount through periodic payments.

6. As used in this section, "record of criminal history" has the meaning ascribed to it in NRS 179A.070.

Sec. 1.3. NRS 426.339 is hereby amended to read as follows:

426.339 1. Upon receiving information ~~from~~ provided to the Office by the Central Repository for Nevada Records of Criminal History pursuant to NRS 426.335, or evidence from any other source, that an employee or independent contractor of an intermediary service organization has been convicted of a crime listed in subsection 1 of NRS 426.341, the holder of a certificate to operate the intermediary service organization shall terminate the employment or contract of that person after allowing him time to correct the information pursuant to subsection 2.

2. If an employee or independent contractor believes that the information provided by the Central Repository is incorrect, he may immediately inform the intermediary service organization. An intermediary service organization that is so informed shall give the employee or independent contractor a reasonable amount of time of not less than 30 days to correct the information ~~received from~~ provided by the Central Repository before terminating the employment or contract of the person pursuant to subsection 1.

3. An intermediary service organization that has complied with NRS 426.335 may not be held civilly or criminally liable based solely upon the ground that the intermediary service organization allowed an employee or independent contractor to work:

(a) Before it received the information concerning the employee or independent contractor ~~from~~ provided by the Central Repository;

(b) During any period required pursuant to subsection 2 to allow the employee or independent contractor to correct that information;

(c) Based on the information ~~received from~~ provided by the Central Repository, if the information ~~received from~~ provided by the Central Repository was inaccurate; or

(d) Any combination thereof.

↪ An intermediary service organization may be held liable for any other conduct determined to be negligent or unlawful.

~~Section 1.1~~ Sec. 1.7. Chapter 427A of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 14, inclusive, of this act.

Sec. 2. As used in sections 2 to 14, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 to ~~10~~ 9.5, inclusive, of this act have the meanings ascribed to them in those sections.

Sec. 3. "Abuse" has the meaning ascribed to it in NRS 200.5092.

Sec. 4. "Central Registry" means the Statewide Central Registry for the Collection of Information Concerning the Abuse, Neglect, Exploitation or Isolation of Older Persons established by section 10 of this act.

Sec. 5. "Exploitation" has the meaning ascribed to it in NRS 200.5092.

Sec. 6. "Isolation" has the meaning ascribed to it in NRS 200.5092.

Sec. 7. "Neglect" has the meaning ascribed to it in NRS 200.5092.

Sec. 8. "Older person" has the meaning ascribed to it in NRS 200.5092.

Sec. 9. "Protective Services" has the meaning ascribed to it in NRS 200.5092.

Sec. 9.5. "Reasonable cause to believe" has the meaning ascribed to it in NRS 200.50925.

Sec. 10. 1. There is hereby established a Statewide Central Registry for the Collection of Information Concerning the Abuse, Neglect, Exploitation or Isolation of Older Persons. The Division shall maintain the Central Registry.

2. The Central Registry must contain:

(a) The information concerning each report submitted and investigation conducted pursuant to NRS 200.5093 if the investigation of the report results in ~~the belief~~ reasonable cause to believe that an older person ~~has~~ has been abused, neglected, exploited or isolated ~~or~~ or the investigation substantiates that abuse, neglect, exploitation or isolation of an older person has occurred;

(b) Statistical information on the protective services provided in this State; and

(c) Any other information which the Administrator determines to be in furtherance of this chapter.

3. The Division may release information contained in the Central Registry to an employer or prospective employer:

(a) If the person who is the subject of a background investigation by the employer or prospective employer provides written authorization for the release of the information; and

(b) Either:

(1) The employer or prospective employer is required by law to conduct the background investigation of the person for employment purposes; or

(2) The person who is the subject of the background investigation could, in the course of his employment, have regular and substantial contact with older persons ~~for regular and substantial contact with children;~~

↪ but only to the extent necessary to inform the employer or prospective employer whether the person who is the subject of the background investigation is believed to have abused, neglected, exploited or isolated an older person. The Division shall not release any information concerning the identity of a victim or of a person who made a report.

1 4. Except as otherwise provided in this section or by other specific statute,
2 the information contained in the Central Registry may be accessed only by an
3 employee of the Division or an employee of an office for protective services
4 established by a county of this State.

5 Sec. 10.5. 1. After the Division makes a determination to include
6 information in the Central Registry pursuant to subsection 2 of section 10 of this
7 act, the Division shall provide written notification to the person about whom the
8 information pertains concerning his right to appeal the determination and shall
9 provide information on the process for such an appeal.

10 2. The Division shall adopt regulations to establish the process for such an
11 appeal and shall adopt such other regulations as necessary to carry out the
12 provisions of sections 2 to 14, inclusive, of this act.

13 Sec. 11. 1. Except as otherwise provided in subsection 2, the Division
14 shall maintain a record of:

15 (a) The name and identifying data, dates and circumstances of each person
16 requesting or receiving information from the Central Registry; and

17 (b) Any other information which the Administrator determines might be
18 helpful in furthering the purposes of this chapter.

19 2. The Division is not required to maintain a record of information
20 concerning requests for information from or the receipt of information by
21 employees of the Division or an office for protective services established by a
22 county of this State.

23 Sec. 12. 1. Information contained in the Central Registry must not be
24 released unless:

25 (a) The right of the applicant to the information is confirmed;

26 (b) The information concerns a report submitted pursuant to NRS 200.5093
27 which resulted in ~~the belief~~ reasonable cause to believe that an older person
28 ~~has~~ has been abused, neglected, exploited or isolated ~~or~~ or substantiation that
29 abuse, neglect, exploitation or isolation of an older person has occurred;

30 (c) The released information discloses the disposition of the case; and

31 (d) If the information is being provided pursuant to subsection 3 of section
32 10 of this act, the person who is the subject of the background investigation
33 provides written authorization for the release of the information.

34 2. The information contained in the Central Registry concerning cases in
35 which a report results in the belief that an older person has been abused,
36 neglected, exploited or isolated must be deleted from the Central Registry not
37 later than 10 years after the date on which the information is entered into the
38 Central Registry.

39 Sec. 13. If a person who is authorized to release data and information
40 pursuant to sections 2 to 14, inclusive, of this act releases the data and
41 information in good faith and in accordance with sections 2 to 14, inclusive, of
42 this act, the person is immune from civil and criminal liability for any act or
43 omission related to such release.

44 Sec. 14. Any person who willfully releases data or information contained in
45 the Central Registry to an unauthorized person in violation of sections 2 to 14,
46 inclusive, of this act is guilty of a misdemeanor.

Sec. 15. Chapter 179A of NRS is hereby amended by adding thereto a new section to read as follows:

A person who submits fingerprints to his employer or any licensing board under any false pretense to be used to search the records of criminal history of the person is guilty of a category D felony and shall be punished as provided in NRS 193.130.

~~[Sec. 15.]~~ Sec. 16. NRS 200.5095 is hereby amended to read as follows:

200.5095 1. Reports made pursuant to NRS 200.5093, 200.50935 and 200.5094, and records and investigations relating to those reports, are confidential.

2. A person, law enforcement agency or public or private agency, institution or facility who willfully releases data or information concerning the reports and investigation of the abuse, neglect, exploitation or isolation of older persons or vulnerable persons, except:

(a) Pursuant to a criminal prosecution;

(b) Pursuant to NRS 200.50982; ~~for~~

(c) Pursuant to the provisions of sections 2 to 14, inclusive, of this act; or

(d) To persons or agencies enumerated in subsection 3,
is guilty of a misdemeanor.

3. Except as otherwise provided in subsection 2 and NRS 200.50982, data or information concerning the reports and investigations of the abuse, neglect, exploitation or isolation of an older person or a vulnerable person is available only to:

(a) A physician who is providing care to an older person or a vulnerable person who may have been abused, neglected, exploited or isolated;

(b) An agency responsible for or authorized to undertake the care, treatment and supervision of the older person or vulnerable person;

(c) A district attorney or other law enforcement official who requires the information in connection with an investigation of the abuse, neglect, exploitation or isolation of the older person or vulnerable person;

(d) A court which has determined, in camera, that public disclosure of such information is necessary for the determination of an issue before it;

(e) A person engaged in bona fide research, but the identity of the subjects of the report must remain confidential;

(f) A grand jury upon its determination that access to such records is necessary in the conduct of its official business;

(g) Any comparable authorized person or agency in another jurisdiction;

(h) A legal guardian of the older person or vulnerable person, if the identity of the person who was responsible for reporting the alleged abuse, neglect, exploitation or isolation of the older person or vulnerable person to the public agency is protected, and the legal guardian of the older person or vulnerable person is not the person suspected of such abuse, neglect, exploitation or isolation;

(i) If the older person or vulnerable person is deceased, the executor or administrator of his estate, if the identity of the person who was responsible for reporting the alleged abuse, neglect, exploitation or isolation of the older person or vulnerable person to the public agency is protected, and the executor or administrator is not the person suspected of such abuse, neglect, exploitation or isolation; or

(j) The older person or vulnerable person named in the report as allegedly being abused, neglected, exploited or isolated, if that person is not legally incompetent.

4. If the person who is reported to have abused, neglected, exploited or isolated an older person or a vulnerable person is the holder of a license or certificate issued pursuant to chapters 449, 630 to 641B, inclusive, or 654 of NRS,

information contained in the report must be submitted to the board that issued the license.

Sec. 17. NRS 449.176 is hereby amended to read as follows:

449.176 1. Each applicant for a license to operate a facility for intermediate care, facility for skilled nursing or residential facility for groups shall submit to the Central Repository for Nevada Records of Criminal History two complete sets of fingerprints for submission to the Federal Bureau of Investigation for its report.

2. The Central Repository for Nevada Records of Criminal History shall search the record of criminal history of the applicant and forward the record to the Health Division together with the report obtained from the Federal Bureau of Investigation pursuant to subsection 1. The Health Division shall review the record and report and determine whether the applicant has been convicted of a crime listed in paragraph (a) of subsection 1 of NRS 449.188 and immediately inform the administrator of the facility ~~[, if any, and the Health Division]~~ of whether the applicant has been convicted of such a crime.

3. As used in this section, "record of criminal history" has the meaning ascribed to it in NRS 179A.070.

Sec. 18. NRS 449.179 is hereby amended to read as follows:

449.179 1. Except as otherwise provided in subsection 2, within 10 days after hiring an employee or entering into a contract with an independent contractor, the administrator of, or the person licensed to operate, an agency to provide personal care services in the home, an agency to provide nursing in the home, a facility for intermediate care, a facility for skilled nursing or a residential facility for groups shall:

(a) Obtain a written statement from the employee or independent contractor stating whether he has been convicted of any crime listed in NRS 449.188;

(b) Obtain an oral and written confirmation of the information contained in the written statement obtained pursuant to paragraph (a);

(c) Obtain from the employee or independent contractor two sets of fingerprints and a written authorization to forward the fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report; and

(d) Submit to the Central Repository for Nevada Records of Criminal History the fingerprints obtained pursuant to paragraph (c).

2. The administrator of, or the person licensed to operate, an agency to provide personal care services in the home, an agency to provide nursing in the home, a facility for intermediate care, a facility for skilled nursing or a residential facility for groups is not required to obtain the information described in subsection 1 from an employee or independent contractor who provides proof that ~~an investigation~~ a search of his criminal history has been conducted by the Central Repository for Nevada Records of Criminal History within the immediately preceding 6 months and the ~~investigation~~ search did not indicate that the employee or independent contractor had been convicted of any crime set forth in NRS 449.188.

3. The administrator of, or the person licensed to operate, an agency to provide personal care services in the home, an agency to provide nursing in the home, a facility for intermediate care, a facility for skilled nursing or a residential facility for groups shall ensure that the criminal history of each employee or independent contractor who works at the agency or facility is investigated at least once every 5 years. The administrator or person shall:

(a) ~~[If the agency or facility does not have the fingerprints of the employee or independent contractor on file, obtain]~~ Obtain two sets of fingerprints from the employee or independent contractor;

(b) Obtain written authorization from the employee or independent contractor to forward the fingerprints ~~{on file or}~~ obtained pursuant to paragraph (a) to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report; and

(c) Submit the fingerprints to the Central Repository for Nevada Records of Criminal History.

4. Upon receiving fingerprints submitted pursuant to this section, the Central Repository for Nevada Records of Criminal History shall search the record of criminal history of the employee or independent contractor and forward the record to the Health Division together with the report obtained from the Federal Bureau of Investigation pursuant to subsection 3. The Health Division shall review the record and report and determine whether the employee or independent contractor has been convicted of a crime listed in NRS 449.188 and immediately inform ~~{the Health Division and}~~ the administrator of, or the person licensed to operate, the agency or facility at which the person works whether the employee or independent contractor has been convicted of such a crime.

5. The Central Repository for Nevada Records of Criminal History may impose a fee upon an agency or a facility that submits fingerprints pursuant to this section for the reasonable cost of ~~{the investigation.}~~ taking any action described in this section. The agency or facility may recover from the employee or independent contractor not more than one-half of the fee imposed by the Central Repository. If the agency or facility requires the employee or independent contractor to pay for any part of the fee imposed by the Central Repository, it shall allow the employee or independent contractor to pay the amount through periodic payments.

6. As used in this section, "record of criminal history" has the meaning ascribed to it in NRS 179A.070.

Sec. 19. NRS 449.185 is hereby amended to read as follows:

449.185 1. Upon receiving information ~~{from}~~ provided by the Central Repository for Nevada Records of Criminal History pursuant to NRS 449.179, or evidence from any other source, that an employee or independent contractor of an agency to provide personal care services in the home, an agency to provide nursing in the home, a facility for intermediate care, a facility for skilled nursing or a residential facility for groups has been convicted of a crime listed in paragraph (a) of subsection 1 of NRS 449.188, the administrator of, or the person licensed to operate, the agency or facility shall terminate the employment or contract of that person after allowing him time to correct the information as required pursuant to subsection 2.

2. If an employee or independent contractor believes that the information provided by the Central Repository is incorrect, he may immediately inform the agency or facility. An agency or facility that is so informed shall give the employee or independent contractor a reasonable amount of time of not less than 30 days to correct the information ~~{received from}~~ provided by the Central Repository before terminating the employment or contract of the person pursuant to subsection 1.

3. An agency or facility that has complied with NRS 449.179 may not be held civilly or criminally liable based solely upon the ground that the agency or facility allowed an employee or independent contractor to work:

(a) Before it received the information concerning the employee or independent contractor ~~{from}~~ provided by the Central Repository;

(b) During any period required pursuant to subsection 2 to allow the employee or independent contractor to correct that information;

(c) Based on the information ~~{received}~~ provided by from the Central Repository, if the information ~~{received}~~ provided by from the Central Repository was inaccurate; or

- 1 (d) Any combination thereof.
- 2 ➡ An agency or facility may be held liable for any other conduct determined to be
- 3 negligent or unlawful.