

Amendment No. 785

Assembly Amendment to Senate Bill No. 338 First Reprint (BDR 10-1152)

Proposed by: Assembly Committee on Commerce and Labor**Amends:** Summary: No Title: No 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.

BFG/KEL



Date: 5/17/2009

S.B. No. 338—Authorizes a landlord who leases or subleases any commercial premises to dispose of any abandoned personal property left on the commercial premises under certain circumstances.
(BDR 10-1152)



SENATE BILL NO. 338—COMMITTEE ON JUDICIARY

MARCH 23, 2009

Referred to Committee on Judiciary

SUMMARY—Authorizes a landlord who leases or subleases any commercial premises to dispose of any abandoned personal property left on the commercial premises under certain circumstances. (BDR 10-1152)

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 property; authorizing a landlord who leases or subleases any commercial premises to dispose of any abandoned personal property left on the commercial premises without incurring any civil or criminal liability under certain circumstances; authorizing the landlord to charge and collect certain reasonable and actual costs before releasing the abandoned personal property; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 1 of this bill authorizes a landlord who leases or subleases any commercial premises under a rental agreement that has been terminated for any reason to dispose of any abandoned personal property left on the commercial premises without incurring any civil or criminal liability if the landlord takes ~~reasonable~~ **certain** steps to notify any holder of a **perfected** lien or security interest of the existence of the abandoned property and notifies ~~by certified mail~~, the tenant who left the property on the premises of his intention to dispose of the property. ***If the landlord and any holder of a perfected lien or security interest have a written agreement concerning the removal and disposal of abandoned property, that agreement determines the rights and obligations of those parties with respect to the removal and disposal of abandoned property.***

Section 2 of this bill defines "abandoned personal property" as any personal property which is left unattended on the commercial premises after the termination of the tenancy, ~~unless the owner of the personal property expresses his intent in writing to return for the personal property~~ **and which is not removed within a certain period after the landlord has provided certain notices to the tenant and any holder of a perfected lien or security interest in the property.** If the abandoned personal property is a vehicle, **section 1** requires the vehicle to be disposed of in the manner provided in chapter 487 of NRS for abandoned vehicles.

Section 1 of this bill also authorizes the landlord to charge and collect the reasonable and actual costs of inventory, moving and safe storage, if necessary, of the abandoned personal property before releasing the abandoned personal property to the tenant or his authorized representative. If the tenant disputes the costs claimed by the landlord, **section 1** authorizes the dispute to be resolved using the procedure specified in NRS 40.253, as amended by **section 3** of this bill.

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

Section 1. Chapter 118 of NRS is hereby amended by adding thereto a new section to read as follows:

1. ~~[A]~~ Except as otherwise provided in subsection 2, a landlord who leases or subleases any commercial premises under a rental agreement that has been terminated for any reason may, in accordance with the following provisions, dispose of any abandoned personal property, regardless of its character, left on the commercial premises without incurring any civil or criminal liability:

(a) The landlord may dispose of the abandoned personal property and recover his reasonable costs out of the abandoned personal property or the value thereof if the conditions set forth in subparagraphs (1) and (2) are satisfied:

~~(1) [The landlord has taken reasonable steps to:~~

~~(I) Determine whether the abandoned personal property is subject to a lien or security interest; and~~

~~(II) If the abandoned personal property is subject to a lien or security interest, notify the holder of the lien or the security interest that the abandoned personal property has been left on the premises.~~

~~(2)} The landlord has notified the tenant in writing of his intention to dispose of the abandoned personal property and 14 days have elapsed since the notice was [given] mailed to the tenant. The notice must be mailed, by certified mail, return receipt requested, to the tenant at the tenant's present address, and if that address is unknown, then at the tenant's last known address.~~

(2) The landlord has taken reasonable steps to:

(I) Determine whether the tenant has subjected the abandoned personal property to a perfected lien or security interest; and

(II) If the landlord determines that the tenant has subjected the abandoned personal property to a perfected lien or security interest, notify the holder of the perfected lien or the security interest that the abandoned personal property has been left on the premises.

↪ The landlord shall be deemed to have taken the reasonable steps required by subparagraph (2) if the landlord has reviewed the results of a current search of the records in which a financing statement must be filed in order to perfect a lien or security interest pursuant to chapter 104 of NRS for a financing statement naming the tenant as the debtor of a debt secured by the abandoned personal property and, if such a financing statement is found, mailed, to any secured party named on the financing statement at the address indicated on the financing statement, by certified mail, return receipt requested, a written notice stating that the abandoned personal property has been left on the premises.

(b) The landlord may charge and collect the reasonable and actual costs of inventory, moving and safe storage, if necessary, before releasing the abandoned personal property to the tenant or his authorized representative rightfully claiming the abandoned personal property within the appropriate period set forth in paragraph (a).

(c) Vehicles must be disposed of in the manner provided in chapter 487 of NRS for abandoned vehicles.

2. If a written agreement between a landlord and a secured party who has a perfected lien on, or a perfected security interest in, any abandoned personal property of the tenant contains provisions which relate to the removal and

disposal of abandoned personal property, the provisions of the agreement determine the rights and obligations of the landlord and the secured party with respect to the removal and disposal of the abandoned personal property.

3. Any dispute relating to the amount of the costs claimed by the landlord pursuant to paragraph (b) of subsection 1 may be resolved using the procedure provided in subsection 7 of NRS 40.253.

Sec. 2. NRS 118.171 is hereby amended to read as follows:

118.171 As used in NRS 118.171 to 118.205, inclusive, **and section 1 of this act**, unless the context otherwise requires:

1. **"Abandoned personal property" means any personal property which is left unattended on any commercial premises after the termination of the tenancy [unless the owner of the personal property has expressed an intent in writing to return for the personal property] and which is not removed by the tenant or a person who has a perfected lien on, or perfected security interest in, the personal property within 14 days after the later of the date on which the landlord:**

(a) Mailed, by certified mail, return receipt requested, notice of his intention to dispose of the personal property, as required by subparagraph (1) of paragraph (a) of subsection 1 of section 1 of this act; or

(b) Provided notice to a person who has a perfected lien on, or a perfected security interest in, the personal property that the personal property has been left on the premises, as required by subparagraph (2) of paragraph (a) of subsection 1 of section 1 of this act.

2. "Real property" includes an apartment, a dwelling, a mobile home that is owned by a landlord and located on property owned by the landlord and commercial premises.

~~2-3~~ 3. "Rental agreement" means an agreement to lease or sublease real property for a term less than life which provides for the periodic payment of rent.

~~3-3~~ 4. "Tenant" means a person who has the right to possess real property pursuant to a rental agreement.

Sec. 3. NRS 40.253 is hereby amended to read as follows:

40.253 1. Except as otherwise provided in subsection 10, in addition to the remedy provided in NRS 40.2512 and 40.290 to 40.420, inclusive, when the tenant of any dwelling, apartment, mobile home, recreational vehicle or commercial premises with periodic rent reserved by the month or any shorter period is in default in payment of the rent, the landlord or his agent, unless otherwise agreed in writing, may serve or have served a notice in writing, requiring in the alternative the payment of the rent or the surrender of the premises:

(a) At or before noon of the fifth full day following the day of service; or

(b) If the landlord chooses not to proceed in the manner set forth in paragraph (a) and the rent is reserved by a period of 1 week or less and the tenancy has not continued for more than 45 days, at or before noon of the fourth full day following the day of service.

➤ As used in this subsection, "day of service" means the day the landlord or his agent personally delivers the notice to the tenant. If personal service was not so delivered, the "day of service" means the day the notice is delivered, after posting and mailing pursuant to subsection 2, to the sheriff or constable for service if the request for service is made before noon. If the request for service by the sheriff or constable is made after noon, the "day of service" shall be deemed to be the day next following the day that the request is made for service by the sheriff or constable.

2. A landlord or his agent who serves a notice to a tenant pursuant to paragraph (b) of subsection 1 shall attempt to deliver the notice in person in the

1 manner set forth in paragraph (a) of subsection 1 of NRS 40.280. If the notice
2 cannot be delivered in person, the landlord or his agent:

3 (a) Shall post a copy of the notice in a conspicuous place on the premises and
4 mail the notice by overnight mail; and

5 (b) After the notice has been posted and mailed, may deliver the notice to the
6 sheriff or constable for service in the manner set forth in subsection 1 of NRS
7 40.280. The sheriff or constable shall not accept the notice for service unless it is
8 accompanied by written evidence, signed by the tenant when he took possession of
9 the premises, that the landlord or his agent informed the tenant of the provisions of
10 this section which set forth the lawful procedures for eviction from a short-term
11 tenancy. Upon acceptance, the sheriff or constable shall serve the notice within 48
12 hours after the request for service was made by the landlord or his agent.

13 3. A notice served pursuant to subsection 1 or 2 must:

14 (a) Identify the court that has jurisdiction over the matter; and

15 (b) Advise the tenant of his right to contest the matter by filing, within the time
16 specified in subsection 1 for the payment of the rent or surrender of the premises,
17 an affidavit with the court that has jurisdiction over the matter stating that he has
18 tendered payment or is not in default in the payment of the rent.

19 4. If the tenant files such an affidavit at or before the time stated in the notice,
20 the landlord or his agent, after receipt of a file-stamped copy of the affidavit which
21 was filed, shall not provide for the nonadmittance of the tenant to the premises by
22 locking or otherwise.

23 5. Upon noncompliance with the notice:

24 (a) The landlord or his agent may apply by affidavit of complaint for eviction
25 to the Justice Court of the township in which the dwelling, apartment, mobile home
26 or commercial premises are located or to the district court of the county in which
27 the dwelling, apartment, mobile home or commercial premises are located,
28 whichever has jurisdiction over the matter. The court may thereupon issue an order
29 directing the sheriff or constable of the county to remove the tenant within 24 hours
30 after receipt of the order. The affidavit must state or contain:

31 (1) The date the tenancy commenced.

32 (2) The amount of periodic rent reserved.

33 (3) The amounts of any cleaning, security or rent deposits paid in advance,
34 in excess of the first month's rent, by the tenant.

35 (4) The date the rental payments became delinquent.

36 (5) The length of time the tenant has remained in possession without
37 paying rent.

38 (6) The amount of rent claimed due and delinquent.

39 (7) A statement that the written notice was served on the tenant in
40 accordance with NRS 40.280.

41 (8) A copy of the written notice served on the tenant.

42 (9) A copy of the signed written rental agreement, if any.

43 (b) Except when the tenant has timely filed the affidavit described in
44 subsection 3 and a file-stamped copy of it has been received by the landlord or his
45 agent, and except when the landlord is prohibited pursuant to NRS 118A.480, the
46 landlord or his agent may, in a peaceable manner, provide for the nonadmittance of
47 the tenant to the premises by locking or otherwise.

48 6. Upon the filing by the tenant of the affidavit permitted in subsection 3,
49 regardless of the information contained in the affidavit, and the filing by the
50 landlord of the affidavit permitted by subsection 5, the Justice Court or the district
51 court shall hold a hearing, after service of notice of the hearing upon the parties, to
52 determine the truthfulness and sufficiency of any affidavit or notice provided for in
53 this section. If the court determines that there is no legal defense as to the alleged

1 unlawful detainer and the tenant is guilty of an unlawful detainer, the court may
2 issue a summary order for removal of the tenant or an order providing for the
3 nonadmittance of the tenant. If the court determines that there is a legal defense as
4 to the alleged unlawful detainer, the court shall refuse to grant either party any
5 relief, and, except as otherwise provided in this subsection, shall require that any
6 further proceedings be conducted pursuant to NRS 40.290 to 40.420, inclusive. The
7 issuance of a summary order for removal of the tenant does not preclude an action
8 by the tenant for any damages or other relief to which he may be entitled. If the
9 alleged unlawful detainer was based upon subsection 5 of NRS 40.2514, the refusal
10 by the court to grant relief does not preclude the landlord thereafter from pursuing
11 an action for unlawful detainer in accordance with NRS 40.251.

12 7. The tenant may, upon payment of the appropriate fees relating to the filing
13 and service of a motion, file a motion with the court, on a form provided by the
14 clerk of the court, to dispute the amount of the costs, if any, claimed by the landlord
15 pursuant to NRS 118A.460 *or section 1 of this act* for the inventory, moving and
16 storage of personal property left on the premises. The motion must be filed within
17 20 days after the summary order for removal of the tenant or the abandonment of
18 the premises by the tenant, or within 20 days after:

19 (a) The tenant has vacated or been removed from the premises; and

20 (b) A copy of those charges has been requested by or provided to the tenant,

21 ↪ whichever is later.

22 8. Upon the filing of a motion pursuant to subsection 7, the court shall
23 schedule a hearing on the motion. The hearing must be held within 10 days after the
24 filing of the motion. The court shall affix the date of the hearing to the motion and
25 order a copy served upon the landlord by the sheriff, constable or other process
26 server. At the hearing, the court may:

27 (a) Determine the costs, if any, claimed by the landlord pursuant to NRS
28 118A.460 *or section 1 of this act* and any accumulating daily costs; and

29 (b) Order the release of the tenant's property upon the payment of the charges
30 determined to be due or if no charges are determined to be due.

31 9. A landlord shall not refuse to accept rent from a tenant that is submitted
32 after the landlord or his agent has served or had served a notice pursuant to
33 subsection 1 if the refusal is based on the fact that the tenant has not paid collection
34 fees, attorney's fees or other costs other than rent, a reasonable charge for late
35 payments of rent or dishonored checks, or a security. As used in this subsection,
36 "security" has the meaning ascribed to it in NRS 118A.240.

37 10. This section does not apply to the tenant of a mobile home lot in a mobile
38 home park or to the tenant of a recreational vehicle lot in an area of a mobile home
39 park in this State other than an area designated as a recreational vehicle lot pursuant
40 to the provisions of subsection 6 of NRS 40.215.